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FOR THE PERIOD

JANUARY 22 - 29, 2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 10315. January 22, 2020]
(Formerly CBD Case No. 15-4553)

LIBRADA A. LADRERA, *complainant, vs.* **ATTY. RAMIRO S. OSORIO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; NATURE OF DISCIPLINARY PROCEEDINGS AGAINST LAWYERS, EXPLAINED.—** Disciplinary proceedings against lawyers are *sui generis*. They are neither purely civil nor purely criminal which involve a trial of an action or a suit. They are rather investigations by the Court into the conduct of its officers. Public interest is their primary objective, and the real question for determination is whether or not the attorney should still be allowed the privileges as such.

2. **ID.; NOTARIES PUBLIC; 2004 NOTARIAL PRACTICE LAW; PEREMPTORILY NOTARIZING THE DOCUMENTS WITHOUT FIRST REQUIRING THE PARTIES TO PRESENT COMPETENT PROOFS OF IDENTITY HIGHLIGHTS RESPONDENT'S UNWORTHINESS TO FURTHER DISCHARGE THE DUTIES AND FUNCTIONS OF A NOTARY PUBLIC. —** The required personal appearance and competent evidence of identity allow the notary public to verify the identity of the principal himself or herself and determine whether the instrument, deed, or document is his or

her voluntary act. Too, competent evidence of identity is necessary for filling in the details of the notarial register[.] x x x By his own admission, Atty. Osorio unabashedly confesses to being reckless, thoughtless, and mindless of his sworn duties as notary public. He peremptorily notarized the documents without first requiring the parties to present competent proofs of identity. There is no showing nor any averment that he personally knew the parties so as to exempt them from presenting to him competent proofs of identity. Atty. Osorio's claim that he did not turn over the notarized documents to complainant pending presentation of competent evidence of her identity and those of her witnesses, and that complainant probably got hold of them because of her "unusual enterprising ability" speaks volumes of Atty. Osorio's utter irresponsibility, if not sheer dishonesty. His story totally lacks credence, nay, goes against the natural course of things and common experience. His story all the more highlights his unworthiness to further discharge the duties and functions of a notary public.

3. ID.; ID.; ID.; BY CERTIFYING A DEED OF SALE WITH A *JURAT* INSTEAD OF AN ACKNOWLEDGMENT, RESPONDENT DEMONSTRATED LACK OF BASIC KNOWLEDGE OF NOTARIAL ACTS; *JURAT* AND ACKNOWLEDGMENT, DISTINGUISHED. — Atty. Osorio committed another palpable error when he certified the *Deed of Absaloute (sic) Sale* with a *jurat* instead of an acknowledgment. He demonstrated lack of basic knowledge of the notarial acts in failing to distinguish one from the other. The language of the *jurat* avows that the document was subscribed and sworn to before the notary public. On the other hand, an acknowledgment is the act of one who has executed a deed, attesting the deed to be his own before some competent officer. Too, the notary declares that the executor of the document has personally attested before him or her the same to be the executor's free act. Here, the *Deed of Absaloute (sic)* Sale required not just a *jurat* but an acknowledgment by the parties themselves that the same is their voluntary act. Atty. Osorio, however, erroneously certified the *Deed of Absaloute (sic)* Sale with a *jurat*, not an acknowledgment.

4. ID.; ID.; ID.; IN FAILING TO MAKE THE PROPER ENTRIES IN HIS NOTARIAL REGISTER, RESPONDENT EXHIBITED HIS LACK OF CARE IN THE DISCHARGE

OF HIS DUTIES AS A NOTARY PUBLIC; EFFECTS. — The *Acknowledgment of Debt and Promissory Note* here was assigned the following entry in Atty. Osorio's notarial register: Doc. No. 41, Page No. 9, Book No. 10, Series of 2009. Per verification with the Office of the Clerk of Court for Quezon City, nonetheless, it was discovered that this entry pertained to an entirely different document in his notarial register, *i.e.*, a document executed by a certain Benjamin Alfonso and Dante C. Rosento, Jr., on April 24, 2009. Atty. Osorio's failure to make the proper entries in his notarial register demonstrated his lack of care in the discharge of his duties as a notary public in violation of Section 2(e), Rule VI of the 2004 Rules on Notarial Practice[.] x x x As a duly commissioned notary public, Atty. Osorio is charged with the duty to accurately record pertinent information regarding an instrument or document he notarized. For notarization ensures the authenticity and reliability of a document. It converts a private document into a public one and makes it admissible in evidence without need of preliminary proof of authenticity and due execution. Atty. Osorio's failure to perform his duty as a notary public undermined the integrity of the act of notarization. He cast doubt on the authenticity of subject documents. He also cast doubt on the credibility of the notarial register and the notarial process.

5. ID.; ID.; ID.; LACK OF CARE IN THE PERFORMANCE OF NOTARIAL DUTIES ALSO CONSTITUTED A TRANSGRESSION OF THE CODE OF PROFESSIONAL RESPONSIBILITY; HAVING BEEN FOUND NEGLIGENT ON THREE COUNTS IN THE DISCHARGE OF HIS DUTIES AND FUNCTIONS AS A NOTARY PUBLIC, RESPONDENT IS SUSPENDED FROM THE PRACTICE OF LAW FOR SIX MONTHS WITH REVOCATION OF NOTARIAL COMMISSION AND PROHIBITION FOR BEING COMMISSIONED AS NOTARY PUBLIC FOR TWO YEARS. — His acts constituted a violation not only of the Notarial Rules but also of the Code of Professional Responsibility which requires lawyers to promote respect for law and legal processes. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer. x x x Atty. Osorio was negligent on three (3) counts in the discharge of his duties and functions as notary public. He disregarded the principle that a notarial document is, on its

face and by authority of law, entitled to full faith and credit and notaries public must observe utmost care in complying with the formalities intended to ensure the integrity of the notarized document and the act or acts it embodies. Atty. Osorio's want of care in the performance of his notarial duties constituted a transgression of Canon 1 of the Code of Professional Responsibility which requires lawyers to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes, and of the Lawyer's Oath which commands him *to obey the laws and to do no falsehood nor consent to the doing of any in court.* His inattention and recklessness in performing his notarial duties have resulted not only in damage to those directly affected by the notarized documents, but also in undermining the integrity of the office of a notary public and degrading the function of notarization. x x x Atty. Ramiro S. Osorio is found **GUILTY** of violation of the 2004 Rules on Notarial Practice, particularly Section 1 (b), paragraphs (2), (8), and (10), Rule XI; Section 2, paragraph (a) and (e), Rule VI; and Section 2(b), Rule IV, Canon 1, Rule 1.01 of the Code of Professional Responsibility; and the Lawyer's Oath. He is **SUSPENDED** from the practice of law for **six (6) months** and his Notarial Commission is **REVOKED** with **PROHIBITION** from being commissioned as a notary public for **two (2) years**, effective immediately. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

APPEARANCES OF COUNSEL

Puracan Law Office & Associates for complainant.
Millar Villasis Pangilinan Law Offices for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Respondent Atty. Ramiro S. Osorio is charged with violation of the Code of Professional Responsibility, Lawyer's Oath, and the 2004 Rules on Notarial Practice, specifically, for notarizing

documents even in the absence of the parties and despite lack of competent proofs of their identity.

The Complaint

In her *Sinumpaang Reklamo*[1] dated December 16, 2013, complainant Librada A. Ladrera alleged that respondent Atty. Ramiro Osorio notarized the following documents: (1) *Deed of Absaloute* (*sic*) *Sale* dated June 30, 2008, (2) *Acknowledgment of Debt and Promissory Note* dated July 30, 2008, and (3) *Deed of Conditional Transfer and Waiver of Possessory Rights* dated April 24, 2009. In all three (3) documents, her name and that of her daughter Jeralyn Ladrera Kumar were indicated as buyers of a property purportedly owned by respondent's client Dalia[*] Valladolid-Rousan. In truth, however, neither she nor her daughter executed these documents, let alone, personally subscribed them before Atty. Osorio. During the dates in question, her daughter was living abroad.

Aside from this irregularity, the three (3) documents allegedly also bear the following defects, *viz.*:

1. In the *Deed of Absaloute* (*sic*) *Sale* dated June 30, 2008, the competent evidence of identity of the supposed affiants was not indicated in the deed, there was no technical description of the subject realty, and the document was executed outside respondent's notarial jurisdiction;

2. The *Acknowledgment of Debt and Promissory Note* dated July 30, 2008 was notarized on April 24, 2009; and

3. In the *Deed of Conditional Transfer and Waiver of Possessory Rights* dated April 24, 2009, the competent evidence of identity of the supposed affiants was not indicated and the notarial certification was false because the document and page number indicated pertain to another document in respondent's Notarial Book.

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

[*] Sometimes spelled as "Delia" and "Dhalia".

In his *Comment*[2] dated July 18, 2014, Atty. Osorio counters that complainant was the "direct beneficiary" of the questioned documents as she even used them as evidence in the ejectment case Rousan filed against her and her daughter. At present, complainant continues to occupy Rousan's property, albeit, she has not paid its purchase price in full. She even refused to return the property to his client despite demand. Contrary to complainant's claim that she personally appeared before him for the purpose of subscribing the documents, she, in fact, went to his office and even brought her own witnesses when she had the documents notarized. The signatures of these witnesses were already affixed to the documents when the same were presented to him. He had already affixed his signature and notarial seal to the documents when complainant belatedly disclosed that she and her companions did not bring their respective competent proofs of identity. Consequently, he advised them to leave the documents in his possession until such time complainant and her companions could present their respective competent proofs of identity. He did not know how these documents landed in complainant's hands because he never turned them over to her. He delayed no man for money or malice as he was not even paid for notarizing the documents.

Proceedings Before the IBP-CBD

The case was referred to the Integrated Bar of the Philippines-Committee on Bar Discipline (IBP-CBD) for investigation, report and recommendation and assigned to Investigating Commissioner Jose Alfonso M. Gomos.

On June 19, 2015, the case was set for mandatory conference.[3] Only complainant and her counsel appeared. Atty. Osorio did not attend despite notice. In order to avoid delay, the parties were required to file their respective verified position papers, including all supporting documents and/or affidavits of witnesses.

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[2] *Id.* at 31-36.

[3] *Id.* unnumbered page.

On July 21, 2015, complainant submitted her verified position paper.[4] Atty. Osorio again failed to comply despite receipt of the Order dated June 19, 2015 requiring submission of his position papers.

IBP-CBD's Report and Recommendation

In his Report and Recommendation[5] dated August 25, 2015, Commissioner Gomos found that respondent failed to observe due care as notary public when he notarized the documents despite the following deficiencies: (1) the absence of the persons who were supposedly involved in the document; (2) lack of competent evidence of identity of the signatories to the documents; (3) lack of authority to notarize documents executed outside his notarial jurisdiction, Quezon City; and (4) lack of the required notarial acknowledgment on the deeds of conveyance, attachment of a mere *jurat* thereto is improper.

Commissioner Gomos recommended respondent's suspension from the practice of law for one (1) year and the revocation of his notarial commission.

Resolution of the IBP Board of Governors

Under Resolution No. XXII-2016-217 dated February 25, 2016,[6] the IBP Board of Governors adopted the recommendation with modification of the penalty, *viz.*:

> RESOLVED to ADOPT with modification as to the penalty the report and recommendation of the Investigating Commissioner. The Board hereby imposes a penalty of IMMEDIATE REVOCATION OF NOTARIAL COMMISSION, DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC FOR TWO (2) YEARS AND SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS, to be consistent with the prevailing jurisprudence.

Respondent's motion for reconsideration was denied under Resolution No. XXII-2017-786 dated January 27, 2017.

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[4] *Id.*

[5] *Id.*

[6] Notice of Resolution; *id.*

RULING

The Court adopts in full the Resolution of the IBP-Board of Governors.

Disciplinary proceedings against lawyers are *sui generis*. They are neither purely civil nor purely criminal which involve a trial of an action or a suit. They are rather investigations by the Court into the conduct of its officers. Public interest is their primary objective, and the real question for determination is whether or not the attorney should still be allowed the privileges as such.[7]

The Court's primary concern here is to determine whether in discharging the duties and functions of a duly commissioned notary public, Atty. Osorio violated the Rules on Notarial Practice, the Lawyer's Oath, and the Code of Professional Responsibility. That complainant may have benefitted from these documents is not a valid defense and does not warrant the dismissal of the complaint.

Personal appearance required

It is a basic requirement in notarizing a document that the principal must be present before the notary public to personally attest to its voluntariness and due execution. This requirement gives effect to the act of acknowledgment as defined under Section 1, Rule II of the Notarial Rules, thus:

SECTION 1. Acknowledgment. — "Acknowledgment" refers to an act in which an individual on a single occasion:

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

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

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes

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

> stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity. (Emphasis supplied)

Here, complainant asserts that Atty. Osorio notarized the documents although neither she nor her daughter Kumar personally appeared before him to subscribe the same in April 2009. As proof, complainant submitted a certification from the Bureau of Immigration and Deportation (BID) stating that Kumar left the Philippines on November 3, 2006, hence, could not have possibly personally appeared before Atty. Osorio when the documents were supposedly notarized in April 2009.

Notably, the BID certification does not contain any statement that Kumar was still out of the country in April 2009. Hence, the BID certification, on its face, does not serve to negate Atty. Osorio's categorical statement that complainant's daughter did personally appear and subscribe the documents before him. The presumption of regularity accorded to Atty. Osorio in the performance of his official duty as notary public is upheld on this score.

The Court keenly notes, nonetheless, that Atty. Osorio violated some other provisions of the Notarial Law.

1. Lack of competent evidence of identity

A notary public is proscribed from performing a notarial act sans compliance with the two (2)-fold requirement under Section 2(b), Rule IV[8] of the Notarial Rules, *viz*.:

> SEC. 2. Prohibitions. — (a) xxx xxx xxx
>
> (b) A person shall **not** perform a notarial act if the person involved as signatory to the instrument or document —

[8] Powers and Limitations of Notaries Public.

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. (emphasis supplied)

The required personal appearance and competent evidence of identity allow the notary public to verify the identity of the principal himself or herself and determine whether the instrument, deed, or document is his or her voluntary act. Too, competent evidence of identity is necessary for filling in the details of the notarial register, *viz*.:

SEC. 2. *Entries in the Notarial Register*. — (a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:

(1) the entry number and page number;

(2) the date and time of day of the notarial act;

(3) xxx;

(4) xxx;

(5) xxx;

(6) **the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;**

(7) xxx;

(8) xxx;

(9) xxx; and

(10) xxx.[9] (Emphasis supplied)

In his *Comment*[10] dated July 18, 2014, Atty. Osorio himself admits that he had already notarized the documents *before* he

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[9] Section 2(a), Rule VI, 2004 Rules on Notarial Practice.

[10] *Rollo*, pp. 31-36.

learned from the parties themselves that they did not have with them at that time competent proofs of identity, thus:

> Third, Librada A. Ladrera was the very person who went into the Notarial Office of Atty. Ramiro S. Osorio. She was already in possession of the documents marked as Annexes "B", "C" and "D" of SINUMPAANG REKLAMO. The documents were not prepared in the Office of Atty. Ramiro S. Osorio. Librada A. Ladrera had companions and requested for the notarization of the documents marked as Annexes "B", "C", and "D". Librada A. Ladrera represented that the persons in her company are the signatories in the documents. **Respo[n]dent Atty. Ramiro S. Osorio believed in good faith that the persons with Librada Ladrera were indeed the signatories in the documents marked as Annexes "B", "C" and "D". But when asked to produce their valid identifiactions (sic) they were not able to bring out their valid identifications despite the fact respondent already had signed the documents and designated corresponding notarial numbers. The non-production of valid identifications (sic) prompted respondent Atty. Ramiro S. Osorio to retain the x x x documents until the production of valid identifications.** It was complainant Ladrera who insisted that they are the owners of the documents. As to how the documents eventually ended in the possession of Librada A. Ladrera despite impounding those documents at the office of respo[n]dent Ramiro S. Osorio is another unusual enterprising ability of Librada A. Ladrera.[11] (emphasis ours)

By his own admission, Atty. Osorio unabashedly confesses to being reckless, thoughtless, and mindless of his sworn duties as notary public. He peremptorily notarized the documents without first requiring the parties to present competent proofs of identity. There is no showing nor any averment that he personally knew the parties so as to exempt them from presenting to him competent proofs of identity.

Atty. Osorio's claim that he did not turn over the notarized documents to complainant pending presentation of competent evidence of her identity and those of her witnesses, and that complainant probably got hold of them because of her "unusual

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

enterprising ability" speaks volumes of Atty. Osorio's utter irresponsibility, if not sheer dishonesty. His story totally lacks credence, nay, goes against the natural course of things and common experience. His story all the more highlights his unworthiness to further discharge the duties and functions of a notary public.

2. *Jurat* in lieu of Acknowledgment

Atty. Osorio committed another palpable error when he certified the *Deed of Absaloute (sic) Sale* with a *jurat* instead of an acknowledgment.[12] He demonstrated lack of basic knowledge of the notarial acts in failing to distinguish one from the other.

The language of the *jurat* avows that the document was subscribed and sworn to before the notary public. On the other hand, an acknowledgment is the act of one who has executed a deed, attesting the deed to be his own before some competent officer. Too, the notary declares that the executor of the document has personally attested before him or her the same to be the executor's free act.

Here, the *Deed of Absaloute (sic) Sale* required not just a *jurat* but an acknowledgment by the parties themselves that the same is their voluntary act. Atty. Osorio, however, erroneously certified the *Deed of Absaloute (sic) Sale* with a *jurat*, not an acknowledgment.

3. Incorrect entries in the notarial register

The *Acknowledgment of Debt and Promissory Note* here was assigned the following entry in Atty. Osorio's notarial register: Doc. No. 41, Page No. 9, Book No. 10, Series of 2009. Per verification with the Office of the Clerk of Court for Quezon City, nonetheless, it was discovered that this entry pertained to an entirely different document in his notarial register, *i.e.*,

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[12] See *Tigno v. Spouses Aquino*, 486 Phil. 254, 264 (2004).

a document executed by a certain Benjamin Alfonso and Dante C. Rosento, Jr., on April 24, 2009.

Atty. Osorio's failure to make the proper entries in his notarial register demonstrated his lack of care in the discharge of his duties as a notary public in violation of Section 2(e), Rule VI of the 2004 Rules on Notarial Practice, *viz*.:

> (e) the notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.

As a duly commissioned notary public, Atty. Osorio is charged with the duty to accurately record pertinent information regarding an instrument or document he notarized. For notarization ensures the authenticity and reliability of a document.[13] It converts a private document into a public one and makes it admissible in evidence without need of preliminary proof of authenticity and due execution.[14]

Atty. Osorio's failure to perform his duty as a notary public undermined the integrity of the act of notarization.[15] He cast doubt on the authenticity of subject documents. He also cast doubt on the credibility of the notarial register and the notarial process. His acts constituted a violation not only of the Notarial Rules but also of the Code of Professional Responsibility which requires lawyers to promote respect for law and legal processes.[16] He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer.[17]

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[13] *Anudon, et al. v. Atty. Cefra,* 753 Phil. 421, 428 (2015).

[14] See *Malvar v. Atty. Baleros*, 807 Phil. 16, 28 (2017), citing *Agagon v. Atty. Bustamante*, 565 Phil. 581, 587 (2007).

[15] *Agbulos v. Atty. Viray*, 704 Phil. 1, 8 (2013) (citations omitted).

[16] See *Pitogo v. Suello*, 756 Phil. 124, 133 (2015).

[17] *Id.*

No showing that notarial acts performed were beyond Atty. Osorio's notarial jurisdiction

Complainant asserts that Atty. Osorio performed notarial acts outside his notarial jurisdiction since the *Deed of Absaloute (sic) Sale* was executed in Liboro Ragay, Camarines Sur, but Atty. Osorio notarized it in Quezon City.

Nothing in the *Deed of Absaloute (sic) Sale*, however, indicated that Atty. Osorio misrepresented himself to be a commissioned notary public in Camarines Sur when he affixed his signature and notarial seal to this document. On the contrary, the notarial details on the document itself indicated that his notarial commission was "***issued on/at 1-5-09/Q.C.***" It is not entirely remote that the deed was executed in Camarines Sur but brought to Atty. Osorio for notarization in Quezon City. This is not prohibited for so long as the parties to the deed personally appeared before Atty. Osorio. As required under the Notarial Rules, "a notary public should **not** notarize a document **unless** the signatory to the document is in the notary's **presence personally** at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity."[18]

Liabilities as notary public

To emphasize, Atty. Osorio does not deny having notarized the three (3) subject documents, *i.e.*, *Deed of Absaloute (sic) Sale* dated June 30, 2008, *Acknowledgment of Debt and Promissory Note* dated July 30, 2008, and *Deed of Conditional Transfer and Waiver of Possessory Rights* dated April 24, 2009, sans competent proofs of the parties' identities and the required acknowledgment attached to the documents themselves. He, too, does not deny the erroneous entries in his notarial register pertaining to the *Acknowledgment of Debt and Promissory Note* dated July 30, 2008.

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[18] *Miranda, Jr. v. Alvarez, Sr.*, A.C. No. 12196, September 3, 2018, citing *Gaddi v. Velasco*, 742 Phil. 810, 813 (2014) (emphasis supplied).

Undoubtedly, Atty. Osorio was negligent on three (3) counts in the discharge of his duties and functions as notary public. He disregarded the principle that a notarial document is, on its face and by authority of law, entitled to full faith and credit and notaries public must observe utmost care in complying with the formalities intended to ensure the integrity of the notarized document and the act or acts it embodies.[19]

Atty. Osorio's want of care in the performance of his notarial duties constituted a transgression of Canon 1 of the Code of Professional Responsibility which requires lawyers to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes, and of the Lawyer's Oath which commands him *to obey the laws and to do no falsehood nor consent to the doing of any in court*.

His inattention and recklessness in performing his notarial duties have resulted not only in damage to those directly affected by the notarized documents, but also in undermining the integrity of the office of a notary public and degrading the function of notarization.[20]

Proper penalties

Atty. Osorio's obligation to observe and respect the legal solemnity of the act of notarization is more pronounced because he belongs to the legal profession. As a lawyer, he must abide by his solemn oath to do no falsehood or give his consent thereto, and uphold the integrity and dignity of the legal profession at all times. He is expected to refrain from doing any act or omission calculated to lessen the trust and confidence reposed by the public in the integrity of the legal profession.[21]

In various cases, the Court ordered the revocation of the notary public's notarial commission and suspension from the

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[19] See *Gonzales v. Padiernos*, 593 Phil. 562, 568 (2008).

[20] See *Bartolome v. Atty. Basilio*, 771 Phil. 1, 10 (2015).

[21] See *Orola v. Baribar*, A.C. No. 6927, March 14, 2018, 858 SCRA 556, 564.

practice of law for his or her failure to faithfully discharge the duties of his or her office. In ***Coquia v. Atty. Laforteza***,[22] the notary public's failure to personally verify the identity of all parties when he notarized a *pre-signed* document resulted in the revocation of his notarial commission and suspension from the practice of law for a period of one year. In ***Bartolome v. Atty. Basilio***,[23] the penalty was revocation and suspension for one year, with prohibition from being commissioned as notary public for two (2) years because the notary public affixed his official signature and seal on the notarial certificate on a Joint Affidavit without properly identifying the person/s who signed it. In ***Iringan v. Atty. Gumangan***,[24] for notarizing a contract of lease sans presentation by the parties of their competent proofs of identity, respondent's notarial commission was revoked and he was prohibited from being commissioned as notary public for two (2) years. In ***Malvar v. Atty. Baleros***,[25] respondent was found guilty of violating the Notarial Rules, Code of Professional Responsibility and the Lawyer's Oath, hence, her notarial commission was revoked with disqualification from reappointment as notary public for two (2) years and she was suspended from the practice of law for six (6) months.

Here, Atty. Osorio's failure to require complainant and her daughter to present competent evidence of identity and to make proper entries in his notarial register, warrants the revocation of his notarial commission conformably with Section 1, Rule XI of the Notarial Rules, thus:

> SECTION 1. Revocation and Administrative Sanctions. — (a) The Executive Judge shall revoke a notarial commission for any ground on which an application for a commission may be denied.
>
> (b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

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[22] 805 Phil. 400, 414 (2017).

[23] *Supra* note 20.

[24] 816 Phil. 820, 839 (2017).

[25] 807 Phil. 16, 30 (2017).

x x x x x x x x x

(2) fails to make the proper entry or entries in his notarial register concerning his notarial acts;

x x x x x x x x x

(8) fails to identify a principal on the basis of personal knowledge or competent evidence;

x x x x x x x x x

(10) knowingly performs or fails to perform any other act prohibited or mandated by these Rules[.]

Atty. Osorio's disqualification from being commissioned as notary public for two (2) years is also proper, following ***Dr. Malvar v. Atty. Baleros***.[26]

Further, for his notarial indiscretion, neglect in the performance of his sacred duties as notary public, and violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility and the Lawyer's Oath, Atty. Osorio should be suspended from the practice of law for six (6) months.[27]

ACCORDINGLY, Atty. Ramiro S. Osorio is found **GUILTY** of violation of the 2004 Rules on Notarial Practice, particularly Section 1(b), paragraphs (2), (8), and (10), Rule XI; Section 2, paragraph (a) and (e), Rule VI; and Section 2(b), Rule IV, Canon 1, Rule 1.01 of the Code of Professional Responsibility; and the Lawyer's Oath. He is **SUSPENDED** from the practice of law for **six (6) months** and his Notarial Commission is **REVOKED** with **PROHIBITION** from being commissioned as a notary public for **two (2) years**, effective immediately. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

Let a copy of this Decision be (1) entered into the personal records of Atty. Ramiro S. Osorio with the Office of the Bar Confidant; (2) furnished to all chapters of the Integrated Bar

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[26] *Id.*

[27] *Id.*

of the Philippines; and (3) circulated by the Court Administrator to all the courts in the country for their information and guidance.

This Decision takes effect immediately. Atty. Osorio is required to submit to the Office of the Bar Confidant the exact date when he shall have received this Decision within five (5) days from notice.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 201117. January 22, 2020]

ROMEO A. BELTRAN and DANILO G. SARMIENTO, *petitioners, vs.* **SANDIGANBAYAN (Second Division), OFFICE OF THE OMBUDSMAN, ASST. SPECIAL PROSECUTOR III JENNIFER AGUSTIN-SE, OFFICE OF THE SPECIAL PROSECUTOR OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, and COMMISSION ON AUDIT represented by DANILO SISON, ROMEO DE GUZMAN, and LUIS DIMOLOY (COA Regional Office No. 02 Tuguegarao City, Cagayan),** *respondents.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 6770 (OMBUDSMAN ACT OF 1989); OFFICE OF THE SPECIAL PROSECUTOR (OSP); A MERE COMPONENT OF THE OFFICE OF THE OMBUDSMAN AND DOES NOT POSSESS AN INDEPENDENT POWER TO ACT ON

BEHALF OF THE OMBUDSMAN; CASE AT BAR. —[I]n its current form, the Office of the Special Prosecutor is a component of the Office of the Ombudsman, with both concurrently exercising prosecutorial powers. However, in exercising its functions, the Office of the Special Prosecutor shall be under the supervision and control of the Office of the Ombudsman and can only act upon its authority. The Office of the Special Prosecutor is but a mere component of the Office of the Ombudsman. It does not possess an independent power to act on behalf of the Ombudsman. Only upon the Ombudsman's authority can it decide on matters with finality. Therefore, except upon the Ombudsman's orders, the Office of the Special Prosecutor has no power to direct the filing of an information in court. Such is the case here. Petitioners are correct to point out that the assailed February 1, 2011 Order could not have been the denial of petitioner Beltran's Motion for Reconsideration. Respondent Office of the Special Prosecutor had no power to do so; the Order was merely noted by Director Rodrigo V. Coquia of the Prosecution Bureau II. Its findings, therefore, bear no imprimatur from the Ombudsman. Without the Office of the Ombudsman's approval, the Office of the Special Prosecutor's February 1, 2011 Order cannot be considered a final denial of the Motion for Reconsideration.

2. ID.; ID.; ID.; EVEN A ONE-LINE MARGINAL NOTE BY THE OMBUDSMAN IS SUFFICIENT TO APPROVE OR DISAPPROVE THE RECOMMENDATION OF THE OSP; CASE AT BAR. — In *Dumangcas, Jr. v. Marcelo*, this Court held that even a one-line marginal note by the Ombudsman is sufficient to approve or disapprove the Office of the Special Prosecutor's recommendations: It may appear that the Ombudsman's one-line note lacks any factual or evidentiary grounds as it did not set forth the same. The state of affairs, however, is that the Ombudsman's note stems from his [or her] review of the findings of fact reached by the investigating prosecutor. The Ombudsman, contrary to the investigating prosecutor's conclusion, was of the conviction that petitioners are probably guilty of the offense charged, and for this, he [or she] is not required to conduct an investigation anew. He [or she] is merely determining the propriety and correctness of the recommendation by the investigating prosecutor, *i.e.*, whether probable cause actually exists or not, on the basis of the findings

of fact of the latter. He [or she] may agree, fully or partly, or disagree completely with the investigating prosecutor. Whatever course or action that the Ombudsman may take, whether to approve or to disapprove the recommendation of the investigating prosecutor, is but an exercise of his [or her] discretionary powers based upon constitutional mandate. What is important is the Ombudsman's action on the investigating officer's recommendations. Here, Ombudsman Carpio Morales' approval of the May 9, 2012 Order is shown through her signature appearing on the last page of the Order. This is a discretionary act on her part, to which this Court accords respect. Thus, respondents are correct. Through the May 9, 2012 Order, petitioner Beltran's Motion for Reconsideration was finally denied. That the Order came out during the pendency of this Petition neither weakens its value nor makes the final denial invalid. In fact, with this issuance, the argument that there was no denial of petitioner Beltran's Motion for reconsideration has become moot.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; MERE DISAGREEMENT WITH THE OMBUDSMAN'S FINDINGS IS NOT ENOUGH TO CONSTITUTE GRAVE ABUSE OF DISCRETION; THE COURT WILL NOT INTERFERE WITH THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE UNLESS THERE IS A SHOWING OF GRAVE ABUSE OF DISCRETION. — "Mere 'disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion.'" The Office of the Ombudsman has both the constitutional and statutory mandate to act on criminal complaints against erring public officials and employees. As an independent constitutional body, the Office of the Ombudsman is given a wide latitude to conduct investigations and to prosecute cases to fulfill its role "as the champion of the people" and "preserver of the integrity of the public service." Under the principle of non-interference, this Court is called to exercise restraint in reviewing the Office of the Ombudsman's finding of probable cause. As this Court is not a trier of facts, it generally defers to the sound judgment of the Office of the Ombudsman, which is in the better position to assess the facts and circumstances necessary to find probable cause. Moreover, the finding of probable cause for holding an

accused for trial and for filing the necessary information before the courts is an executive function. This Court will not interfere with this function, unless there is a showing of grave abuse of discretion. To constitute grave abuse of discretion, the Office of the Ombudsman must be shown to have conducted the preliminary investigation in a manner that amounts to a "virtual refusal to perform a duty under the law."

4. ID.; CRIMINAL PROCEDURE; JURISDICTION; ONCE THE INFORMATION IS FILED IN COURT, THE COURT ACQUIRES JURISDICTION OF THE CASE AND ANY MOTION TO DISMISS THE CASE OR TO DETERMINE THE ACCUSED'S GUILT OR INNOCENCE RESTS WITHIN THE SOUND DISCRETION OF THE COURT; CASE AT BAR. — In *De Lima v. Reyes*, this Court held that "[o]nce the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court." The filing of the information initiates the criminal action before the court, and the preliminary investigation by the prosecution is terminated. In *De Lima*: Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case. x x x In this case, the criminal action has already commenced. Jurisdiction over the case had been transferred to the Sandiganbayan upon the filing of the Informations. Petitioners received notices of arraignment, and after several deferments, the Sandiganbayan proceeded to arraign them on January 21, 2013 considering the absence of any injunctive relief enjoining the arraignment. It is clear that the Sandiganbayan has already independently determined the existence of probable cause. Petitioners' arraignment has rendered moot any question on the results of respondent Office of the Deputy Ombudsman's preliminary investigation.

APPEARANCES OF COUNSEL

Puno and Associates Law Offices for petitioners.

D E C I S I O N

LEONEN, *J.*:

The Ombudsman's and his or her Deputies' power of determining probable cause to charge an accused is an executive function. They must be given a wide latitude in performing this duty. Absent any showing of grave abuse of discretion, this Court will not disturb their determination of probable cause.

This Court resolves a Petition for *Certiorari*[1] challenging the Decision[2] of the Office of the Deputy Ombudsman for Luzon (Office of the Deputy Ombudsman) and the Office of the Special Prosecutor's Order[3] that allegedly upholds it. The Office of the Deputy Ombudsman found Romeo A. Beltran (Beltran) guilty of serious dishonesty and ordered his dismissal from government service, and recommended that criminal charges be filed against him and Danilo G. Sarmiento (Sarmiento).

This case arose from a Complaint that the Commission on Audit filed before the Office of the Deputy Ombudsman against the following: (1) Alfredo M. Castillo, Jr. (Mayor Castillo), then mayor of Alfonso Castañeda, Nueva Vizcaya; (2) Beltran, then its municipal engineer; and (3) KAICO 25 Realty and Development Corporation (KAICO), owned by Sonny L. Salba and represented by Sarmiento.

The Commission on Audit alleged that Mayor Castillo had entered into a ₱10,000,000.00-worth Contract Agreement with

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[1] *Rollo,* pp. 3-35.

[2] *Id.* at 36-47. The January 21, 2010 Decision was penned by Graft Investigation and Prosecution Officer I Maria Melinda S. Mananghaya and concurred in by Evaluation and Investigation Office-Bureau A Acting Director Joaquin F. Salazar. It was approved by Deputy Ombudsman for Luzon Mark E. Jalandoni, as recommended by Deputy Ombudsman for Luzon Victor C. Fernandez.

[3] *Id.* at 48-65. The February 1, 2011 Order was signed by Assistant Special Prosecutor III Jennifer A. Agustin-Se.

KAICO for the construction of the Bato-Abuyo Farm-to-Market Road in Alfonso Castañeda.[4]

Auditors from the Commission on Audit later observed that only 3.78% of the project was accomplished despite the entire ₱10,000,000.00 being disbursed and paid to KAICO.[5] A breakdown of the project's deficiencies was revealed in a January 2, 2003 Inspection Report prepared by Danilo N. Sison (Sison), a technical audit specialist at the Commission on Audit.[6]

On November 3, 2003, Sison and the other auditors executed a Joint Affidavit, confirming that the project was certified by Beltran as 100% and was fully paid on July 31, 2002,[7] when only 3.78% was accomplished. They recommended that the appropriate cases be filed against Mayor Castillo, Beltran, and KAICO's officers.[8] Sison later submitted a Position Paper, reiterating the need to file criminal and administrative charges against them.[9]

For his part, Beltran insisted that he was not a disbursing officer and that he had never handled the project's funds. He added that he signed the Project Acceptance, which certifies that the project is 100% complete, based on what he saw and reported. He invoked the presumption of regularity in the discharge of official duties.[10]

To bolster his claim, Beltran pointed to the Findings and Observations of the Department of the Interior and Local Government Provincial Fact-Finding Team (Fact-Finding Team), indicating the project's progress.[11] He also relied on the

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[4] *Id.* at 37.

[5] *Id.*

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

[7] *Id.* at 277.

[8] *Id.* at 38.

[9] *Id.* at 39.

[10] *Id.* at 40.

[11] *Id.*

Certifications of Barangay Captains Rosie Sanchez (Barangay Captain Sanchez) of Barangay Batu and Milton P. Suaking (Barangay Captain Suaking) of Barangay Abuyo, dated November 6, 2003 and August 1, 2005, respectively.[12] Both of them stated that the Batu-Abuyo Road was fully built and was being used by farmers as an alternative road.[13]

On January 21, 2010, the Office of the Deputy Ombudsman rendered the assailed Decision,[14] ruling that Beltran should be held administratively liable for certifying that the project was 100% complete when only 3.78% was accomplished at the time he signed the Project Acceptance.[15]

The Office of the Deputy Ombudsman found that Beltran's reliance on the barangay captains' Certifications was misplaced because they were issued much later than the Commission on Audit's Inspection Report. Barangay Captain Suaking's Certification only came 10 months after the inspection, and Sanchez's Certification two (2) years and seven (7) months after. To the Office of the Deputy Ombudsman, these documents may not accurately reflect the condition of the project when the inspection was conducted.[16]

Moreover, the Office of the Deputy Ombudsman found that the Certifications only contained general descriptions of the road, as compared to the Inspection Report, which contained more technical descriptions of the project's deficiencies.[17]

As to the Findings and Observations of the Fact-Finding Team, the Office of the Deputy Ombudsman found that it did not indicate the percentage of the actual accomplished work as compared to the Inspection Report. It also noted that the Fact-Finding

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[12] *Id.* at 43.

[13] *Id.* at 41.

[14] *Id.* at 36-47.

[15] *Id.* at 43.

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

[17] *Id.* at 44.

Team reported that "the road is already covered with vegetative growth for *non-use* and only few have the courage to pass through it."[18]

Hence, for Beltran's failure to refute the claim that his certification in the Project Acceptance was false,[19] the Office of the Deputy Ombudsman held that he committed fraud or falsification that caused undue injury or serious damage to Alfonso Castañeda worth ₱9,622,000.00. This amount represented the unaccomplished portion of the project.[20]

Accordingly, the Office of the Deputy Ombudsman found Beltran guilty of serious dishonesty and dismissed him from government service. It also recommended that criminal charges for violations of Section 3(e) of Republic Act No. 3019 and falsification of public document under Article 171(4) of the Revised Penal Code be filed against Beltran and Sarmiento. However, the administrative charges against Sarmiento and Mayor Castillo were dismissed.[21]

Only Beltran moved for reconsideration.[22]

Upon the Office of the Deputy Ombudsman's Decision, two (2) Informations for the recommended violations were filed before the Sandiganbayan on July 28, 2011.[23] Beltran and Sarmiento later received a Notice from the Sandiganbayan selling their arraignment. However, they manifested that a Motion for Reconsideration was pending before the Office of the Deputy Ombudsman and prayed that the arraignment be postponed.[24]

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[18] *Id.*

[19] *Id.*

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

[21] *Id.* at 253 and 271.

[22] *Id.* at 93-105.

[23] *Id.* at 272.

[24] *Id.* at 254.

Thus, the Sandiganbayan reset the arraignment and instructed the Office of the Special Prosecutor to comment on Beltran's Motion for Reconsideration.[25]

On February 1, 2011, the Office of the Special Prosecutor issued the assailed Order.[26] It declared that the Office of the Deputy Ombudsman did not err when it gave credence to the Commission on Audit's Inspection Report over the Findings and Observations of the Fact-Finding Team and the barangay captains' Certifications.[27]

However, this Order did not contain a dispositive portion. Instead, it contained a prayer at the end, which read:

> ***WHEREFORE***, premises considered, there being no merit for the Motion For Reconsideration filed by Respondent Beltran, the Prosecution respectfully prays that the same be ***DENIED***.
>
> Other just and equitable relief under the law are likewise prayed for.[28] (Emphasis in the original)

Thinking that this Order was a denial of Beltran's Motion for Reconsideration, Beltran and Sarmiento filed before the Office of the Special Prosecutor a Manifestation and Motion[29] praying that the Informations filed in the Sandiganbayan be withdrawn. They claimed that the filing of the informations was premature as they still had available remedies under the Rules of Procedure of the Office of the Ombudsman to question the finding of probable cause.[30] Beltran and Sarmiento furnished the Sandiganbayan with a copy of this Manifestation and

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[25] *Id.* at 273.

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

[27] *Id.* at 55.

[28] *Id.* at 64.

[29] *Id.* at 109-112.

[30] *Id.* at 111.

Motion.[31] In view of this, the Sandiganbayan again deferred the arraignment.[32]

Later realizing that the Order did not contain a dispositive portion but a prayer, Beltran and Sarmiento filed a Motion to Defer Arraignment.[33] They argued that the Motion for Reconsideration remained pending as the Office of the Special Prosecutor's Order was, in essence, a comment on the Motion for Reconsideration.[34]

In its Comment/Opposition,[35] the Office of the Special Prosecutor argued that its assailed Order was actually a denial of the Motion for Reconsideration and not a mere comment.[36] It insisted that as the Office of the Ombudsmans prosecuting arm, it "takes over whatever pending incident that may arise relative to the case already filed with the court."[37] This was why it acted on the Motion for Reconsideration once it was forwarded by the Office of the Deputy Ombudsman.[38]

The Office of the Special Prosecutor further argued that in manifesting their intention to pursue other legal remedies to question the finding of probable cause, Beltran and Sarmiento clearly showed that they treated the Order as a denial of the Motion for Reconsideration.[39]

On April 10, 2012, petitioners Beltran and Sarmiento filed this Petition for *Certiorari*[40] praying, among others, that the

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[31] *Id.* at 112.

[32] *Id.* at 113.

[33] *Id.* at 114-118.

[34] *Id.* at 254-255.

[35] *Id.* at 151-155.

[36] *Id.* at 152-153.

[37] *Id.* at 153.

[38] *Id.*

[39] *Id.*

[40] *Id.* at 3-35.

Decision of the Office of the Deputy Ombudsman and the Order of the Office of the Special Prosecutor be nullified.[41]

With this case still pending, the Office of the Special Prosecutor rendered a May 9, 2012 Order[42] expressly denying petitioner Beltran's Motion for Reconsideration for lack of merit. Its dispositive portion read:

> ***WHEREFORE***, premises considered, respondent's Motion for Reconsideration is hereby ***DENIED*** for lack of merit.[43] (Emphasis in the original)

The Order was approved by then Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) on June 26, 2012, as shown on the last page of the ruling where her signature appears.[44]

On August 22, 2012, respondents Office of the Ombudsman and Office of the Special Prosecutor filed their Comment,[45] to which petitioners filed their Reply on December 11, 2012.[46]

On March 6, 2013, this Court gave due course to the Petition and required the parties to submit their respective memoranda.[47]

On May 24, 2013. petitioners filed their Memorandum.[48] Respondents likewise filed their Memorandum[49] on May 29, 2013.

For their part, petitioners mainly accuse both respondents Office of the Special Prosecutor and Office of the Deputy

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[41] *Id.* at 30.

[42] *Id.* at 217-223.

[43] *Id.* at 223.

[44] *Id.*

[45] *Id.* at 196-216.

[46] *Id.* at 228-239.

[47] *Id.* at 243-244.

[48] *Id.* at 251-270.

[49] *Id.* at 271-283.

Ombudsman of committing grave abuse of discretion in their rulings.

Petitioners argue that respondent Office of the Special Prosecutor gravely abused its discretion in initially insisting that its Order was a denial of the Motion for Reconsideration, when it had no power to do so. They first point out that the assailed Order contains not a dispositive portion, but a mere statement praying that Beltran's Motion be denied.[50] Neither was the Order approved by the Ombudsman, but was just "noted" by the Prosecution Bureau Director. Petitioners also claim that the Order, despite being titled so, served as a comment or opposition that essentially contained a discussion and refutation of their assignment of errors.[51]

Moreover, petitioners point out that Section 11(4) of Republic Act No. 6770, which enumerates the Office of the Special Prosecutor's powers, does not provide that it can deny a motion for reconsideration.[52] Under the same provision, they point out, the office is a mere component of the Office of the Ombudsman, which in turn exercises supervision and control over it.[53]

Thus, petitioners claim that when Assistant Special Prosecutor Jennifer Agustin-Se, the officer tasked with handling the prosecution of their cases, also reviewed and supposedly denied the Motion for Reconsideration, there was a denial of due process because she acted both as prosecutor and the reviewing body of the Informations against petitioners.[54]

Petitioners also claim that respondents changed their position after this Petition for *Certiorari* had been filed. They argue that in respondents' Comment, they admitted that it was only on June 26, 2012 that the Ombudsman approved a new Order

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

[51] *Id.* at 259.

[52] *Id.*

[53] *Id.* at 259-260.

[54] *Id.* at 260.

dated May 9, 2012 recommending the Motion for Reconsideration's denial. To petitioners, this goes against respondents' earlier contention that the February 1, 2011 Order was already the denial of the Motion. Just the same, petitioners insist that the Ombudsman's approval was belated, and could not change the fact that respondent Office of the Special Prosecutor had committed grave abuse of discretion.[55]

In any case, petitioners claim that respondent Office of the Deputy Ombudsman gravely abused its discretion when it completely disregarded their evidence, showing that the project had been completed, and instead found probable cause to file the criminal charges.[56]

Petitioners maintain that the barangay captains' Certifications should have been given probative value as they were in a better position to state whether the project was accomplished, being in the locality where the project was built.[57] They also claim that the Certifications' late issuance does not detract from their contents' veracity— "that the road was actually completed and being used."[58]

Petitioners also argue that respondent Office of the Deputy Ombudsman improperly dismissed the Fact-Finding Team's Findings and Observations for not indicating the percentage of actual work accomplished. They claim that respondent Office of the Deputy Ombudsman only quoted select portions of the Findings and Observations, which, when read in full, would negate the Commission on Audit's Inspection Report.[59]

Petitioners further fault respondent Office of the Deputy Ombudsman for completely relying on the Inspection Report, which they claim should not be given credence for being highly

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[55] *Id.* at 260-261.

[56] *Id.* at 261.

[57] *Id.* at 262.

[58] *Id.* at 263.

[59] *Id.* at 264.

questionable.[60] They claim that the Commission on Audit did not have the original plans and specifications of the project when it conducted the inspection, which makes its evaluation baseless.[61] It likewise did not coordinate with the relevant authorities from the municipality, who would have provided them with the project's specifics, witnessed the inspection, and explained their side, petitioners point out.[62]

Thus, petitioners pray that the assailed Decision and Order issued by respondents be set aside, and the Complaint against them be dismissed for lack of merit.[63]

On the other hand, respondents argue that the issue raised by petitioners on the Office of the Special Prosecutor's power to issue a denial has become moot as the assailed Order has been replaced by the May 9, 2012 Order approved by Ombudsman Carpio Morales. which flatly denied the Motion for Reconsideration. They also emphasize that only petitioner Beltran filed the Motion; petitioner Sarmiento did not join him.[64]

Moreover, respondents submit that respondent Office of the Deputy Ombudsman did not commit grave abuse of discretion in finding probable cause to criminally charge petitioners before the Sandiganbayan.[65] They argue that it did not capriciously and arbitrarily exercise its discretion or violate petitioners' right to due process.[66]

Respondents claim that the finding of probable cause was established based on the appreciation of the facts and evidence presented by both parties during preliminary investigation.[67]

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[60] *Id.* at 265.

[61] *Id.*

[62] *Id.*

[63] *Id.* at 269.

[64] *Id.* at 275.

[65] *Id.*

[66] *Id.*

[67] *Id.*

From this, respondent Office of the Deputy Ombudsman concluded that when petitioner Beltran signed the Project Acceptance, he falsely certified that the project was 100% accomplished when only 3.78% of the project was done.[68]

According to respondents, the findings of respondent Office of the Deputy Ombudsman—that the barangay captains' Certifications and the Findings and Observations deserved no consideration—should not be disturbed by this Court.[69]

Citing *Esquivel v. Ombudsman*,[70] respondents raise the rule on non-interference and assert that this Court has no reason to disturb the finding of probable cause without any showing of grave abuse of discretion. In any case, they assert that petitioners dwell on issues not within the province of the extraordinary remedy of *certiorari*. They point out that any error committed in the evaluation of evidence is a mere error of judgment that cannot be remedied by *certiorari*.[71]

Thus, respondents reiterate their claim that this Court should give deference to the determinations of probable cause by the Office of the Ombudsman, absent any showing of arbitrariness. Otherwise, they argue, courts will be unduly hampered by numerous petitions seeking review of Office of the Ombudsman's exercise of discretion whenever they find probable cause.[72]

As to the question of whether the facts established during the preliminary investigation are enough to sustain a conviction, respondents assert that these can only be determined by the Sandiganbayan after trial. Accordingly, respondents pray that the Petition for *Certiorari* be "denied for lack of merit."[73]

For this Court's resolution are the following issues:

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[68] *Id.*

[69] *Id.* at 277.

[70] 437 Phil. 702 (2002) [Per *J.* Quisumbing, Second Division].

[71] *Rollo,* p. 279.

[72] *Id.* at 280.

[73] *Id.* at 281.

First, whether or not respondent Office of the Special Prosecutor committed grave abuse of discretion when it issued the February 1, 2011 Order; and

Second, whether or not respondent Office of the Deputy Ombudsman committed grave abuse of discretion when it found probable cause against petitioners Romeo A. Beltran and Danilo G. Sarmiento for violating Section 3(e) of Republic Act No. 3019 and Article 171 (4) of the Revised Penal Code.

The Petition is dismissed.

I

The concept of a complaint-handling agency in the Philippines originated from several past offices with similar—but not identical—functions, created by previous administrations in their attempt to rid the government of graft and corrupt practices.[74]

In 1950, then President Elpidio Quirino created an Integrity Board to receive complaints against public officials for acts of corruption, dereliction of duty, and irregularities in office. It was also empowered to investigate and make recommendations to the President.[75]

During President Ramon Magsaysay's term, he created a Presidential Complaints and Action Commission "to encourage public participation in making government service more responsive to the needs of the people."[76] Still a component of the Office of the President, it likewise had the power to conduct fact-finding investigations and to make recommendations to the President. The Commission was later on changed to

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[74] Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1, 5-7 (1982).

[75] Executive Order No. 318 (1950). See Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

[76] Executive Order No. 1 (1953). See Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

Complaints and Action Committee, with the same but more detailed powers.[77]

When President Carlos P. Garcia came into office, he created the Presidential Committee on Administration Performance Efficiency with the goal of achieving "higher efficiency and competence in the administration of government[.]"[78] Its duties included receiving, processing, and evaluating complaints on public officers in the executive branch, which it would then endorse to the office or agency concerned for action. Still directly under the Office of the President, it informed the President on the status of the complaints it received.[79]

For his part, President Diosdado Macapagal created an investigating agency called the Presidential Anti-Graft Committee, which had the power to inquire into and take measures to prevent graft and corruption. Thus, this Committee was vested with investigatory powers, and its findings were then forwarded to the President.[80]

President Ferdinand Marcos (President Marcos) then created the Presidential Agency on Reforms and Government Operations directly under the Office of the President, which acted as a "central clearing house" through which the public may lodge their complaints. It also had the power to investigate graft and corruption, and other activities which are prejudicial to the government and the public interest.[81]

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[77] Executive Order No. 1 (1953). See Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

[78] Executive Order No. 306 (1958), See Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

[79] Executive Order No. 306 (1958). See Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

[80] Executive Order No. 4 (1962). See Irene R. Cortes. *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

[81] Executive Order No. 4 (1966). See Irene R. Cortes. *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

Common to these agencies was that they were all created by presidential issuances, directly under and responsible to the President, and merely exercised fact-finding and recommendatory functions. As such, these agencies were not independent and served at the pleasure of the appointing power.[82]

Around this time, in an attempt to make a more permanent grievance agency, Congress enacted Republic Act No. 6028, or the Citizen's Counselor Act of 1969.[83] The law aimed to safeguard the constitutional right to petition the government for redress of their grievances and to promote higher standards of efficiency in government business and the administration of justice.[84]

Republic Act No. 6028 established the Office of the Citizen's Counselor, which was relatively more independent than the presidential commissions and committees earlier established. For one, the appointment of the Citizen's Counselor, despite coming from the President, needed the consent of the Commission on Appointments.[85] Nonetheless, the offices powers remained limited to investigation, upon complaint by a person or *motu proprio*,[86] with the findings and recommendations to be referred to the relevant government offices.[87]

However, the Office of the Citizen's Counselor was never operationalized as no funds were allocated to it. The Presidential Agency on Reforms and Government Operations was continued instead.[88]

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[82] Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 6 (1982).

[83] *Id.* at 7.

[84] Republic Act No. 6028 (1969), Sec. 2.

[85] Republic Act No. 6028 (1969), Sec. 3.

[86] Republic Act No. 6028 (1969), Sec. 12.

[87] Republic Act No. 6028 (1969), Sec. 14.

[88] Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1, 7 (1982).

When the 1973 Constitution took effect, it mandated the creation of an Office of the Ombudsman called the Tanodbayan. President Marcos, invoking his legislative powers under Presidential Decree No. 1081, issued Presidential Decree No. 1487 in 1978 to implement this constitutional provision.[89] Just the same, the Tanodbayan's powers were confined to investigation and recommendation.[90]

Around this time, the Office of the Chief Special Prosecutor was also created under Presidential Decree No. 1486. Then, passed shortly after was Presidential Decree No. 1607, which amended Presidential Decree No. 1487. The new decree transferred the Office of the Chief Special Prosecutor to the Tanodbayan, effectively transforming the Tanodbayan from merely an investigatory body to a prosecutorial one.[91]

Serving as the prosecution arm of the Tanodbayan,[92] the Office of the Chief Special Prosecutor had the exclusive authority to conduct preliminary investigation in all cases cognizable by the Sandiganbayan, to file informations, and to direct and control the prosecution of these cases.[93]

After this transfer, a further amendatory law[94] granted the Tanodbayan itself the power to conduct preliminary investigations and to prosecute civil, administrative and criminal cases in the Sandiganbayan or in any proper court. This gave both the Tanodbayan and the Office of the Chief Special Prosecutor power to prosecute cases.

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[89] *Id.* at 8.

[90] Presidential Decree No. 1487 (1978), Sec. 14.

[91] Presidential Decree No. 1607 (1978). Sec. 17. See Presidential Decree No. 1486 (1978), Sec. 12; Irene R. Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1, 9 (1982).

[92] Presidential Decree No. 1607 (1978), Secs. 17 and 19. See Presidential Decree No. 1486 (1978), Sec. 12; Irene R.Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1, 9 (1982).

[93] Presidential Decree No. 1607 (1978), Sec. 17.

[94] Presidential Decree No. 1630 (1979), Secs. 10(e) to (f) and 18.

With the ratification of the 1987 Constitution, a new Office of the Ombudsman was created. Its powers, functions, and duties are now constitutionally provided under Article XI, Sections 12 and 13, which state:

SECTION 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

SECTION 13. The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may he provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes or inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards or ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

The Constitution does not expressly provide the Office of the Ombudsman the power to prosecute cases in courts. Instead, it converted the Tanodbayan, which had prosecutorial powers, to the Office of the Special Prosecutor.[95]

A couple of years later, Republic Act No. 6770 or the Ombudsman Act of 1989 was passed, providing the functional and structural organization of the Office of the Ombudsman. Through it, the office's powers were expanded to include not only the power to investigate, but also to prosecute cases against government officers and employees:

SECTION 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate *and prosecute* on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise or this primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases[.] (Emphasis supplied)

At the same time, the Office of the Special Prosecutor retained its power to conduct preliminary investigation and prosecute criminal cases.

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[95] CONST., Art. XI, Sec. 7. See Executive Order No. 243 (1987) and Executive Order No. 244 (1987).

Nonetheless, Republic Act No. 6770 effectively placed the Office of the Special Prosecutor under the auspices of the Office of the Ombudsman. The relationship between these offices has been defined more under Section 11(3) and (4) of the Ombudsman Act, which provide:

> SECTION 11. *Structural Organization.* — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.
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> . . . . . .
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> (3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his [or her] prosecution staff. The Office of the Special Prosecutor shall be an organic component or the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.
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> (4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:
>
> (a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;
>
> (b) To enter into plea bargaining agreements; and
>
> (c) To perform such other duties assigned to it by the Ombudsman.

Thus, in its current form, the Office of the Special Prosecutor is a component of the Office of the Ombudsman, with both concurrently exercising prosecutorial powers. However, in exercising its functions, the Office of the Special Prosecutor shall be under the supervision and control of the Office of the Ombudsman and can only act upon its authority.[96]

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[96] *Zaldivar v. Sandiganbayan*, 243 Phil. 988, 992 (1988) [*Per Curiam, En Banc*].

The Office of the Special Prosecutor is but a mere component of the Office of the Ombudsman. It does not possess an independent power to act on behalf of the Ombudsman. Only upon the Ombudsman's authority can it decide on matters with finality. Therefore, except upon the Ombudsman's orders, the Office of the Special Prosecutor has no power to direct the filing of an information in court.

Such is the case here. Petitioners are correct to point out that the assailed February 1, 2011 Order could not have been the denial of petitioner Beltran's Motion for Reconsideration. Respondent Office of the Special Prosecutor had no power to do so; the Order was merely noted by Director Rodrigo V. Coquia of the Prosecution Bureau II. Its findings, therefore, bear no imprimatur from the Ombudsman.

Without the Office of the Ombudsman's approval, the Office of the Special Prosecutor's February 1, 2011 Order cannot be considered a final denial of the Motion for Reconsideration.

Nevertheless, respondents point out that this defect has been cured by the issuance of the May 9, 2012 Order denying the Motion for Reconsideration—this time, with then Ombudsman Carpio Morales' express approval given on June 26, 2012.

In *Dumangcas, Jr. v. Marcelo*,[97] this Court held that even a one-line marginal note by the Ombudsman is sufficient to approve or disapprove the Office of the Special Prosecutor's recommendations:

> It may appear that the Ombudsman's one—line note lacks any factual or evidentiary grounds as it did not set forth the same. The state of affairs, however, is that the Ombudsman's note stems from his [or her] review of the findings of fact reached by the investigating prosecutor. The Ombudsman, contrary to the investigating prosecutor's conclusion, was of the conviction that petitioners are probably guilty of the offense charged, and for this, he [or she] is not required to conduct an investigation anew. He [or she] is merely determining the propriety and correctness of the recommendation by the

[97] 518 Phil. 464 (2006) [Per *J.* Chico-Nazario, First Division].

investigating prosecutor, *i.e.*, whether probable cause actually exists or not, on the basis of the findings of fact of the latter. He [or she] may agree, fully or partly, or disagree completely with the investigating prosecutor. Whatever course or action that the Ombudsman may take, whether to approve or to disapprove the recommendation or the investigating prosecutor, is but an exercise of his [or her] discretionary powers based upon constitutional mandate.[98]

What is important is the Ombudsman's action on the investigating officer's recommendations. Here, Ombudsman Carpio Morales' approval of the May 9, 2012 Order is shown through her signature appearing on the last page of the Order. This is a discretionary act on her part, to which this Court accords respect.

Thus, respondents are correct. Through the May 9, 2012 Order, petitioner Beltran's Motion for Reconsideration was finally denied. That the Order came out during the pendency of this Petition neither weakens its value nor makes the final denial invalid. In fact, with this issuance, the argument that there was no denial of petitioner Beltran's Motion for reconsideration has become moot.

II

Petitioners also question the finding of probable cause against them. They argue that respondent Office of the Deputy Ombudsman gravely abused its discretion in relying on the Commission on Audit's Inspection Report and not on the barangay captains' Certifications and the Fact-Finding Team's Findings and Observations.

"Mere 'disagreement with the Ombudsman's findings is not enough to constitute grave abuse or discretion.'"[99] The Office of the Ombudsman has both the constitutional and statutory

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[98] *Id.* at 476-477 citing *Gallardo v. People*, 496 Phil. 381 (2005) [Per *J.* Chico-Nazario, Second Division].

[99] *Binay v. Ombudsman*, G.R. Nos. 213957-58, August 7, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552> [Per *J.* Leonen, Third Division].

mandate to act on criminal complaints against erring public officials and employees.[100] As an independent constitutional body, the Office of the Ombudsman is given a wide latitude to conduct investigations and to prosecute cases to fulfill its role "as the champion of the people" and "preserver of the integrity of the public service."[101]

Under the principle of non-interference, this Court is called to exercise restraint in reviewing the Office of the Ombudsman's finding of probable cause.[102] As this Court is not a trier of facts. it generally defers to the sound judgment of the Office of the Ombudsman, which is in the better position to assess the facts and circumstances necessary to find probable cause.[103] Moreover, the finding of probable cause for holding an accused for trial and for filing the necessary information before the courts is an executive function.[104] This Court will not interfere with this function, unless there is a showing of grave abuse of discretion.[105]

To constitute grave abuse of discretion, the Office of the Ombudsman must be shown to have conducted the preliminary investigation in a manner that amounts to a "virtual refusal to perform a duty under the law."[106]

Here, when respondent Office of the Deputy Ombudsman issued the assailed January 21, 2010 Decision, it relied on the Inspection Report by the Commission on Audit as weighed against the different documentary evidence submitted by

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[100] *Dichaves v. Ombudsman*, 802 Phil. 564, 589 (2016) [Per *J*. Leonen, Second Division].

[101] *Id.* at 589-590.

[102] *Id.* at 589.

[103] *Id.* at 590.

[104] *Id.* at 591.

[105] *Binay v. Ombudsman*, G.R. Nos. 213957-58, August 7, 2019. <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552> [Per *J*. Leonen, Third Division].

[106] *Id.*, citing *Reyes v. Ombudsman*, 810 Phil. 106 (2017) [Per *J*. Leonen, Second Division].

petitioners. It considered the barangay captains' Certifications and the Fact-Finding Team's findings and Observations, all submitted by petitioners. In fact, it even concluded that these documents were insufficient to dispute the Commission on Audit's findings:

> The reliance of respondent Beltran on the certifications issued by Rosie Sanches (*sic*) and Milton Suaking, and the Findings and Observations of the DILG Provincial Fact-Finding Team, is misplaced. It should be noted that the Inspection Report of the COA Audit Team was dated 02 January 2003. On the other hand, the certifications issued by Sanches (*sic*) and Luaking (*sic*) were dated 06 November 2003 and 01 August 2005. Thus, the statements of the said individuals may not accuratey reflect the condition of the road at the time the inspection was conducted. Further, the declaration of Sanchez and Luaking (*sic*) merely constitute general descriptions of the road. The said certifications are not sufficient to dispute the Inspection Report of the COA Audit Team, which possesses the expertise and authority to determine the technical specifications of construction projects.
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> Anent the findings of the DILG Provincial Fact-Finding Team, the same did not indicate the percentage of the actual accomplished work as compared to what was reported by the COA. As a matter of fact, contrary to the claim of the respondents that the road is being used by the locality, the Fact-Finding Team reported that "the road is already covered with vegetative growth for non-use and only few have the courage to pass through it".
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> Hence, respondent Beltran failed to rebut that his certification that the construction is 100% complete is false. Such fraud or falsification employed by said respondent caused undue injury or serious damage to the Municipality of Alfonso Castañeda in the amount of Nine Million Six Hundred Twenty Two Thousand Pesos (Php9,622,000.00), representing the amount paid for the unaccomplished portion of the project.[107] (Citations omitted)

This Court does not find grave abuse of discretion in the determination of probable cause against petitioners. It is within the Office of the Ombudsman's mandate and discretion to weigh the different pieces of evidence presented before it during

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[107] *Rollo*, pp. 43-45.

preliminary investigation. That is precisely what happened here: respondent Office of the Deputy Ombudsman considered all the relevant pieces of information before arriving at the conclusion that probable cause against petitioners exists. Petitioners failed to show any grave abuse of discretion on its part. This Court must, therefore, respect its findings.

Finally, it is worth noting that the two (2) Informations against petitioners have already been filed before the Sandiganbayan on July 28, 2011. Petitioners thereafter received notices setting their arraignment.

In *De Lima v. Reyes*,[108] this Court held that "[o]nce the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court."[109] The filing of the information initiates the criminal action before the court, and the preliminary investigation by the prosecution is terminated.[110] In *De Lima*:

> Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.
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> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case

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[108] 776 Phil. 623 (2016) [Per J. Leonen, Second Division].

[109] *Id.* at 649.

[110] *Id.* at 650 citing *Crespo v. Mogul*, 235 Phil. 465, 474-476 (1987) [J. Gancayco, *En Banc*].

before it. The determination of the case is within its exclusive jurisdiction and competence.[111]

In this case, the criminal action has already commenced. Jurisdiction over the case had been transferred to the Sandiganbayan upon the filing of the informations. Petitioners received notices of arraignment, and after several deferments. the Sandiganbayan proceeded to arraign them on January 21, 2013 considering the absence of any injunctive relief enjoining the arraignment.[112]

It is clear that the Sandiganbayan has already independently determined the existence of probable cause. Petitioners' arraignment has rendered moot any question on the results of respondent Office of the Deputy Ombudsman's preliminary investigation.[113]

WHEREFORE, the Petition for Certiorari is **DISMISSED**.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[111] *Id.* at 650-651.

[112] *Rollo*, pp. 271-272.

[113] See *De Lima v. Reyes*, 776 Phil. 623, 652-653 (2016) [Per *J.* Leonen, Second Division].

THIRD DIVISION

[G.R. No. 201812. January 22, 2020]

THELMA B. SIAN represented by ROMUALDO A. SIAN, *petitioner, vs.* **SPOUSES CAESAR A. SOMOSO and ANITA B. SOMOSO, the former being substituted by his surviving son, ANTHONY VOLTAIRE B. SOMOSO, MACARIO M. DE GUZMAN, JR., in his capacity as Sheriff III of the Regional Trial Court of Panabo, Davao, Branch 4,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FRIVOLOUS ACTION; A GROUNDLESS LAWSUIT WITH LITTLE PROSPECT OF SUCCESS, OFTEN BROUGHT MERELY TO HARASS, ANNOY, AND CAST GROUNDLESS SUSPICIONS ON THE INTEGRITY AND REPUTATION OF THE DEFENDANT; CASE AT BAR. — A frivolous action is a groundless lawsuit with little prospect of success. It is often brought merely to harass, annoy, and cast groundless suspicions on the integrity and reputation of the defendant. When petitioner filed the third-party complaint, she was merely exercising her right to litigate, claiming ownership over the subject property, submitting as evidence the Deed of Sale dated July 26, 1980 and TCT No. T-34705 issued in her name. Being the registered owner of the subject property, she has a remedy under the law to assail the writ of attachment and notice of levy. A third-party claimant or any third person may vindicate his claim to his property wrongfully levied by filing a proper action, which is distinct and separate from that in which the judgment is being enforced. Such action would have for its object the recovery of the possession of the property seized by the Sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third-party claim. When the third-party complaint was denied by the RTC, petitioner's remedy was to file an independent reivindicatory action against the judgment creditor — herein respondents. In fact, this was the directive of the RTC when it

denied petitioner's third-party complaint. Hence, when petitioner filed the complaint for annulment and cancellation of writ of attachment and notice of levy, injunction, damages and attorney's fees, she did not act in bad faith nor was the complaint frivolous.

2. **ID.; ID.; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; REMEDIES OF A THIRD-PARTY CLAIMANT. —** The remedies of a third-party claimant under Section 16 of Rule 39 of the Rules of Court is further explained by Justice Florenz D. Regalado in this wise: The remedies of a third-party claimant mentioned in Section 16, Rule 39 of the Rules of Court, that is, a summary hearing before the court which authorized the execution, or a "terceria" or third-party claim filed with the sheriff, or an action for damages on the bond posted by the judgment creditor, or an independent revindicatory action, are cumulative remedies and may be resorted to by a third-party claimant independently of or separately from and without need of availing of the others. If he opted to file a proper action to vindicate his claim of ownership, he must institute an action, distinct and separate from that in which the judgment is being enforced, with a competent court even before or without filing a claim in the court which issued the writ, the latter not being a condition *sine qua non* for the former. This proper action would have for its object the recovery of ownership or possession of the property seized by the Sheriff, as well as damages against the sheriff and other persons responsible for the illegal seizure or detention of the property. The validity of the title of the third-party claimant shall be resolved in said action and a writ of preliminary injunction may be issued against the sheriff.

3. **CIVIL LAW; DAMAGES; MORAL DAMAGES; FILING OF AN UNFOUNDED SUIT IS NOT A GROUND FOR THE GRANT OF MORAL DAMAGES; CASE AT BAR. —** When the CA held that petitioner's complaint was frivolous, it was in effect granting the award of moral damages on the basis of Article 2219(8) of the Civil Code on malicious prosecution. Traditionally, the term malicious prosecution has been associated with unfounded criminal actions. Jurisprudence has also recognized malicious prosecution to include baseless civil suits intended to vex and humiliate the defendant despite the absence of a cause of action or probable cause. However, it should be stressed that the filing of an unfounded suit is not a ground for

the grant of moral damages. Otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff. 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. Besides, as the Court explained above, there was no showing that petitioner flied the case in bad faith or that the action was vexatious and baseless. Accordingly, since respondents are not entitled to moral damages, neither can they be awarded with exemplary damages, so with attorney's fees and the cost of litigation.

4. ID.; ID.; EXEMPLARY DAMAGES; CANNOT BE AWARDED UNLESS THE CLAIMANT FIRST ESTABLISHES HIS CLEAR RIGHT TO MORAL DAMAGES. — The rule in our jurisdiction is that exemplary damages are awarded in addition to moral damages. In the case of *Mahinay v. Velasquez, Jr.*, the Court pronounced: If the court has no proof or evidence upon which the claim for moral damages could be based, such indemnity could not be outrightly awarded. The same holds true with respect to the award of exemplary damages where it must be shown that the party acted in a wanton, oppressive or malevolent manner. Furthermore, this specie of damages is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages.

5. ID.; ID.; ATTORNEY'S FEES; EVEN WHEN A CLAIMANT IS COMPELLED TO LITIGATE WITH THIRD PERSONS OR TO INCUR EXPENSES TO PROTECT HIS RIGHTS, STILL ATTORNEY'S FEES MAY NOT BE AWARDED WHERE NO SUFFICIENT SHOWING OF BAD FAITH COULD BE REFLECTED IN A PARTY'S PERSISTENCE IN A CASE OTHER THAN AN ERRONEOUS CONVICTION OF THE RIGHTEOUSNESS OF HIS CAUSE. — The award of attorney's fees should be deleted as well. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to

litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

APPEARANCES OF COUNSEL

J.V. Yap Law Office for petitioner.
Alabastro & Olaguer Law Offices for respondents.

D E C I S I O N

CARANDANG, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated September 30, 2011 and the Resolution[3] dated April 24, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 00812-MIN, which partly granted respondents' appeal and denying petitioner Thelma Sian's (petitioner) motion for reconsideration.

Facts of the Case

Sometime on March 26, 1981, Caesar A. Somoso (Somoso) filed with the Regional Trial Court (RTC) of Tagum, Davao, Branch 3, a collection suit[4] with prayer for issuance of writ of preliminary attachment against Spouses Iluminada (Iluminada) and Juanito Quiblatin (collectively, Sps. Quiblatin). On May 8, 1981, the RTC granted the prayer for issuance of writ of preliminary attachment on the properties of Sps. Quiblatin. On

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[1] *Rollo*, pp. 5-23.

[2] Penned by Associate Justice Romulo V. Borja, with Associate Justices Edgardo T. Lloren and Carmelita Salandanan Manahan, concurring; *id.* at 36-57.

[3] Penned by Associate Justice Romulo V. Borja, with Associate Justices Edgardo T. Lloren and Melchor Q.C. Sadang, concurring; *id.* at 32-34.

[4] Docketed as Civil Case No. 1460.

May 20, 1981, the Provincial Sheriff attached the properties of Sps. Quiblatin, which included a parcel of land covered by Transfer Certificate of Title (TCT) No. T-29793 (subject property) covering an area of 413 square meters, more or less, issued in the name of "Iluminada Quiblatin, married to Juanito Quiblatin." On July 14, 1981, the attachment on the subject property was annotated on TCT No. T-29793. On September 30, 1985, the RTC decided the case in favor of respondent, ordering Sps. Quiblatin to pay Somoso the sum of ₱154,000.00 with 12% interest *per annum* until the entire obligation is fully paid, ₱5,000.00 as expenses of litigation, ₱20,000.00 as attorney's fees and the costs of suit. Sps. Quiblatin failed to appeal, hence, the decision became final and executory. On October 30, 1989, a Writ of Execution was issued. Among the properties levied is the subject property.

Before the writ of execution could be implemented, petitioner, represented by her husband, Romualdo Sian, filed on March 13, 1990 a third-party claim over TCT No. T-29793. They alleged that the subject property was sold to them by lluminada on July 26, 1980 and the deed of sale was duly registered with the Register of Deeds (RD) of Davao on August 18, 1981. TCT No. T-34705[5] was issued in the name of petitioner by the RD on the same date. Petitioner prayed for the auction sale not to proceed, and the immediate release of the subject property to her.

The RTC dismissed the third-party claim in its Order[6] dated June 6, 1990. It ruled that the levy was annotated on the subject property in the RD on July 14, 1981 ahead of the registration of the deed of sale of the third-party claimant on August 18, 1981. It further declared that the third-party claim can only be taken up in a separate and independent action.

Thus, petitioner filed an action for annulment and cancellation of writ of attachment and notice of levy, injunction, damages

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[5] Records, pp. 6-7.

[6] *Id.* at 28-33.

and attorney's fees[7] against respondents before the RTC of Panabo City, Davao del Norte, Branch 4. Petitioner alleged that she is the registered owner of the subject property and had been in possession thereof since July 26, 1980 up to the present, that she has been religiously paying the taxes, and had introduced improvements. It was sometime in 1981 that she was shocked to learn that the subject property was among those levied by the Sheriff of Davao del Norte in connection with a collection suit. Since the levy on July 14, 1981, the Sheriff had withheld possession of the subject property despite her third-party claim filed in his office. Petitioner further claimed that the levy and attachment of the subject property is without legal basis, as respondents knew from the very beginning that she bought the land from Iluminada.

Respondents countered that TCT No. T-34705, in the name of petitioner, is null and void, as it was obtained through machination employed by petitioner in connivance with Iluminada, a fugitive of justice. Respondents further claimed that the title of the subject property had been attached long before TCT No. T-34705 was issued to petitioner. Further, the alleged Deed of Sale dated July 26, 1980 was not annotated on TCT No. T-29793, even when the subject property was attached on July 14, 1981.[8]

On motion of respondents, the RTC issued a temporary restraining order enjoining petitioner from constructing any building inside the subject property.[9]

Petitioner subsequently amended[10] her complaint to include the allegation that at the time the Sheriff made a levy on the subject property, Iluminada was not yet served with summons of the complaint in Civil Case No. 1460, which was only served on her by publication on March 1, 1984.

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[7] *Id.* at 1-5.

[8] *Id.* at 15-25.

[9] *Id.* at 92.

[10] *Id.* at 125-130.

Respondents specifically denied the allegation and averred that petitioner, not being a party to said case, has no personality to assail the proceedings therein.

RTC Ruling

After trial on the merits, the RTC rendered a Decision[11] dated May 7, 2001 dismissing petitioner's amended complaint, as well as the other claims and counterclaims, for lack of or insufficient evidence. The RTC ruled that petitioner's rights are subordinate to that of respondents', considering that petitioner's title was issued subject to the attachment/levy in favor of respondent. When the Sheriff attached the property on July 14, 1981, TCT No. T-29793 was still registered in the name of the judgment debtor, Iluminada Quiblatin. Although the Deed of Sale was executed on July 26, 1980, it was registered in the RD only on August 18, 1981.

Petitioner moved for reconsideration.[12] In the Order[13] dated February 16, 2006, the RTC partially reconsidered its decision by declaring petitioner as the legal owner of the property, subject to the timely and valid attachment/levy on the subject property by the Sheriff. As such owner, she may well be in the material possession of the subject property, but because of the timely and valid attachment/levy effected by the Sheriff, such property, though owned by petitioner, was brought under *custodia legis*.

Respondents filed an appeal before the CA.

CA Ruling

On September 30, 2011, the CA issued a Decision[14] partly granting the appeal by ordering petitioner to pay respondents the amount of ₱50,000.00 as moral damages, ₱25,000.00 as

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[11] *Id.* at 317-325.

[12] *Id.* at 326-330.

[13] *Id.* at 350-353.

[14] *Rollo*, pp. 36-57.

exemplary damages, and ₱30,000.00 as attorney's fees and litigation cost. It affirmed the rest of the decision of the RTC.

The CA ruled that the third-party claimant is not prevented from vindicating his ownership of the attached property in an appropriate proceeding, which in this case, was by way of reivindicatory action or a suit for damages; that the reivindicatory action had not prescribed; and that the sale of the subject property by Iluminada to petitioner is not fictitious. The CA further declared that the right of respondents to the subject property is not in the nature of ownership but a right to have the property sold in satisfaction of their claims against Iluminada. The fact that petitioner is declared owner does not alter the fact that the subject property may be sold to satisfy respondents' claim. Upon the sale on execution of the property, petitioner will then be divested of ownership of the subject property.

The CA awarded damages to respondents after considering petitioner's suit to be frivolous. It explained that petitioner's main or essential cause of action is to annul or declare the attachment on the subject property null and void. Thus, when petitioner registered the sale, she was aware of the levy on the subject property. Hence, she knew that her action to have the levy cancelled was frivolous.

Petitioner moved for reconsideration, but it was denied in the Resolution[15] dated April 24, 2012 of the CA.

Hence, petitioner filed this Petition for Review on *Certiorari*[16] under Rule 45.

Petitioner argues that respondents are not entitled to damages for their failure to prove the same and that she is not guilty of bad faith in pursuing her claim over the subject property. Being the registered owner, petitioner may not be faulted in assailing the validity of the levy by filing this complaint. Further, the award of moral damages may be granted only if bad faith is

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[15] *Id.* at 32-34.

[16] *Id.* at 5-23.

proven. The fact that she was able to successfully register the subject property on August 18, 1981, although late, does not constitute bad faith, much less a wrongful act or omission. She did so in order to protect her interest over the land. Respondents could not deny the fact that at the time the levy on attachment was made, petitioner was in actual possession of the subject property. Thus, petitioner averred that there is no basis for the award of moral damages; consequently, exemplary damages cannot be awarded either.

In their Comment,[17] respondents maintained that petitioner was in bad faith when she filed the complaint, considering that there is absolutely no basis to annul the levy on the subject property. They averred that petitioner was trying to mislead the trial court with the "simulated" deed of sale, coupled with the false claim that petitioner was in possession of the property. Also, respondents claimed that they do not know about petitioner's transaction on the subject property. They claimed that petitioner could not possibly buy the subject property on July 26, 1980, since petitioner was not in the Philippines during the whole year of 1980.

Issue

The issue is simple: whether petitioner should pay respondents ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages, and ₱30,000.00 as attorney's fees and litigation cost for instituting a frivolous suit against respondents.

Our Ruling

The petition is meritorious.

After a judicious study of the case, the Court finds that the CA erred in awarding damages. Petitioner's complaint for annulment and cancellation of writ of attachment and notice of levy is not frivolous, contrary to the CA's conclusion. The CA explained that when petitioner registered the sale, she was

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[17] *Id.* at 62-74.

aware of the levy on the subject property, hence, she knew that her action to have the levy cancelled was frivolous.

A frivolous action is a groundless lawsuit with little prospect of success.[18] It is often brought merely to harass, annoy, and cast groundless suspicions on the integrity and reputation of the defendant.[19]

When petitioner filed the third-party complaint, she was merely exercising her right to litigate, claiming ownership over the subject property, submitting as evidence the Deed of Sale dated July 26, 1980 and TCT No. T-34705 issued in her name. Being the registered owner of the subject property, she has a remedy under the law to assail the writ of attachment and notice of levy. A third-party claimant or any third person may vindicate his claim to his property wrongfully levied by filing a proper action, which is distinct and separate from that in which the judgment is being enforced. Such action would have for its object the recovery of the possession of the property seized by the Sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third-party claim.[20]

When the third-party complaint was denied by the RTC, petitioner's remedy was to file an independent reivindicatory action against the judgment creditor — herein respondents.[21] In fact, this was the directive of the RTC when it denied petitioner's third-party complaint. Hence, when petitioner filed the complaint for annulment and cancellation of writ of attachment and notice of levy, injunction, damages and attorney's fees, she did not act in bad faith nor was the complaint frivolous.

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[18] *BLACK'S LAW DICTIONARY*, Sixth Edition, p. 668.

[19] See *Prieto v. Corpuz*, 539 Phil. 65, 72 (2006).

[20] *Capa v. Court of Appeals*, 533 Phil. 691, 702 (2006).

[21] Florenz D. Regalado, *REMEDIAL LAW COMPENDIUM*, Vol. 1, 1999 Ed., pp. 443-446.

The remedies of a third-party claimant under Section 16 of Rule 39 of the Rules of Court is further explained by Justice Florenz D. Regalado in this wise:

> The remedies of a third-party claimant mentioned in Section 16, Rule 39 of the Rules of Court, that is, a summary hearing before the court which authorized the execution, or a "terceria" or third-party claim filed with the sheriff, or an action for damages on the bond posted by the judgment creditor, or an independent revindicatory action, are cumulative remedies and may be resorted to by a third-party claimant independently of or separately from and without need of availing of the others. If he opted to file a proper action to vindicate his claim of ownership, he must institute an action, distinct and separate from that in which the judgment is being enforced, with a competent court even before or without filing a claim in the court which issued the writ, the latter not being a condition *sine qua non* for the former. This proper action would have for its object the recovery of ownership or possession of the property seized by the Sheriff, as well as damages against the sheriff and other persons responsible for the illegal seizure or detention of the property. The validity of the title of the third-party claimant shall be resolved in said action and a writ of preliminary injunction may be issued against the sheriff.[22]

When the CA held that petitioner's complaint was frivolous, it was in effect granting the award of moral damages on the basis of Article 2219(8) of the Civil Code on malicious prosecution. Traditionally, the term malicious prosecution has been associated with unfounded criminal actions. Jurisprudence has also recognized malicious prosecution to include baseless civil suits intended to vex and humiliate the defendant despite the absence of a cause of action or probable cause.[23] However, it should be stressed that the filing of an unfounded suit is not a ground for the grant of moral damages. Otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff. The law never intended to impose a penalty on the right to litigate so that the

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[22] *Id.* at 445-446, citing *Sy v. Discaya*, 260 Phil. 401 (1990).

[23] *Villanueva-Ong v. Enrile*, G.R. No. 212904, November 22, 2017, 846 SCRA 376, 386-387.

filing of an unfounded suit does not automatically entitle the defendant to moral damages.[24]

Besides, as the Court explained above, there was no showing that petitioner filed the case in bad faith or that the action was vexatious and baseless. Accordingly, since respondents are not entitled to moral damages, neither can they be awarded with exemplary damages, so with attorney's fees and the cost of litigation.

The rule in our jurisdiction is that exemplary damages are awarded in addition to moral damages.[25] In the case of *Mahinay v. Velasquez, Jr.*,[26] the Court pronounced:

> If the court has no proof or evidence upon which the claim for moral damages could be based, such indemnity could not be outrightly awarded. The same holds true with respect to the award of exemplary damages where it must be shown that the party acted in a wanton, oppressive or malevolent manner. Furthermore, this specie of damages is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages.[27]

The award of attorney's fees should be deleted as well. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[28]

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[24] *Delos Santos v. Papa*, 605 Phil. 460, 471 (2009).

[25] *Id.* at 472.

[26] 464 Phil. 146 (2004).

[27] *Id.* at 150.

[28] *Spouses Timado v. Rural Bank of San Jose, Inc.*, 789 Phil. 453, 460 (2016).

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED**. The Decision dated September 30, 2011 and the Resolution dated April 24, 2012 of the Court of Appeals in CA-G.R. CV No. 00812-MIN as to the award of damages are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Zalameda*, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 203948. January 22, 2020]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS and HIGHWAYS, *petitioner, vs.* **LEONOR A. MACABAGDAL, represented by EULOGIA MACABAGDAL-PASCUAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT CANNOT BE RAISED THEREIN; QUESTION OF FACT, EXPLAINED; CASE AT BAR. — Contrary to petitioner Republic's assertion that the instant Petition concerns "pure questions of law," it is abundantly clear from the instant Petition that petitioner Republic raises a purely factual issue. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to

each other and to the whole, and the probability of the situation. Considering that petitioner Republic invites the Court to recalibrate the RTC and CA's assessment of the evidence on record as regards respondent Leonor's standing as an heir of Elena, the issue presented before the Court is a question of fact that is not cognizable by the Court. A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration. The Court is not a trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.

2. ID.; SPECIAL PROCEEDINGS; EXTRAJUDICIAL SETTLEMENT OF ESTATE; AN UNREGISTERED AFFIDAVIT OF SELF-ADJUDICATION OR EXTRAJUDICIAL SETTLEMENT DOES NOT BIND THIRD PERSONS WITH RESPECT TO THE ADJUDICATION OF PROPERTY BUT THERE IS NO RULE THAT THE SAME CANNOT BE USED TO PROVE THAT ONE IS AN HEIR DUE TO THE SHEER FACT THAT IT WAS NOT REGISTERED BEFORE THE REGISTER OF DEEDS; CASE AT BAR. — It must be stressed that the RTC appreciated the Deed of Extrajudicial Settlement in relation to respondent Leonor's claim that she is the only surviving sister of Elena and that the latter had no other heirs, thus giving respondent Leonor sufficient standing to be a party defendant in the expropriation case. The RTC did not hold whatsoever that the subject property was indeed adjudicated solely to respondent Leonor by virtue of the Deed of Extrajudicial Settlement. While petitioner Republic is correct insofar as saying that under Section 1, Rule 74 of the Rules of Court an unregistered affidavit of self-adjudication or extrajudicial settlement does not bind third persons with respect to the adjudication of property, the CA is also correct in its holding that there is no provision in the Rules of Court which states that "the instrument cannot be used to prove that one is an heir" due to the sheer fact that it was not registered before the Register of Deeds.

3. ID.; EVIDENCE; PUBLIC DOCUMENTS; A NOTARIZED DOCUMENT IS A PUBLIC DOCUMENT THAT HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY AND TRUTHFULNESS OF ITS CONTENTS; CASE AT BAR.

> — [I]t does not escape the attention of the Court that the Deed of Extrajudicial Settlement, which states that Elena has no other heirs and that respondent Leonor is Elena's only surviving sister, was duly notarized, the fact of notarization not disputed by petitioner Republic. A notarized document has in its favor the presumption of regularity and the truthfulness of its contents. A notarized document, being a public document, is evidence of the fact which gave rise to its execution. Hence, the burden of disproving what is borne in the Deed of Extrajudicial Settlement, *i.e.*, that respondent Leonor is the sole surviving heir and sister of Elena, falls on petitioner Republic. However, such burden was not met. Solely focusing on the non-registration of the Deed of Extrajudicial Settlement, petitioner Republic does not provide any evidence, nor does it even make any allegation whatsoever, that respondent Leonor is not the sole surviving heir and sister of Elena.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ricardo C. Pilares, Jr. for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Republic of the Philippines (petitioner Republic), represented by the Department of Public Works and Highways (DPWH), through the Office of the Solicitor General (OSG), against respondent Leonor A. Macabagdal (respondent Leonor), as represented by Eulogia Macabagdal-Pascual, assailing the Decision[2] dated May 30, 2012 (assailed Decision) and Resolution[3]

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[1] *Rollo*, pp. 18-47.

[2] *Id.* at 49-59. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Franchito N. Diamante and Leoncia Real-Dimagiba, concurring.

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

dated September 28, 2012 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. SP No. 120151.

The Essential Facts and Antecedent Proceedings

As culled from the recital of facts in the assailed Decision, the essential facts and antecedent proceedings are as follows:

x x x [Petitioner Republic, represented by the DPWH,] filed a *Complaint*[4] dated January 23, 2008, seeking to expropriate a parcel of land located in Barangay Ugong, Valenzuela City [(subject property)]. The expropriation was necessary for the implementation of the C-5 Northern Link Road Project. The title and registered owner of the subject property, however, were not properly identified, although diligent efforts to search the owner were exerted. The [C]omplaint initially impleaded an unidentified owner named in the title as "John Doe YY." [The Complaint was filed before the Regional Trial Court of Valenzuela City, Branch 172 (RTC) and was docketed as Civil Case No. 55-V-08.]

After the trial court directed that the [C]omplaint be published in a newspaper of general circulation, petitioner [Republic] filed a *Motion*[5] for issuance of a writ of possession. The trial court issued [an] *Order*,[6] granting the motion, but holding in abeyance the implementation of the writ until petitioner [Republic] would be able to deposit with the trial court a check representing the 100% zonal value of the property. Upon compliance therewith, the RTC, per *Order* dated March 10, 2009, issued a corresponding writ of possession.

Meanwhile, on October 13, 2008, a certain Atty. Conrado E. Panlaque appeared before the RTC, praying that one Elena A. Macabagdal (Elena, for brevity) be substituted as party defendant, alleging that she is the real party in interest, being the registered owner of the subject property. Counsel also submitted a copy of a land title [Transfer Certificate of Title (TCT) No. T-125922], registered, in Elena's name.

Petitioner [Republic] then filed a *Motion* to set the case for hearing to enable Elena to substantiate her claim. But on the day of the supposed

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[4] *Id.* at 77-83.

[5] *Id.* at 96-103.

[6] *Id.* at 107-110.

hearing, neither Elena nor her counsel appeared. Instead, on February 3, 2010, Atty. Ricardo C. Pilares, Jr. [(Atty. Pilares)] filed an *Omnibus Motion for Substitution of Party, Admission of Answer and Hearing*,[7] averring that Elena already died on May 14, 1997 as shown in her death certificate.[8] He also prayed that the sole heir, one Leonor A. Macabagdal ([respondent] Leonor, for brevity), represented by Eulogia Macabagdal-Pascual by virtue of a *Special Power of Attorney*,[9] be substituted in Elena's place. [In the said Omnibus Motion, respondent Leonor informed the RTC that she is the sole heir of her sister Elena as the latter died single intestate without a husband and children.]

On April 16, 2010, Atty. Pilares presented as witnesses Eulogia Macabagdal-Pascual and one Nenita Pascual Ramota, and marked in evidence a copy of a *Deed of Extrajudicial Settlement*[10] and other pertinent documents, as Exhibit "1" to "Exhibit "13-A," respectively, in support of [respondent] Leonor's claim as the registered owner of the subject property and proof of her ownership. After the completion of the testimonies of both witnesses, Atty. Hermenegildo Dumlao II, counsel for petitioner [Republic], orally manifested that [petitioner Republic's] position with regard to the motion for substitution of party defendant will depend on the certification that will be issued by Project [D]irector Patrick B. Gatan.

In a *Manifestation*[11] dated April 26, 2010, petitioner [Republic] informed the RTC that the property subject of expropriation is the same as that described in the technical description of TCT No. T-125922, registered in the name of Elena.

In its *Order*[12] dated July 9, 201[0], the RTC, finding that Elena A. Macabagdal really owned the property, named her as party defendant. Due to her death, however, the RTC ordered her to be substituted by [respondent] Leonor, being her sole heir. The dispositive portion of the *Order* dated July 9[,] 2010 reads, (*sic*) as follows:

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[7] *Id.* at 135-138-A.

[8] *Id.* at 139.

[9] *Id.* at 142.

[10] *Id.* at 140-141.

[11] *Id.* at 157-160.

[12] *Id.* at 161-163. Penned by Judge Nancy Rivas-Palmones.

> WHEREFORE, defendant John Doe "YY" is substituted by Elena A. Macabagdal as party defendant in this case. Due to the death of defendant Elena A. Macabagdal on May 14, 1997, she is now substituted by her sole heir, Leonor A. Macabagdal, represented by Eulogia Macabagdal-Pascual as party defendant.
>
> *x x x* *x x x* *x x x*
>
> SO ORDERED.

On August 25, 2010, petitioner [Republic] filed a *Motion for Partial Reconsideration*[13] arguing that the substitution of [respondent] Leonor was improper as the extrajudicial deed of partition, the evidence for allowing her to be substituted as the sole heir, was neither registered in the Register of Deeds of Valenzuela City nor published in a newspaper of general circulation pursuant to Sec. 1, Rule 74 of the Rules of Court. However, the RTC, in its Order[14] dated March 16, 2011, denied the motion ratiocinating, as follows:

> Section 1, Rule 74 of the Rules of Court is not one of the requirements set forth in substitution of party mentioned in Section 16, Rule 3 of the Rules of Court. It is clearly stated in the Death Certificate of Elena A. Macabagdal that she was single at the time of her death on May 14, 1997 and she did not execute a will and testament during her lifetime. Therefore, in applying Section 16, Rule 3 of the Rules of Court, her only heir is the surviving sister, Leonor A. Macabagdal, represented by Eulogia Macabagdal-Pascual. Besides, Transfer Certificate of Title No. [T-125922] is admittedly registered exclusively in the name of Elena A. Macabagdal.

Aggrieved, petitioner [Republic] filed [a] petition for certiorari [under Rule 65 of the Rules of Court before the CA (Rule 65 Petition),[15]] raising the sole issue:

> **WHETHER OR NOT RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION**

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[13] *Id.* at 164-168.

[14] *Id.* at 169-170.

[15] *Id.* at 171-193.

IN ALLOWING RESPONDENT LEONOR A. MACABAGDAL TO SUBSTITUTE ELENA A. MACABAGDAL DESPITE THE FORMER'S FAILURE TO PROVE THAT SHE HAS A LAWFUL RIGHT OVER THE PROPERTY SUBJECT OF THE EXPROPRIATION CASE.

x x x

Petitioner [Republic] contends that the RTC gravely abused its discretion in allowing the substitution of [respondent Leonor] since the only evidence submitted to prove that she is the sole heir is the extrajudicial deed of settlement. Petitioner [Republic] maintains that the substitution is erroneous as the said deed is unregistered with the Register of Deeds and unpublished in a newspaper of general circulation. Hence, the deed does not bind petitioner [Republic], and [respondent Leonor] may not rightfully claim payment for the expropriation of the property.

On the other hand, [respondent Leonor] argues that [the RTC] did not abuse its discretion, maintaining that the substitution is proper. [Respondent Leonor] insists there are sufficient pertinent documents and papers to support her claim and that petitioner [Republic] acquiesced in to her (*sic*) as the real party-in-interest when it actively participated in the determination of her personality as the sole heir. Thus, petitioner [Republic] is precluded from questioning her as an heir to Elena Macabagdal.

Petitioner [Republic] counters by stating that what has been admitted is only the fact that the property subject of expropriation is the same registered under TCT No. T-125922.[16]

The Ruling of the CA

In the assailed Decision, the CA denied the Rule 65 Petition for lack of merit.

The dispositive portion of the assailed Decision reads:

WHEREFORE, the instant petition is **DENIED**. The assailed *Orders* dated July 9, 2010 and March 16, 2011 are **AFFIRMED**.

SO ORDERED.[17]

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[16] *Id.* at 50-53; citations supplied, emphasis and italics in the original.

[17] *Id.* at 58.

In the assailed Decision, the CA "found no abuse of discretion, so patent and so gross, committed by the RTC in allowing the substitution of the deceased Elena A. Macabagdal with her sole heir Leonor Macabagdal."[18]

In upholding the RTC's ruling allowing respondent Leonor to substitute Elena in the expropriation case, the CA explained that petitioner Republic had already admitted that the subject property is registered in the name of Elena and that the latter is the proper party defendant. Hence, "[n]o other party or third person may therefore substitute her other than her legal representative, or an administrator or executor, as the case may be. The death certificate [of Elena] shows that Elena was single at the time of her death, and her only remaining heir is [respondent] Leonor."[19]

Further, the CA belied petitioner Republic's assertion that the evidence on record, *i.e.*, the Deed of Extrajudicial Settlement, was insufficient in establishing the sole heirship of respondent Leonor due to the said document's non-registration and non-publication. As factually found by the CA, "[c]ontrary to what petitioner [Republic] asserts, the deed of extrajudicial settlement and the notice thereof, were in fact published."[20]

The CA likewise explained that even if the Deed of Extrajudicial Settlement was indeed unregistered and unpublished, "the immediate effect x x x is that the instrument will not bind the heirs, creditors or other persons who have no notice thereof as to the settlement or partition of the estate stated in a deed. Consequently, said heirs or creditors can still dispute the partition or interpose their claims beyond the two-year period and even after the properties are already distributed among the heirs."[21]

The CA added that "[t]here is no mention, however, that the instrument cannot be used to prove that one is an heir, save in

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[18] *Id.* at 54.

[19] *Id.* at 55.

[20] *Id.* at 55-56.

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

case of fraud. Petitioner [Republic], therefore, has no basis to question [respondent] Leonor's right as an heir by simply claiming that the instrument is not binding. The non-publication or non-registration [cannot] be used to defeat [respondent] Leonor's right as an heir, specifically, her right to substitute the deceased as in this case."[22]

Petitioner Republic filed a Motion for Reconsideration[23] dated June 21, 2012, which was denied by the CA in the assailed Resolution.

Hence, the instant Petition before the Court.

Reiterating the points she made in previous submission, respondent Leonor filed her Comment on the Petition[24] dated April 14, 2012. Petitioner Republic filed its Reply (Re: Comment on the Petition dated 14 April 2012)[25] dated November 19, 2013, restating its position that the substitution of respondent Leonor was invalid because "the only evidence relied upon in confirming [respondent Leonor's] sole heirship is a *Deed of Extrajudicial Settlement of Estates of the late Lapaz A.* [*Macabagdal*] *and Elena A. Macabagdal dated 21 July 2008* — which ignores Section 1, Rule 74 of the Rules of Court[.]"[26]

Issues

Stripped to its core, the essential issue for the Court's disposition is whether the CA erred in finding that the RTC did not commit grave abuse of discretion in allowing respondent Leonor's substitution as party defendant in the expropriation case.

The Court's Ruling

The instant Petition is *unmeritorious*.

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[22] *Id.* at 57.

[23] *Id.* at 63-71.

[24] *Id.* at 284-301.

[25] *Id.* at 319-325.

[26] *Id.* at 320; italics in the original.

In maintaining that the RTC committed grave abuse of discretion in allowing respondent Leonor to substitute Elena in the expropriation case, petitioner Republic argues that the RTC misappreciated the evidence on record, considering that "the only evidence of [respondent Leonor] in proving that she is the sole heir of Elena Macabagdal (registered owner of the property) is a *Deed of Extrajudicial Settlement of Estates of the Late Lapaz A. Macabagdal and Elena A. Macabagdal dated July 21, 2008*, which is indubitably unregistered with the Register of Deeds."[27] Simply stated, the instant Petition concerns itself with the sufficiency of evidence presented by respondent Leonor in establishing that she is the surviving sister and sole heir of the registered owner of the subject property, Elena.

Contrary to petitioner Republic's assertion that the instant Petition concerns "pure questions of law,"[28] it is abundantly clear from the instant Petition that petitioner Republic raises a purely factual issue.

A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[29]

Considering that petitioner Republic invites the Court to recalibrate the RTC and CA's assessment of the evidence on record as regards respondent Leonor's standing as an heir of Elena, the issue presented before the Court is a question of fact that is not cognizable by the Court.

A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration.[30] The Court is not a

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[27] *Id.* at 38; emphasis omitted, italics in the original.

[28] *Id.* at 21; emphasis omitted.

[29] *Caiña v. People*, 288 Phil. 177, 182-183 (1992).

[30] *Bautista v. Puyat Vinyl Products, Inc.*, 416 Phil. 305, 309 (2001), citing *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*,

trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.[31]

In any case, after a careful study of the records of the instant case, the Court finds no cogent reason to reverse the CA's holding that the RTC did not commit grave abuse of discretion in allowing respondent Leonor to substitute Elena as the party defendant in the expropriation case.

First and foremost, the Court does not find merit in petitioner Republic's assertion that the only evidence of respondent Leonor in proving that she is the sole heir of Elena is the Deed of Extrajudicial Settlement.

As noted by both the CA and RTC, respondent Leonor was able to present two witnesses, *i.e.*, Eulogia Macabagdal-Pascual and Nenita Pascual Ramota, as well as other pertinent pieces of documentary evidence (which includes the Death Certificate of Elena) establishing respondent Leonor's identity and interest over the subject property.[32]

In fact, very telling is the fact that after the completion of the testimonies of the aforementioned witnesses, Atty. Hermenegildo Dumlao II, the counsel for petitioner Republic, orally manifested in open court that petitioner Republic's position as regards respondent Leonor's motion for substitution depended solely on the certification issued by DPWH's Project Director, Patrick B. Gatan, with respect to whether the subject property refers to the one covered by TCT No. T-125922 registered in the name of Elena.[33] Hence, this reveals that petitioner Republic had no issue as regards respondent Leonor's status as the heir of Elena. Petitioner Republic had an issue only with respect to the identity of the land registered under the name of Elena.

298-A Phil. 361, 372 (1993) and *Navarro v. Commission on Elections*, 298-A Phil. 588, 593 (1993).

[31] *Republic of the Phils. v. Sandiganbayan*, 426 Phil. 104, 110 (2002); citation omitted.

[32] *Rollo*, p. 51.

[33] *Id.* at 162.

Eventually, as expressed in its Manifestation dated April 26, 2010, petitioner Republic confirmed that the subject property is indeed the same one covered by TCT No. T-125922, thus satisfying petitioner Republic's reservation as regards respondent Leonor's motion for substitution. In the said Manifestation, while petitioner Republic raised some issues concerning the aforementioned TCT, the status of respondent Leonor as the sole surviving sister of Elena and the propriety of respondent Leonor's substitution were never questioned.

Moreover, even assuming *arguendo* that the unregistered Deed of Extrajudicial Settlement was the only piece of evidence provided by respondent Leonor to establish her interest over the subject property, the fact that the said Deed of Extrajudicial Settlement was not registered before the Register of Deeds does not strip away the document's evidentiary value with respect to respondent Leonor's status and interest over the subject property.

It must be stressed that the RTC appreciated the Deed of Extrajudicial Settlement in relation to respondent Leonor's claim that she is the only surviving sister of Elena and that the latter had no other heirs, thus giving respondent Leonor sufficient standing to be a party defendant in the expropriation case. The RTC did not hold whatsoever that the subject property was indeed adjudicated solely to respondent Leonor by virtue of the Deed of Extrajudicial Settlement.

While petitioner Republic is correct insofar as saying that under Section 1, Rule 74 of the Rules of Court an unregistered affidavit of self-adjudication or extrajudicial settlement does not bind third persons with respect to the adjudication of property, the CA is also correct in its holding that there is no provision in the Rules of Court which states that "the instrument cannot be used to prove that one is an heir"[34] due to the sheer fact that it was not registered before the Register of Deeds.

Furthermore, it does not escape the attention of the Court that the Deed of Extrajudicial Settlement, which states that Elena

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[34] *Id.* at 57.

has no other heirs and that respondent Leonor is Elena's only surviving sister,[35] was duly notarized, the fact of notarization not disputed by petitioner Republic.

A notarized document has in its favor the presumption of regularity and the truthfulness of its contents.[36] A notarized document, being a public document, is evidence of the fact which gave rise to its execution.[37]

Hence, the burden of disproving what is borne in the Deed of Extrajudicial Settlement, *i.e.*, that respondent Leonor is the sole surviving heir and sister of Elena, falls on petitioner Republic. However, such burden was not met. Solely focusing on the non-registration of the Deed of Extrajudicial Settlement, petitioner Republic does not provide any evidence, nor does it even make any allegation whatsoever, that respondent Leonor is not the sole surviving heir and sister of Elena.

Therefore, considering the foregoing, the Court finds that the RTC did not commit any grave abuse of discretion in allowing respondent Leonor to substitute Elena in the expropriation case, considering that respondent Leonor was able to provide ample proof of her interest over the subject property.

WHEREFORE, the instant Petition is **DENIED**. The assailed Decision dated May 30, 2012 and Resolution dated September 28, 2012 rendered by the Court of Appeals in CA-G.R. SP No. 120151 are **AFFIRMED**.

SO ORDERED.

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

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[35] *Id.* at 140-141.

[36] *Spouses Reyes, et al. v. Heirs of Benjamin Malance*, 793 Phil. 861, 869 (2016).

[37] RULES OF COURT, Rule 132, Sec. 23.

FIRST DIVISION

[G.R. No. 210013. January 22, 2020]

DANGEROUS DRUGS BOARD, *petitioner, vs.* **MARIA BELEN ANGELITA V. MATIBAG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC, NOT A CASE OF; A CASE, WHICH HAS PRACTICAL VALUE AND HAS NOT RESOLVED AN IMPORTANT ISSUE, CANNOT BE RENDERED MOOT AND ACADEMIC. — A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon will be of no practical use or value. The Court's ruling on whether Matibag was illegally dismissed has a practical value as it will affect her entitlement to reinstatement and backwages. If the Court decides that she was illegally dismissed, she stands to receive backwages and considered as having served as Deputy Executive Director from March 2, 2011 until April 7, 2017. However, if the Court holds otherwise, she is not entitled to reinstatement and backwages and her dismissal from her position shall be considered as valid. Further, despite her appointment as Executive Director, there is no showing that she has been paid her backwages from March 2, 2011 until her appointment on April 7, 2017. It also cannot be said that she has been reinstated to her former position as it does not appear that the position to which she was appointed to in 2017, Executive Director, is the same as what she held in 2011, Deputy Executive Director. Thus, the mere fact that she was appointed as Executive Director of the DDB did not render the issue of whether she was illegally dismissed moot and academic.

2. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; THE CAREER EXECUTIVE SERVICE BOARD (CESB) HAS THE AUTHORITY TO PRESCRIBE THE REQUIREMENTS FOR ENTRY TO THE CAREER EXECUTIVE SERVICE (CES); A HOLDER OF CAREER SERVICE EXECUTIVE ELIGIBILITY (CSEE) HAS TO COMPLY WITH THE LAST TWO STAGES PRESCRIBED

BY CESB RESOLUTION NO. 811, WHICH ARE THE ASSESSMENT CENTER AND THE PERFORMANCE VALIDATION, TO GET CES ELIGIBILITY. — [T]he CESB, as the Court ruled in *Career Executive Service Board v. Civil Service Commission*, which was cited in *Feliciano*, has the authority to "(a) identify other officers belonging to the CES in keeping with the conditions imposed by law; and **(b) prescribe requirements for entrance to the third-level**." It is therefore clear from the foregoing that it is the CESB that has the authority to prescribe the requirements for entry to the CES. Following this clear authority of the CESB, the Court held that Feliciano and Gonzalez, even though holders of the CSEE, still needed to comply with CESB Resolution No. 811 dated August 17, 2009, which states that holders of the CSC's CSEE still needed to comply with the last two stages to get CES Eligibility, which are the assessment center and the performance validation.

3. **ID.; ID.; ID.; ID.; ID.; CONSIDERING THAT RESPONDENT FAILED TO PROVE THAT SHE COMPLETED THE LAST TWO STAGES OF THE EXAMINATION PROCESS, SHE WAS NOT CES ELIGIBLE AT THE TIME SHE HELD THE POSITION OF DEPUTY EXECUTIVE DIRECTOR, AND DID NOT ENJOY SECURITY OF TENURE; HER TERMINATION FROM THE SAID POSITION WAS THEREFORE VALID. —** Matibag only possessed the CSC's CSEE. She failed to prove that she has completed the last two stages of the examination process under CESB Resolution No. 811. Given this, she was not CES Eligible at the time she held the position of Deputy Executive Director for Operations, and did not enjoy security of tenure. Her appointment was temporary. x x x Matibag's termination from her position as Deputy Executive Director for Operations of DDB was therefore effective and valid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated July 18, 2013 and Resolution[3] dated November 11, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 126310, which denied petitioner Dangerous Drugs Board's (DDB) petition for review under Rule 43 of the Rules of Court and affirmed the Civil Service Commission's (CSC) Decision[4] dated April 10, 2012. The CSC found that respondent Maria Belen Angelita V. Matibag (Matibag) was illegally dismissed.

Facts

The antecedent facts as quoted by the CA are as follows:

> Records show that Matibag used to be the Chief of Policy Studies, Research and Statistics Division, DDB until she was appointed by then President Gloria Macapagal-Arroyo as Deputy Executive Director for Operations (DEDO) with a rank of Assistant Secretary on January 5, 2007 and stayed as such until Office of the President Memorandum Circular (OP-MC) No. 1 was issued.
>
> Covered by the foregoing memorandum are those Non-Career Executive Service Officers (Non-CESOs) occupying a Career Executive Service (CES) position in all government agencies who remain in office and continue to perform their duties and responsibilities until July 31, 2010 or until resignations have been accepted.
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> On July 16, 2010, the Office of the President issued the **Guidelines Implementing Memorandum Circular No. 1**,[5] which states that

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[1] *Rollo*, pp. 11-31, excluding Annexes.

[2] *Id.* at 32-40. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

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

[4] *Id.* at 43-49.

[5] Amended by OP-MC No. 2 moving the date from July 31, 2010 to October 31, 2010; see *rollo*, p. 13.

"all non-CESOs occupying CES positions in all agencies of the Executive Branch shall remain in office and continue to perform their duties and discharge their responsibilities until July 31, 2010 or until their resignations have been accepted, and/or until their respective replacements have been appointed or designated, whichever comes first, unless they are reappointed in the meantime."

On November 2, 2010, Matibag sent a letter requesting clarification on the coverage of OP-MC No. 1.

In a letter dated November 23, 2010, Matibag sought the opinion of the Commission [(CSC)] regarding her employment status. In response, the [CSC] in its letter dated November 30, 2010 cited the provision of Section 2 (3), Article IX-B of the 1987 Constitution which states that she enjoys security of tenure for being a holder of an appropriate Civil Service Eligibility. Thus, she cannot be removed or suspended except for cause provided for by law and after due process. The foregoing statement was also stated in the letter dated July 30, 2010 of Chairman Francisco T. Duque III, [CSC] to Executive Secretary Paquito N. Ochoa, Jr., OP.

In a letter dated January 7, 2011, Executive Secretary Ochoa state[d] that:

"*Section 8, Chapter 2, Subtitle A, Title I, Book V of the Administrative Code of 1987 provides that entrance to CES third-level positions shall be prescribed by the Career Executive Service Board (CESB). Pursuant thereto, the requisite eligibility for a CES third-level position is not the Career Service Executive Eligibility neither the Career Executive Officer rank administered/conferred by the Civil Service Commission but the appropriate CESO rank conferred by the CESB. Applied to your case, you are covered by MC for being a non-CESO occupying a CES position.*"[6] (Emphasis and italics in the original)

It appears that following the January 7, 2011 letter, Undersecretary Edgar C. Galvante, the Acting Executive Director of the DDB, issued a Memorandum dated March 2, 2011 addressed to Matibag, which states that "considering that you are a Non-CESO holder and covered by Memorandum Circular No. 2, you are hereby notified that your designation as DEPUTY

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[6] *Rollo*, pp. 33-34.

EXECUTIVE DIRECTOR FOR OPERATIONS is terminated effective this date. This is without prejudice to your reappointment to the position and/or the final resolution of the propriety of the issuance of MC 2 by the Supreme Court."[7]

Matibag thus filed a complaint before the CSC for illegal dismissal.

CSC and CA Decision

The CSC ruled that Matibag was illegally dismissed. It ruled that Matibag enjoyed security of tenure over the position of Deputy Executive Director and she cannot be removed except for just cause since she possessed a Career Service Executive Eligibility (CSEE) conferred by the CSC.[8] The dispositive portion of the CSC Decision states:

> **WHEREFORE**, the complaint of Maria Belen Angelita V. Matibag for illegal dismissal is found to be meritorious and is hereby given due course. The Dangerous Drugs Board is ordered to reinstate Matibag as its Deputy Executive Director for Operations with payment of backwages from the time she was illegally dismissed up to her actual reinstatement.[9]

The CA affirmed the CSC. The CA ruled that the CSC is the central personnel agency of the government mandated to establish a career service.[10] The CA further ruled that Civil Service laws expressly empowered the CSC to issue and enforce rules and regulations to carry out its mandate and in the exercise of this authority, it may conduct examinations to determine the appropriate eligibilities in the Career Service including the Third Level positions.[11]

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[7] *Id.* at 113.

[8] *Id.* at 34, 48.

[9] *Id.* at 49.

[10] *Id.* at 35.

[11] See *Id.* at 35, 37-38.

Since Matibag's position was considered as part of the Career Executive Service (CES), the conferment by the CSC of the CSEE to Matibag entitled her to be eligible and permanently possess the position until she is removed for a just cause.[12] The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the instant petition is **DENIED**. Accordingly, the Decision promulgated on April 10, 2012 in Case No. 120204 and Resolution promulgated on July 17, 2012 in Case No. 1201069 by the Civil Service Commission are hereby ***AFFIRMED in toto***.
>
> **SO ORDERED**.[13]

DDB filed a motion for reconsideration, but this was denied. Hence, this Petition.

Issues

DDB raised the following issues:

I

A PERSON WITH A CSEE STILL NEEDS TO HURDLE THE TWO OTHER STAGES OF CES ELIGIBILITY EXAMINATIONS PRESCRIBED BY THE CESB TO OBTAIN THE STATUS OF A CES ELIGIBLE.

II

[MATIBAG) DOES NOT POSSESS THE CES RANK APPROPRIATE FOR THE POSITION TO WHICH SHE WAS APPOINTED, THUS MAKING HER APPOINTMENT MERELY TEMPORARY.

III

THE CIVIL SERVICE LAWS SPECIFICALLY AUTHORIZE THE CESB TO PRESCRIBE ENTRANCE TO THE THIRD LEVEL (CES) POSITIONS.[14]

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

[13] *Id.* at 40.

[14] *Id.* at 15.

It appears that during the pendency of this Petition, Matibag took her oath of office as an Executive Director of the DDB on April 7, 2017. She therefore moved for the dismissal of the case as it has been rendered moot and academic.[15] The DDB filed a Comment[16] arguing that there remains a justiciable controversy as the case is capable of repetition yet evading judicial review.[17] The DDB also argued that a novel issue remains: whether the CSEE conferred by the CSC is equivalent to the CES Eligibility conferred by the Career Executive Service Board (CESB).[18]

The Court shall discuss the issue of mootness together with the other issues raised in the Petition.

The Court's Ruling

The Petition is meritorious.

The Petition is not moot and academic

This Petition arose out of an illegal dismissal complaint before the CSC when Matibag's designation as Deputy Executive Director was terminated on March 2, 2011 for being a non-CESO holder. Both the CSC and CA ruled that Matibag was illegally dismissed and directed her reinstatement and the payment of backwages. The DDB is questioning these decisions arguing that Matibag did not have security of tenure over her position because she did not possess CES Eligibility. Matibag, however, argues that the issue has been overtaken by her appointment as Executive Director of the DDB for which she took her oath of office on April 7, 2017.

The Petition has not been rendered moot and academic.

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[15] *Id.* at 207.

[16] Comment (On Respondent's Manifestation with Compliance), *Id.* at 212-218.

[17] *Rollo*, p. 213.

[18] *Id.*

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon will be of no practical use or value.[19] The Court's ruling on whether Matibag was illegally dismissed has a practical value as it will affect her entitlement to reinstatement and backwages. If the Court decides that she was illegally dismissed, she stands to receive backwages and considered as having served as Deputy Executive Director from March 2, 2011 until April 7, 2017. However, if the Court holds otherwise, she is not entitled to reinstatement and backwages and her dismissal from her position shall be considered as valid.

Further, despite her appointment as Executive Director, there is no showing that she has been paid her backwages from March 2, 2011 until her appointment on April 7, 2017. It also cannot be said that she has been reinstated to her former position as it does not appear that the position to which she was appointed to in 2017, Executive Director, is the same as what she held in 2011, Deputy Executive Director. Thus, the mere fact that she was appointed as Executive Director of the DDB did not render the issue of whether she was illegally dismissed moot and academic.

Matibag was validly dismissed

With the Petition still ripe for resolution, the Court shall now discuss the issue of whether Matibag was illegally dismissed. This issue centers on whether Matibag's CSEE from the CSC was sufficient to consider her to be eligible for the position of Deputy Executive Director and to permanently possess it.

The CSC and CA are both of the view that the CSC was not divested of its power to confer eligibility through the CSEE, as it is the central personnel agency of the government.[20] Both the CSC and CA found that the CSEE was sufficient to entitle Matibag to be eligible and permanently possess the position

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[19] *Lacson v. MJ Lacson Development Co., Inc.*, 652 Phil. 34, 46 (2010), citing *Integrated Bar of the Philippines v. Atienza*, 627 Phil. 331, 336 (2010).

[20] *Rollo,* p. 39.

of Deputy Executive Director until she is removed for just cause.[21]

The CSC and CA are incorrect.

This issue is not novel as it has already been resolved by the Court in *Feliciano v. Department of National Defense*[22] (*Feliciano*). In fact, *Feliciano* also involved Office of the President Memorandum Circular (OP-MC) Nos. 1 and 2, the implementation of which also gave rise to the present case.

Roberto Emmanuel T. Feliciano (Feliciano) and Horacio S. Gonzalez (Gonzalez) served as Assistant Secretary and Chief of the Administrative Service Office of the Department of National Defense (DND), respectively. Both possessed the CSEE and thus were deemed not compliant with OP-MC Nos. 1 and 2, and accordingly relieved of their positions. Both filed complaints for illegal dismissal before the CSC.

In different decisions, the CSC held that they were illegally dismissed and directed their reinstatement. Also in different decisions, the CA reversed the CSC and ruled that Feliciano and Gonzalez did not enjoy security of tenure.

For the CA, it was not sufficient that Feliciano and Gonzalez both had a CSEE from the CSC as they failed to show proof that they accomplished and completed the last two stages (assessment center and performance validation stage) to be recommended by the CESB for appointment to a CESO position.

On appeal before the Court and in a consolidated Resolution, the Court upheld the CA. The Court therein held that "the CESB is expressly empowered to promulgate rules, standards and procedures on the selection, classification, compensation and career development of the members of the CES."[23]

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

[22] G.R. Nos. 199232 & 201577, November 8, 2017, 844 SCRA 401.

[23] *Id.* at 411-412.

In fact, the CESB, as the Court ruled in *Career Executive Service Board v. Civil Service Commission*,[24] which was cited in *Feliciano*, has the authority to "(a) identify other officers belonging to the CES in keeping with the conditions imposed by law; and **(b) prescribe requirements for entrance to the third-level**."[25]

It is therefore clear from the foregoing that it is the CESB that has the authority to prescribe the requirements for entry to the CES. Following this clear authority of the CESB, the Court held that Feliciano and Gonzalez, even though holders of the CSEE, still needed to comply with CESB Resolution No. 811[26] dated August 17, 2009, which states that holders of the CSC's CSEE still needed to comply with the last two stages to get CES Eligibility, which are the assessment center and the performance validation.[27] CESB Resolution No. 811 specifically states:

RESOLVED FURTHERMORE, that item no. 1.3.2 of Section 1, Rule VIII (Transitory Provisions) of the aforementioned Revised Integrated Rules on the Grant of CES eligibility (CESB Resolution No. 791 s. 2009) shall be amended herein, as follows:

1.3.2 The Career Service Executive Eligibility (CSEE) conferred by the Civil Service Commission (CSC), which consist of two (2) phases, namely: Written Examination and Panel Interview, **of one who is appointed to a CES position, regardless of the appointing authority or one who is occupying a Division Chief position in a permanent capacity or one designated to a CES position in an acting or OIC capacity for at least one (1) year**, shall be considered

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[24] 806 Phil. 967 (2017).

[25] *Id.* at 1000; emphasis and underscoring supplied.

[26] AMENDATORY GUIDELINES ON THE APPOINTMENT OF CAREER EXECUTIVE SERVICE (CES) RANKS OF CAREER SERVICE EXECUTIVE ELIGIBLES (CSEES).

[27] See *Feliciano v. Department of National Defense*, *supra* note 22, at 413-414.

> equivalent to the two (2) of the four-stage CES eligibility examination process, namely: Written Examination and Board Interview. Hence, for purposes of conferment of CES eligibility and appointment to appropriate rank in the CES, **as the case may be**, the applicant concerned has to complete the two (2) remaining stages of the examination process, namely: Assessment Center and Performance Validation stages and comply with such other requirements as may be prescribed by the Board. (Emphasis and underscoring in the original)

Here, similar to Feliciano and Gonzalez, Matibag only possessed the CSC's CSEE. She failed to prove that she has completed the last two stages of the examination process under CESB Resolution No. 811. Given this, she was not CES Eligible at the time she held the position of Deputy Executive Director for Operations, and did not enjoy security of tenure. Her appointment was temporary. As similarly held in *Feliciano*:

> x x x The effect is that their appointments remained temporary, a status that denied them security of tenure. According to *Amores v. Civil Service Commission*:
>
> > x x x An appointment is permanent where the appointee meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility.
> >
> > x x x x x x x x x
> >
> > x x x [V]erily, it is clear that **the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one**. x x x
> >
> > Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is at best merely temporary as it is said to be conditioned on the subsequent obtention of the required CES eligibility x x x

Clearly, the petitioners' termination from their respective positions at the DND was effective and valid.[28] (Citation removed; emphasis in the original)

Similar to Feliciano and Gonzalez, Matibag's termination from her position as Deputy Executive Director for Operations of DDB was therefore effective and valid.

WHEREFORE, premises considered, the Decision dated July 18, 2013 and Resolution dated November 11, 2013 of the Court of Appeals in CA-G.R. SP No. 126310 are **REVERSED** and **SET ASIDE** and the Court hereby declares respondent Maria Belen Angelita V. Matibag's termination from her position on March 2, 2011 as **VALID**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210845. January 22, 2020]

SPOUSES DANILO and CLARITA GERMAN, *petitioners, vs.* **SPOUSES BENJAMIN and EDITHA SANTUYO and HELEN S. MARIANO, deceased, substituted by her heirs, namely, JOSE MARIO S. MARIANO, MA. CATALINA SAFIRA S. MARIANO, MA. LEONOR M. HUELGAS, MARY THERESA IRENE S. MARIANO and MACARIO S. MARIANO,** *respondents.*

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[28] *Id.* at 414-415.

SYLLABUS

1. CIVIL LAW; SALES; DOUBLE SALE; REQUISITES; PRESENT; THE RULE ON DOUBLE SALE APPLIES WHEN THE SAME THING IS SOLD TO MULTIPLE BUYERS BY ONE SELLER, BUT NOT TO SALE OF THE SAME THING BY MULTIPLE SELLERS. — For Article 1544 to apply, the following requisites must concur: … This provision connotes that the following circumstances must concur: "(a) The two (or more) sales transactions in the issue must pertain to exactly the same subject matter, and *must be valid sales transactions*. (b) The two (or more) *buyers at odds over the rightful ownership* of the subject matter must each represent conflicting interests; and (c) The Two (or more) buyers at odds over the rightful ownership of the subject matter *must each have bought from the very same seller*." The rule on double sales applies when the same thing is sold to multiple buyers by one seller, but not to sales of the same thing by multiple sellers. Contrary to the finding of the Court of Appeals, there was a double sale. The Bautista Spouses sold the same property: first, to the Mariano Spouses in 1986; and second, to the respondents Santuyo Spouses in 1991. Neither of the parties contest the existence of these two (2) transactions. The lower courts made no findings that put into doubt the respective validities of the sales. Clearly, there are conflicting interests in the ownership, because if title over the property had already been transferred to the Mariano Spouses, then no right could be passed on to respondents Santuyo Spouses in the second sale.

2. ID.; ID.; ID.; PERSONS DEALING WITH REGISTERED LAND MAY SAFELY RELY ON THE CORRECTNESS OF THE CERTIFICATE OF TITLE, WITHOUT HAVING TO GO BEYOND IT TO DETERMINE THE PROPERTY'S CONDITION; WHEN CIRCUMSTANCES ARE PRESENT THAT SHOULD PROMPT A POTENTIAL BUYER TO BE ON GUARD, SUCH AS WHEN THERE ARE OCCUPANTS OR TENANTS ON THE PROPERTY, OR WHEN THE SELLER IS NOT IN ACTUAL POSSESSION OF IT, IT IS EXPECTED FROM THE BUYER TO INQUIRE FIRST INTO THE STATUS OR NATURE OF POSSESSION OF THE OCCUPANTS, AND THE FAILURE OF A PROSPECTIVE BUYER TO TAKE SUCH PRECAUTIONARY

STEPS WOULD MEAN NEGLIGENCE ON HIS PART AND WOULD PRECLUDE HIM FROM CLAIMING OR INVOKING THE RIGHTS OF A "PURCHASER IN GOOD FAITH."—Pursuant to Article 1544, ownership of immovable property subject of a double sale is transferred to the buyer who first registers it in the Registry of Property in good faith. Undisputedly, the respondents Santuyo Spouses were the ones who were able to register the property in their names with the Registry of Deeds for Naga City under Transfer Certificate of Title No. 22931. Nonetheless, the Regional Trial Court was correct in finding that respondents Santuyo Spouses were not in good faith when they registered the property. Generally, persons dealing with registered land may safely rely on the correctness of the certificate of title, without having to go beyond it to determine the property's condition. However, when circumstances are present that should prompt a potential buyer to be on guard, it is expected that they inquire first into the status of the land. One such circumstance is when there are occupants or tenants on the property, or when the seller is not in possession of it. In *Spouses Vallido v. Spouses Pono*: Moreover, although it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants. As in the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard that a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would preclude him from claiming or invoking the rights of a "purchaser in good faith." It has been held that "the registration of a later sale must be done in good faith to entitle the registrant to priority in ownership over the vendee in an earlier sale." Here, as pointed out by the Regional

Trial Court, petitioners had continuously possessed the land even prior to the 1986 sale. x x x. Respondent Santuyo Spouses' claim that it is enough that the title is in the name of the seller is unavailing. To buy real property while having only a general idea of where it is and without knowing the actual condition and identity of the metes and bounds of the land to be bought, is negligent and careless. Failure to take such ordinary precautionary steps, which could not have been difficult to undertake for respondents Santuyo Spouses, as they were situated near where the property is located, precludes their defense of good faith in the purchase.

3. ID.; ID.; ID.; THE SECOND BUYER WHO HAS ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE PRIOR SALE CANNOT BE A REGISTRANT IN GOOD FAITH; THUS, HE CANNOT RELY ON THE INDEFEASIBILITY OF HIS TRANSFER CERTIFICATE OF TITLE. — "The second buyer who has actual or constructive knowledge of the prior sale cannot be a registrant in good faith." The totality of documents executed by all of the respondents show that the respondents Santuyo Spouses knew or should have known that there is some cloud or doubt over the seller's title. Moreover, the Regional Trial Court correctly pointed to the dubious circumstance by which one of parties to the 1986 sales, respondent Helen Mariano, actively participated in the 1991 sale, especially in light of her familial relationship with respondent Editha Santuyo. Due to respondents' lack of good faith, they cannot rely on the indefeasibility of their Transfer Certificate of Title. Thus, in accordance with Article 1544 of the Civil Code, it is the first buyer, namely the Mariano Spouses, who had a better right of ownership, and no ownership could pass on to the respondents Santuyo Spouses as a result.

APPEARANCES OF COUNSEL

Botor Botor-Bracia Llaguna & Associates for petitioners.
Rosales and Associates Law Office for respondents.

D E C I S I O N

LEONEN, *J.*:

When circumstances are present that should prompt a potential buyer of registered real property to be on guard, it is expected that they inquire first into the status of the property and not merely rely on the face of the certificate of title.

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] and Resolution[3] of the Court of Appeals, Manila, in CA-G.R. CV. No. 93628. The Court of Appeals reversed and set aside a Decision[4] rendered by the Regional Trial Court of Naga City, Branch 61 in Civil Case No. 2001-0200, and held that Spouses Benjamin and Editha Santuyo were purchasers in good faith of a 400-square meter parcel of land in Naga City.

Francisco and Basilisa Bautista (the Bautista Spouses) were the registered owners of a 400-square meter parcel of land in Barangay Balatas, Naga City, under Transfer Certificate of Title No. 11867.[5]

Allegedly, since 1985, Danilo and Clarita German (the German Spouses) had been occupying the property as the lessees of Soledad Salapare, the caretaker for Jose and Helen Mariano

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[1] *Rollo,* pp. 10-40.

[2] *Id.* at 54-73. The October 29, 2012 Decision was penned by Associate Justice Ramon A. Cruz, and concurred in by Associate Justices Noel G. Tijam (Chair and former Member of this Court) and Romeo F. Barza of the Seventh Division of the Court of Appeals, Manila.

[3] *Id.* at 97-98. The December 18, 2013 Resolution was penned by Associate Justice Ramon A. Cruz, and concurred in by Associate Justices Noel G. Tijam (Chair and Former Member of this Court) and Romeo F. Barza of the Former Seventh Division of the Court of Appeals, Manila.

[4] *Id.* at 41-52. The January 30, 2009 Decision was penned by Judge Maria Eden Huenda Altea.

[5] *Id.* at 56.

(the Mariano Spouses). On April 22, 1986, the Bautista Spouses sold the property to the Mariano Spouses. On the same day, the Mariano Spouses sold the property to the German Spouses on the condition that Helen Mariano would sign the Deed of Sale upon the the German Spouses' payment of the full purchase price.[6]

On July 28, 1992, Benjamin and Editha Santuyo (the Santuyo Spouses) filed a case for Recovery of Ownership and Damages against the German Spouses before the Naga City Regional Trial Court, docketed as Civil Case No. RTC-92-2620. There, the Santuyo Spouses alleged that they and the Bautista Spouses entered into a sale of the property on December 27, 1991, and that they became the registered owners of the property under Transfer Certificate of Title No. 22931 as of April 28, 1992.[7]

The case was dismissed, but afterwards, the Santuyo Spouses filed a case for Unlawful Detainer and Damages against the German Spouses with the Naga City Metropolitan Trial Court, docketed as Civil Case No. 10575. While the Metropolitan Trial Court and the Regional Trial Court both dismissed the unlawful detainer case for lack of jurisdiction, in 2000, the Court of Appeals in ruled that the first-level courts had jurisdiction and held that the Santuyo Spouses had the right to possess the property as they were its registered owners. The Court of Appeals' Decision became final and executory on August 13, 2000.[8]

On January 12, 2001, the German Spouses filed a case for Declaration of Nullity of Sale, Recovery of Ownership, Reconveyance with Damages against the Santuyo Spouses and Helen Mariano before the Naga City Regional Trial Court. The case was docketed as Civil Case No. 2001-0200.[9] The German

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[6] *Id.*

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

[8] *Id.*

[9] *Id.* at 57.

Spouses claimed that, despite their payment of the full purchase price in 1988, the Mariano Spouses failed to execute the final Deed of Sale. Instead, the property was sold to Helen Mariano's sister, Editha Santuyo, and Editha's husband.[10]

The Regional Trial Court ruled in favor of the German Spouses. The dispositive portion of its January 30, 2009 Decision[11] stated:

> WHEREFORE, in the [sic] light of the foregoing considerations, judgment is hereby rendered:
>
> 1. Making permanent the preliminary injunction issued by this Court in its Order of February 21, 2001.
>
> 2. Declaring as null and void the deed of sale purportedly executed by Francisco Bautista in favor of Benjamin Santuyo over Lot 6, Block 6 of the Consolidation Subdivision [P]lan (LRC) Pcs-758, being a portion of the consolidation of Lot 3 , Pcs-4257 and Lot 5-A, (LRC) Psd-2672, LRC (GRRO Record No. 33067) situated in Naga City and covered by [Transfer Certificate of Title] No. 11867.
>
> 3. Ordering the cancellation of [Transfer Certificate of Title] No. 22931 issued in the name of Benjamin Santuyo by virtue of the deed of sale, and declaring the same to be without force and effect.
>
> 4. Declaring plaintiffs spouses Danilo and Clarita German as the rightful owners of the lot in question covered by [Transfer Certificate of Title] No. 11867.
>
> 5. Ordering defendants Heirs of Helen Mariano to execute in favor of plaintiffs spouses Danilo and Clarita German, a deed of absolute sale covering the lot in question covered by [Transfer Certificate of Title] No. 11867; and once accomplished to immediately deliver the said document of sale to plaintiffs Germans.
>
> No pronouncement as to costs.
>
> SO ORDERED.[12]

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[10] *Id.* at 56.

[11] *Id.* at 41-52.

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

The Regional Trial Court found that the sale of the property to the German Spouses was valid and enforceable, despite Helen Mariano's failure to sign the Deed of Sale.[13] As the German Spouses fully paid the price, the Mariano Spouses or their heirs were obliged to convey title to them. The Bautista Spouses could not transfer ownership to the Santuyo Spouses in a subsequent sale because they were no longer the owners of the property at the time.[14] Moreover, the Santuyo Spouses were not purchasers in good faith, as the trial court was unconvinced that Editha Santuyo did not know about the prior sale to the German Spouses. It held that the German Spouses' continued possession of the property was known by the Santuyo Spouses even before they bought the property.[15]

In its October 29, 2012 Decision,[16] the Court of Appeals reversed and set aside the Regional Trial Court's Decision, dismissing the German Spouses' complaint.

First, the Court of Appeals noted that both the marriage of the Mariano Spouses and their April 22, 1986 sale of the property to the German Spouses were governed by the New Civil Code. As such, the Mariano Spouses' property regime is that of conjugal partnership of gains. While Jose was the sole administrator of the conjugal property, he could not sell the property without Helen's consent. However, any sale he made without her consent was not void, but only voidable. Pursuant to Article 173 of the New Civil Code, Helen had 10 years from the date of the sale to annul it. Thus, since there was no proof that she sought to annul the April 22, 1986 sale, it was still valid and enforceable.[17]

Second, the Court of Appeals did not give credence to the German Spouses' claim that the rules on double sale under Article 1544

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[13] *Id.* at 47.

[14] *Id.* at 48.

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

[16] *Id.* at 54-73.

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

of the Civil Code applied. The April 22, 1986 Deed of Sale was a contract to sell, as the Mariano Spouses reserved ownership over the property despite its delivery to the German Spouses. Moreover, the transactions were made by two (2) different sellers: (1) the April 22, 1986 sale between the Mariano Spouses and the German Spouses; and (2) the December 27, 1991 sale between the Bautista Spouses and the Santuyo Spouses.[18]

Third, the Court of Appeals held that the contract between the Mariano Spouses and the German Spouses was a contract to sell, not a contract of sale. The Mariano Spouses reserved ownership of the property and would only execute the deed of sale after full payment of the sale price. Thus, since the deed of sale was not executed, the German Spouses did not have any right to file a case for reconveyance of the property, or to have the sale between the Bautista Spouses and the Santuyo Spouses nullified.[19]

Finally, even if the sale to the German Spouses was not under a contract to sell, the Court of Appeals held that they were unable to prove that the Santuyo Spouses were purchasers in bad faith. It noted that the property's certificate of title did not have any liens or encumbrances that the Santuyo Spouses should have been aware of.[20]

The Court of Appeals denied the German Spouses' Motion for Reconsideration[21] in its December 18, 2013 Resolution.[22]

On February 18, 2014, the German Spouses filed with this Court a Petition for Review on *Certiorari*[23] under Rule 45 of the Rules of Court, assailing the October 29, 2012 Decision and December 18, 2013 Resolution of the Court of Appeals. In

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

[19] *Id.* at 70.

[20] *Id.*

[21] *Id.* at 74-95.

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

[23] *Id.* at 10-40.

their Petition for Review, they argue that the Court of Appeals erred in finding that the Santuyo Spouses bought the property in good faith.

They point out that the Regional Trial Court found that they were in actual possession of the property, which was known to respondent Editha Santuyo at the time of the 1991 sale, especially because she regularly passed by the property when she went to work. Further, the Santuyo Spouses bought the property despite never being in possession of it. These should have further prompted them to closely inspect the property they were buying.[24]

Petitioners also claim that Helen Mariano conspired with the Santuyo Spouses in order to acquire the property. Respondent Helen Mariano assisted the Santuyo Spouses despite knowing that the property had been previously sold to her and her spouse, Jose Mariano; even going so far as to execute a deed of guarantee, freeing the Bautista Spouses from liability in the sale transaction with the Santuyo Spouses.[25]

Because of these circumstances, petitioners claim that the Santuyo Spouses could not have been in good faith when they registered the property in their names.

On June 30, 2014, the Santuyo Spouses filed their Comment[26] to the Petition for Review, claiming that the German Spouses did not have the right to assert ownership over the property because their transaction with the Mariano Spouses was only a contract to sell. Since the German Spouses failed to pay the full purchase price, they could not compel the Mariano Spouses to execute a Deed of Sale in their favor.[27] Moreover, they argue that they have a better right of ownership over the property, because unlike the 1986 sales, they were able to register their title.[28]

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[24] *Id.* at 31.

[25] *Id.* at 33.

[26] *Id.* at 110-136.

[27] *Id.* at 120.

[28] *Id.* at 131.

According to them, their registration was in good faith because, at the time the property was sold to them, the certificate of title was still in the name of the seller, and there was no defect in the title which would require them to go beyond it. They claim that, since Francisco Bautista was Editha Santuyo's godfather, there was no reason to doubt his title.[29]

The issues to be resolved by this Court are as follows:

First, whether or not Article 1544 of the Civil Code applies; and

Second, whether or not respondents the Santuyo Spouses were purchasers in good faith.

Article 1544 of the Civil Code states:

> 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.

For Article 1544 to apply, the following requisites must concur:

> . . . This provision connotes that the following circumstances must concur:
>
> "(a) The two (or more) sales transactions in the issue must pertain to exactly the same subject matter, and *must be valid sales transactions.*
>
> (b) The two (or more) *buyers at odds over the rightful ownership* of the subject matter must each represent conflicting interests; and

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[29] *Id.* at 133.

(c) The two (or more) buyers at odds over the rightful ownership of the subject matter *must each have bought from the very same seller."*[30] (Emphasis in the original)

The rule on double sales applies when the same thing is sold to multiple buyers by one seller, but not to sales of the same thing by multiple sellers.[31]

Contrary to the finding of the Court of Appeals, there was a double sale. The Bautista Spouses sold the same property: first, to the Mariano Spouses in 1986; and second, to the respondents Santuyo Spouses in 1991. Neither of the parties contest the existence of these two (2) transactions. The lower courts made no findings that put into doubt the respective validities of the sales. Clearly, there are conflicting interests in the ownership, because if title over the property had already been transferred to the Mariano Spouses, then no right could be passed on to respondents Santuyo Spouses in the second sale.

Pursuant to Article 1544, ownership of immovable property subject of a double sale is transferred to the buyer who first registers it in the Registry of Property in good faith. Undisputedly, the respondents Santuyo Spouses were the ones who were able to register the property in their names with the Registry of Deeds for Naga City under Transfer Certificate of Title No. 22931.

Nonetheless, the Regional Trial Court was correct in finding that respondents Santuyo Spouses were not in good faith when they registered the property.

Generally, persons dealing with registered land may safely rely on the correctness of the certificate of title, without having to go beyond it to determine the property's condition.[32]

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[30] *Cheng v. Genato,* 360 Phil. 891, 909 (1998) [Per *J.* Martinez, Second Division].

[31] *Manlan v. Beltran,* G.R. No. 222530, October 16, 2019, <http://sc.judiciary.gov.ph/8952/> [Per *J.* Inting, Third Division].

[32] *Rufloe v. Burgos,* 597 Phil. 261 (2009) [Per *J.* Leonardo-De Castro, First Division].

However, when circumstances are present that should prompt a potential buyer to be on guard, it is expected that they inquire first into the status of the land. One such circumstance is when there are occupants or tenants on the property, or when the seller is not in possession of it. In *Spouses Vallido v. Spouses Pono*:[33]

> Moreover, although it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/ tenants thereon, it is expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants. As in the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard that a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would preclude him from claiming or invoking the rights of a "purchaser in good faith." It has been held that " the registration of a later sale must be done in good faith to entitle the registrant to priority in ownership over the vendee in an earlier sale."[34] (Citations omitted)

Here, as pointed out by the Regional Trial Court, petitioners had continuously possessed the land even prior to the 1986 sales:

> At the time of the sale between Jose Mariano and spouses German, the latter were already in possession of the land way back in 1985 and after the sale in 1986, with the permission of the spouses Mariano, plaintiffs German renovated their residential house therein which was completed in 1987. Since then they have been in actual physical possession of the land and residing therein. The plaintiffs' possession

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[33] 709 Phil. 371 (2013) [Per *J.* Mendoza, Third Division].

[34] *Id.* at 378.

thereof was known to the defendants Santuyo even before the execution of the deed of sale in their favor on December 27, 1991. The claim of defendants Santuyo cannot prevail upon the plaintiffs Germans who first acquired and possessed the property from spouses Mariano after the latter has bought the land from the Bautistas.

. . . . . .

This court is not convinced by what defendant Editha has declared that before she bought the land from the Bautistas, she had not yet seen the land but she knows that it is located inside Mariano Subdivision; that in 1986, she does not know where it is located. That even in 1990 when she was already employed by the Mariano spouses at the Sto. Niño Memorial park, she did not visit the land. And that before the land was sold to her in 1991, she did not investigate or determine what was the physical condition of the land[.][35]

Respondent Santuyo Spouses' claim that it is enough that the title is in the name of the seller is unavailing. To buy real property while having only a general idea of where it is and without knowing the actual condition and identity of the metes and bounds of the land to be bought, is negligent and careless. Failure to take such ordinary precautionary steps, which could not have been difficult to undertake for respondents Santuyo Spouses, as they were situated near where the property is located, precludes their defense of good faith in the purchase.

Likewise, the involvement and cooperation of respondent Helen Mariano in the 1991 sale casts doubt on respondents Santuyo Spouses' good faith. According to the Regional Trial Court:

Despite the denial of defendants spouses Santuyo knowledge of the presence of the plaintiffs on the land in question and claim of ownership thereof, their evidence failed to show good faith in their purchase and registration of the land. Defendant Editha presented the alleged down payment receipt she made on October 2, 1986 (Exh. "4") for the lot in question she purchased from Francisco M. Bautista. The document however, which is quoted hereunder:

. . . . . .

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[35] *Rollo*, pp. 48-50.

RECEIPT

Received from Mrs. Editha Santuyo, the amount of Twenty Thousand Pesos (₱20,000.00) covered by PNB Check No. 0000038345 (Demand Draft) dated August 19, 1986, representing payment for a parcel of land located at Naga City, sold to her by Jose Mariano.

Quezon City, October 2, 1986.

(SGD) FRANCISCO M. BAUTISTA

speaks differently. If the lot was sold to defendant Editha, by Jose Mariano, why would Francisco Bautista sign the receipt? If the *her* could have been *his*, what is the necessity of stating that the lot was sold by Jose Mariano when it was registered in the name of Francisco Bautista?

If indeed the registered owner Bautista has sold the lot in question to defendants Santuyo, why should defendant Helen sign a letter of guarantee (Exh. "2") before Bautista signed the deed of sale. Defendant Editha claimed that Bautista allegedly told her that the lot was previously mortgaged to him (Bautista) by Jose Mariano. If it was the reason then why was it not told to defendant Helen? Why would also defendant Helen sign a letter of guarantee without any question? Or probably, this letter of guarantee gives relevance to the receipt (Exh. "4") mentioning about the "*lot sold to her by Jose Mariano"?* These foregoing documents give semblance on the verified answer of Francisco Bautista (Exh. "H") to the third party compliant in the case docketed as Civil case No. 92-2620 before Branch 27 of RTC Naga City, for the "Recovery of Ownership with Damages" filed by defendants Santuyo as against the herein plaintiffs German. In the said pleading, the Bautistas claimed that the sale between them and the Santuyos is fictitious since the former did not receive any payment or consideration thereon. There is likewise an allegation in the Answer to the Amended Complaint in the same case (Exh. "I") by Bautista which alleged in paragraph 6 thereof the following:

"6. Answering defendants specifically deny the allegations of paragraph 15 of the complaint, the truth of matter being that they were tricked and deceived into signing the alluded Deed of Sale between them. Actually such deceitful machination and/or manipulation supervened when the plaintiffs and their co-third party defendants Heirs of Jose Mariano prevailed upon

> *them to sign the Deed of Absolute Sale referred to in paragraph 4 hereof: This was accomplished through the joint effort of plaintiff Editha S. Santuyo and Third Party Defendant Helen S. Mariano, who are sisters, upon their representation that the letter has not sold or conveyed the subject parcel of land to any party. According to them if the sale would have to be made from the herein defendants to the plaintiffs, and not from the Marianos to the plaintiffs, there would be no assessment of penalty charges by Bureau of Internal Revenue for the registration of the sale. Relying on the foregoing representation of plaintiff Editha Santuyo and third party defendant Helen S. Mariano, the herein defendants acceeded [sic] to the former's request."*[36] (Emphasis in the original)

"The second buyer who has actual or constructive knowledge of the prior sale cannot be a registrant in good faith."[37] The totality of documents executed by all of the respondents show that the respondents Santuyo Spouses knew or should have known that there is some cloud or doubt over the seller's title. Moreover, the Regional Trial Court correctly pointed to the dubious circumstance by which one of parties to the 1986 sales, respondent Helen Mariano, actively participated in the 1991 sale, especially in light of her familial relationship with respondent Editha Santuyo.

Due to respondents' lack of good faith, they cannot rely on the indefeasibility of their Transfer Certificate of Title. Thus, in accordance with Article 1544 of the Civil Code, it is the first buyer, namely the Mariano Spouses, who had a better right of ownership, and no ownership could pass on to the respondents Santuyo Spouses as a result.

WHEREFORE, the Petition for Review is **GRANTED**. The Decision and Resolution of the Court of Appeals, Manila, in CA-G.R. CV. No. 93628 are **REVERSED AND SET ASIDE**.

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

[37] *Spouses Vallido v. Spouses Pono*, 709 Phil. 371, 377, (2013) [Per *J.* Mendoza, Third Division] citing *Spouses Limon v. Spouses Borras*, 452 Phil. 178, 207 (2003) [Per *J.* Carpio, First Division].

The January 30, 2009 Decision of the Regional Trial Court of Naga City, Branch 61 in Civil Case No. 2001-0200 is **REINSTATED**.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

SECOND DIVISION

[G.R. No. 213961. January 22, 2020]

PRIME STARS INTERNATIONAL PROMOTION CORPORATION and RICHARD U. PERALTA, *petitioners, vs.* **NORLY M. BAYBAYAN and MICHELLE V. BELTRAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) ARE GENERALLY ACCORDED NOT ONLY GREAT WEIGHT AND RESPECT BUT EVEN CLOTHED WITH FINALITY AS LONG AS THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; AN EXCEPTION IS WHEN THERE ARE VARIANCE AND CONFLICTING FACTUAL FINDINGS BETWEEN THE LABOR ARBITER AND THE NLRC. — The issues raised herein by petitioners are essentially factual. It is an elementary principle that the Court is not a trier of facts. Judicial review of labor cases must not go beyond the evaluation of the sufficiency of the evidence upon and as such, the findings of fact and conclusions of law of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on the Court as

long as they are supported by substantial evidence. However, where there are variance and conflicting factual findings between the LA and the NLRC, as in the case at bench, the Court deems it necessary to reassess these factual findings for the just resolution of the case.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE BURDEN OF PROVING THAT THE RESIGNATION OF AN EMPLOYEE IS VOLUNTARY FALLS UPON THE EMPLOYER; CASE AT BAR. — [T]he Court further adheres to the observation of both the NLRC and the CA that the wordings of Beltran's relinquishment of her contract of employment were ambiguous and doubtful. Contrary to the petitioners' assertion, the burden of proving that Beltran voluntary preterminated her contract falls upon petitioners as the employer. The employer still has the burden of proving that the resignation is voluntary despite the employer's claim that the employee resigned, which petitioners failed to discharge.

3. ID.; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); EXPLICITLY PROHIBITS THE SUBSTITUTION OR ALTERATION TO THE PREJUDICE OF THE WORKER OF EMPLOYMENT CONTRACTS ALREADY APPROVED AND VERIFIED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) FROM THE TIME OF ACTUAL SIGNING THEREOF UP TO AND INCLUDING THE PERIOD OF THE EXPIRATION OF THE SAME WITHOUT THE APPROVAL OF THE DOLE; CASE AT BAR. — Paragraph (i) of Article 34 of the Labor Code of the Philippines prohibits the substitution or alteration of employment contracts approved and verified by the Department of Labor and Employment (DOLE) from the time of the actual signing thereof by the parties up to and including the period of expiration of the same without the approval of the DOLE. Furthermore, Republic Act No. (RA) 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, explicitly prohibits the substitution or alteration to the prejudice of the worker of employment contracts already approved and verified by the DOLE from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the DOLE. x x x A careful and assiduous

review of the record of the case would yield to no other conclusion than that the Addendum is contrary to law and public policy considering that the minimum provisions for employment of respondents were not met, and that there was diminution of their benefits which were already guaranteed by law and granted in their favor under their POEA-approved contracts of employment. The Addendum, absent the approval of the POEA, is not valid and executory as against respondents. The clear and categorical language of the law likewise imposes upon foreign principals minimum terms and conditions of employment for land-based overseas Filipino workers, which include basic provisions for food, accommodation and transportation. The licensed recruitment agency shall also, prior to the signing of the employment contract, inform the overseas Filipino workers of their rights and obligations, and disclose the full terms and conditions of employment, and provided them with a copy of the POEA-approved contract, to give them ample opportunity to examine the same.

4. CIVIL LAW; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES, PROPER IN CASE AT BAR. — The Court finds no cogent reason to disturb the award of damages and attorney's fees in favor of respondents considering that the acts of petitioners were evidently tainted with bad faith. Petitioners' failure to comply with the stipulations on the POEA-approved employment contracts of respondents with regard to salaries and transportation expenses, guaranteed under our labor laws, constituted an act oppressive to labor and more importantly, contrary to law and public policy.

5. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); MANDATES SOLIDARY LIABILITY AMONG CORPORATE OFFICERS, DIRECTORS, PARTNERS AND CORPORATION OR PARTNERSHIP FOR ANY CLAIMS AND DAMAGES THAT MAY BE DUE TO THE OVERSEAS WORKERS. — Peralta is jointly and severally liable with Prime Stars. Section 10 of RA 8042 mandates solidary liability among the corporate officers, directors, partners and the corporation or partnership for any claims and damages that may be due to the overseas workers.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LEGAL INTERESTS; WHERE THERE IS A FINDING OF ILLEGAL DISMISSAL AND AN AWARD OF BACKWAGES AND SEPARATION PAY, THE DECISION ALSO BECOMES A JUDGMENT FOR MONEY IN WHICH THE TOTAL UNPAID JUDGMENT AMOUNT EARNS INTEREST IN CASE OF DELAY, FROM THE TIME THE DECISION BECOMES FINAL. — When there is a finding of illegal dismissal and an award of backwages and separation pay, the decision also becomes a judgment for money from which another consequence flows—the payment of legal interest in case of delay imposable upon the total unpaid judgment amount, from the time the decision became final. Applying the principles laid down in the case of *Nacar v. Gallery Frames, et al.*, respondents shall receive legal interest of 6% *per annum* to be imposed on their total monetary awards computed from finality of judgment until full satisfaction thereof.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioners.
Public Attorney's Office for respondent Baybayan.
YFLIM Associates Law Offices for respondent Beltran.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari*[1] filed pursuant to Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[2] dated January 14, 2014 and the Resolution[3] dated August 14, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 119224 which dismissed the petition filed by Prime

[1] *Rollo*, pp. 15-39.

[2] *Id.* at 44-64; penned by Associate Justice Noel G. Tijam (a retired member of the Court) with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring.

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

Stars International Promotion Corporation (Prime Stars) and Richard U. Peralta (Peralta) (collectively, petitioners).

The Antecedents

Prime Stars is a local recruitment agency with Taiwan Wacoal Co., Ltd., (Wacoal) and Avermedia Technologies Inc. (Avermedia) as foreign principals. Peralta is one of the officers of Prime Stars.

Norly M. Baybayan (Baybayan) was deployed by Prime Stars to Wacoal on June 12, 2007 for a contract period of 24 months or two years, with a monthly salary of NT$15,840.00 per month.[4] However, he was only paid NT$9,000.00 a month and upon inquiry, was informed that the amount of NT$4,000.00 was being deducted from his salary for expenses for his board and lodging. Since he still had debts to pay back home, he finished the contract and returned to the Philippines on May 19, 2009.[5] He then instituted a complaint for underpayment of salaries and the reimbursement of his transportation expenses against petitioners.[6] He further asserted that the petitioners collected from him an exhorbitant placement fee.

On the other hand, Michelle V. Beltran (Beltran) was likewise recruited by Prime Stars and was deployed to Avermedia as an "operator" who assembles TV boxes and USB. Her contract duration was for two years with a monthly salary of NT$17,280.00.[7] She was deployed on June 22, 2008 and was under the supervision of a Taiwanese employee named "Melody." After a year, her services was abruptly and unceremoniously terminated by her supervisor and was immediately repatriated to the Philippines on July 3, 2009.[8]

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

[5] *Id.* at 88-89.

[6] *Id.* at 86-94.

[7] *Id.* at 163, 181.

[8] *Id.* at 181.

Beltran then instituted a complaint for illegal dismissal and sought for the payment of the unexpired portion of her contract, the refund of her placement fee, repatriation expenses, plus damages and attorney's fees against herein petitioners.[9]

The complaints of Baybayan and Beltran (collectively, respondents) were then consolidated.

In response,[10] petitioners denied that Baybayan was underpaid as his payslips for the months of March and April 2009 indicated that he received a monthly salary of NT$17,280.00 during his employment with Wacoal.[11] Petitioners explained that Baybayan signed an Addendum to the Employment Contract (Addendum),[12] which authorized the deduction of the amount of NT$4,000.00 as payment for his monthly food and accomodation. In the same Addendum, Baybayan was apprised that the transportation expenses for his round trip tickets from the Philippines to Taiwan shall be at his own expense.[13] Petitioners further explained that Baybayan paid ₱26,769.00 as placement fee and ₱22,190.00 as documentation fee, and supported by an official receipt, sworn statement of Baybayan, Written Acknowledgment, Foreign Worker's Affidavit Regarding Expenses Incurred For Entry Into the Republic of China To Work and the Wage and Salary and Overseas Contract Worker's Questionnaire which he personally accomplished.[14]

With respect to Beltran, petitioners contended that it was Beltran who voluntarily preterminated her contract for personal reasons. According to petitioners, Beltran approached the management and expressed her intent to return to the Philippines as evidenced by her handwritten statement which she duly signed

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[9] *Id.* at 180-186.

[10] *Id.* at 95-104.

[11] *Id.* at 98-99.

[12] *Id.* at 76.

[13] *Id.* at 101.

[14] *Id.* at 99-101.

on July 4, 2009. Petitioners admitted that it charged Beltran ₱25,056.00 as placement fee and ₱20,560.00 as documentation fee, and supported by an official receipt, her sworn statement, written acknowledgment, Foreign Worker's Affidavit, and Overseas Contract Worker's Questionnaire.[15]

In Beltran's Reply,[16] she countered that she signed the pretermination agreement under duress since she was helpless in a foreign country, and was afraid that her refusal might endanger her status, liberty, and limbs.[17] She further averred that her supervisor Melody discriminated her, and that it was Melody who dictated the words she used in the Worker Discontinue Employment Affidavit she executed.[18]

The Ruling of the Labor Arbiter (LA)

In the Decision[19] dated March 30, 2010, LA Edgardo M. Madriaga dismissed the consolidated cases for lack of merit.[20] The LA found substantial documentary evidence to prove that Baybayan was paid all the salaries and benefits pursuant to his employment contract.[21] In the same vein, the LA gave more weight to the evidence presented by petitioners that Beltran preterminated her employment contract for reasons of her own and was thus not entitled to her money claims.[22]

Respondents appealed the dismissal citing that it was grave error on the part of the LA to deny the award of their money claims despite evidence to the contrary.[23]

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[15] *Id.* at 200-201.

[16] *Id.* at 189-195.

[17] *Id.* at 189.

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

[19] *Id.* at 117-135.

[20] *Id.* at 135.

[21] *Id.* at 134.

[22] *Id.* at 134-135.

[23] *Id.* at 136-146 and 221-229.

The Ruling of the National Labor Relations Commission (NLRC)

In the Decision[24] dated December 21, 2010, the NLRC reversed and set aside the findings of the LA and ruled in favor of respondents.[25] It struck down as contrary to law the Addendum of respondents since it diminished the benefits provided in the original contract approved and submitted to the Philippine Overseas Employment Administration (POEA).[26] The NLRC further gave credence to respondents' assertion that they were forced to sign the Addendum for fear of losing their employment since they were already in a foreign land, aside from their outstanding loans which they obtained to support the expenses for their deployment.[27]

The NLRC was, likewise, convinced that Beltran was illegally dismissed. For the NLRC, Beltran's immediate filing of the complaint four days after she was repatriated belied petitioners' allegation that she voluntarily resigned and preterminated her employment contract. Moreover, the circumstances surrounding Beltran's execution of the notification of termination of her employment would suggest that she was being asked to go home by her employer who had control over her.[28]

The dispositive portion of the Decision reads, *viz*.:

WHEREFORE, the decision of the Labor Arbiter is hereby REVERSED and SET ASIDE and a new one entered finding complainant Michele Beltran to have been illegally dismissed and that ordering all Respondents to solidarily pay Complainants the following in Philippines peso at the rate of exchange prevailing at the time of payment.

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[24] *Id.* at 240-259; penned by Commissioner Teresita D. Castillon-Lora with Presiding Commissioner Raul T. Aquino and Commissioner Napoleon M. Menese, concurring.

[25] *Id.* at 257.

[26] *Id.* at 250.

[27] *Id.* at 251.

[28] *Id.* at 253-254.

Complainant Michelle Beltran

1. full unexpired portion of contract (NT$17,280.00 x 12)		- NT$207,360
2. salary differentials (NT$4,000 x 12)		- NT$48,000
3. refund of placement fee	- ₱25,000.00	
4. refund of plane ticket	- ₱10,000.00	
5. moral damages	- ₱10,000.00	
6. exemplary damages	- ₱ 5,000.00	
sub-total	- ₱50,000.00	NT$255,360
7. 10% attorney's fees	- ₱ 5,000.00	25,536
T O T A L	- ₱55,000.00	NT$280,896

Complainant Norly M. Baybayan

1. salary differentials (NT$6,840 x 24 months)		- NT$164,160
2. refund of transportation fare to and from Taiwan	- ₱10,000.00	
3. moral damages	- ₱10,000.00	
4. exemplary damages	- ₱ 5,000.00	
sub-total	- ₱25,000.00	NT$164,160
5. 10% attorney's fees	- ₱ 2,500.00	16,416
T O T A L	- ₱27,500.00	NT$180,576

SO ORDERED.[29]

Aggrieved, petitioners filed a motion for reconsideration which the NLRC denied for lack of merit in a Resolution[30] dated February 23, 2011. Petitioners then elevated the case to the CA raising grave abuse of discretion tantamount to lack of jurisdiction in the NLRC's reversal of the LA's Decision despite evidence on record.[31]

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[29] *Id.* at 257-258.

[30] *Id.* at 274-275; penned by Commissioner Teresita D. Castillon-Lora with Presiding Commissioner Raul T. Aquino and Commissioner Napoleon M. Menese, concurring.

[31] *Id.* at 276-303.

The Ruling of the CA

The CA dismissed the petition filed by petitioners in the absence of any justifiable reason to reverse the factual findings and conclusions of law of the NLRC as supported by substantial evidence.[32] It affirmed the findings of the NLRC, but modified the refund of Beltran's placement fee to ₱25,056.00 with interest of 12% *per annum*.[33]

The Issues

The issues brought to the Court for resolution are as follows:

(a) whether Beltran was illegally dismissed from employment;

(b) whether there was underpayment of salaries of respondents;

(c) whether the transportation expenses of respondents to Taiwan should be reimbursed;

(d) whether respondents should be awarded moral and exemplary damages and attorney's fees; and

(e) whether petitioner Peralta should be solidarily liable with Prime Stars.

Simply put, the issues boil down to whether the CA erred in holding petitioners liable for respondents' money claims pursuant to their contracts of employment.

The Ruling of the Court

The Court finds no merit in the petition.

The issues raised herein by petitioners are essentially factual. It is an elementary principle that the Court is not a trier of facts.[34] Judicial review of labor cases must not go beyond the

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[32] *Id.* at 44-64.

[33] *Id.* at 63.

[34] *G & M (Phil.), Inc. v. Rivera*, 542 Phil. 175, 179 (2007).

evaluation of the sufficiency of the evidence upon and as such, the findings of fact and conclusions of law of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on the Court as long as they are supported by substantial evidence.[35] However, where there are variance and conflicting factual findings between the LA and the NLRC, as in the case at bench, the Court deems it necessary to reassess these factual findings for the just resolution of the case.

Beltran was illegally dismissed.

Petitioners maintain that Beltran voluntarily preterminated her contract of employment for personal reasons; thus, it precluded her from recovering the unexpired portion of her employment contract. They also contest Beltran's bare testimonies and allegations of undue pressure and duress for being unsubstantiated and in contrast to petitioners' documentary evidence which are Beltran's duly signed Mutual Contract Annulment Agreement and Worker Discontinue Employment Affidavit.

The Court is not convinced.

As similarly declared by the NLRC and the CA, petitioners' complete reliance on Beltran's alleged voluntary execution of the Mutual Contract Annulment Agreement and the Worker Discontinue Employment Affidavit to support their claim that Beltran voluntarily preterminated her contract is unavailing considering that the filing of the complaint for illegal dismissal is inconsistent with resignation.[36] The Court finds it highly unlikely that Beltran would just quit even before the end of her contract after all the expenses she incurred and still needed to settle and the sacrifices she went through in seeking financial

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[35] *Id.*, citing *Ass'n. of Integrated Security Force of Bislig (AISFB)-ALU v. Court of Appeals*, 505 Phil. 10, 23-24 (2005).

[36] See *Cheniver Deco Print Technics Corp. v. NLRC*, 382 Phil. 651, 659 (2000); *Valdez v. NLRC*, 349 Phil. 760, 767-768 (1998); *Great Southern Maritime Services Corp. v. Acuña*, 492 Phil. 518, 531 (2005).

upliftment. It is incongruous for Beltran to simply give up her work, return home, and be unemployed once again given that so much time, effort, and money have already been invested to secure her employment abroad and enduring the tribulations of being in a foreign country and away from her family.

Apropos to the foregoing, the Court further adheres to the observation of both the NLRC and the CA that the wordings of Beltran's relinquishment of her contract of employment were ambiguous and doubtful. Contrary to the petitioners' assertion, the burden of proving that Beltran voluntary preterminated her contract falls upon petitioners as the employer. The employer still has the burden of proving that the resignation is voluntary despite the employer's claim that the employee resigned,[37] which petitioners failed to discharge.

Baybayan and Beltran are entitled to salary differentials and refund of transportation expenses.

Petitioners admit that the employment contracts of respondents were indeed amended, but posit that the Addendum, while apparently do not appear to contain any indication of POEA approval, actually contained provisions which have been approved by the POEA as evidenced by the respondents' Foreign Worker's Affidavits.

The petitioners' argument deserves scant consideration.

Paragraph (i) of Article 34 of the Labor Code of the Philippines prohibits the substitution or alteration of employment contracts approved and verified by the Department of Labor and Employment (DOLE) from the time of the actual signing thereof by the parties up to and including the period of expiration of the same without the approval of the DOLE.

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[37] *Pascua v. Bank Wise, Inc.*, G.R. Nos. 191460 & 191464, January 31, 2018, 853 SCRA 446, 460.

Furthermore, Republic Act No. (RA) 8042, otherwise known as the Migrant workers and Overseas Filipinos Act of 1995, explicitly prohibits the substitution or alteration to the prejudice of the worker of employment contracts already approved and verified by the DOLE from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the DOLE.[38]

Thus, the Court agrees with the findings of the CA in this wise:

> We stress, at the outset, that the numerous documentary evidence presented by petitioners which private respondents entered into with the foreign principals are not valid and binding upon private respondents. Specifically, the Addendum to the employment contract whereby private respondents were made to shoulder their food and accommodation in the amount of NT$4,000 per month, as well as transportation fare, to and from Taiwan, is in contravention of the Employment Contract executed by the parties and duly approved by the Philippine Overseas Employment Administration (POEA). Article IV of the Contract states that private respondents are entitled to free food and accommodation for the duration of the contract. It further states that the employer shall provide the employee with an economy class air ticket from the country of origin to Taiwan and upon completion of the contract, the employer shall provide the ticket back to the country of origin. In fact, these provisions constitute the minimum requirements for contracts of employment of land-based overseas Filipino workers, pursuant to Section 2, Rule 1, Part V of the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, thus -
>
> "Section 2. Minimum Provisions of Employment Contract. Consistent with its welfare and employment facilitation objectives, the following shall be considered minimum requirements for contracts of employment of land-based workers:
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> x x x x x x x x x
>
> b. Free transportation to and from the worksite, or offsetting benefit;

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[38] *Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc.*, 591 Phil. 662, 674 (2008).

c. Free food and accommodation, or offsetting benefit;

x x x x x x x x x"

Following therefor, the explicit provisions of the employment contracts of private respondents, the same cannot be altered or modified by the Addendum without the prior approval of the POEA. Indeed, while the parties may stipulate on other terms and conditions of employment as well as other benefits, the stipulations should not violate the minimum requirements required by law as these would be disadvantageous to the employee. Section 3, Rule 1, Part V of the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas workers is pertinent, to wit:

"Section 3. Freedom to Stipulate. Parties to overseas employment contracts are allowed to stipulate other terms and conditions and other benefits not provided under these minimum requirements; provided the whole employment package should be more beneficial to the worker than the minimum; provided that the same shall not be contrary to law, public policy and morals, and provided further, that Philippine agencies shall make foreign employers aware of the standards of employment adopted by the Administration."

Moreover, Section 15 of R.A. No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995 categorically provides that the repatriation of the worker is the primary responsibility of the agency that recruited and deployed him, unless the repatriation is due to the fault of the worker. We find that both Beltran and Baybayan's repatriation were due to illegal dismissal and expiration of employment contract, respectively, as will be discussed hereunder.[39] (Citations and emphasis omitted.).

A careful and assiduous review of the record of the case would yield to no other conclusion than that the Addendum is contrary to law and public policy considering that the minimum provisions for employment of respondents were not met, and that there was diminution of their benefits which were already guaranteed by law and granted in their favor under their POEA-approved contracts of employment.

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[39] *Rollo,* pp. 54-57.

The Addendum, absent the approval of the POEA, is not valid and executory as against respondents. The clear and categorical language of the law likewise imposes upon foreign principals minimum terms and conditions of employment for land-based overseas Filipino workers, which include basic provisions for food, accommodation and transportation. The licensed recruitment agency shall also, prior to the signing of the employment contract, inform the overseas Filipino workers of their rights and obligations, and disclose the full terms and conditions of employment, and provided them with a copy of the POEA-approved contract, to give them ample opportunity to examine the same.[40]

Award of moral and exemplary damages, and attorney's fees.

The Court finds no cogent reason to disturb the award of damages and attorney's fees in favor of respondents considering that the acts of petitioners were evidently tainted with bad faith. Petitioners' failure to comply with the stipulations on the POEA-approved employment contracts of respondents with regard to salaries and transportation expenses, guaranteed under our labor laws, constituted an act oppressive to labor and more importantly, contrary to law and public policy. Petitioners even tried to justify the execution and validity of the Addendum and cloak the latter as legal and binding through respondents' execution of Foreign Worker's affidavits. However, the affidavits of respondents explicitly indicated that their monthly wage/salary shall be NT$17,280.00 for Beltran and NT$15,840.00 for Baybayan.[41] There was nothing in the mentioned affidavits which would indicate that there would be deductions to respondents' salaries. Indeed, the Court finds appalling petitioners' circumvention of our labor laws and the intentional diminution of employee's benefits guaranteed by our laws to land-based overseas workers—

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[40] Section 137, Rule I, Part V of the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Filipino Workers of 2016.

[41] *Rollo*, pp. 81, 172.

indicative of petitioners' exercise of bad faith and fraud in their dealings with Filipino workers.

As regards Beltran's summary dismissal from employment, there was nothing "voluntary" in putting words into Beltran's own mouth in the guise of her handwritten statement of resignation. Petitioners' attempt to demonstrate voluntariness fails since "cooperate" is more of an imposition coming from the employer rather than from a disadvantaged overseas employee. The execution of the documents was indeed plainly oppressive and violative of Beltran's security of tenure. Veritably, the award of moral and exemplary damages is sufficient to allay the sufferings experienced by respondents and by way of example or correction for public good, respectively.

Peralta is solidarily liable with Prime Stars.

Peralta is jointly and severally liable with Prime Stars. Section 10 of RA 8042 mandates solidary liability among the corporate officers, directors, partners and the corporation or partnership for any claims and damages that may be due to the overseas workers, *viz.*:

Section 10. *Monetary Claims*. — x x x

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

x x x x x x x x x

Legal interest should be imposed on the monetary awards.

When there is a finding of illegal dismissal and an award of backwages and separation pay, the decision also becomes a judgment for money from which another consequence flows—the payment of legal interest in case of delay imposable upon the total unpaid judgment amount, from the time the decision became final.[42] Applying the principles laid down in the case of *Nacar v. Gallery Frames, et al.*,[43] respondents shall receive legal interest of 6% *per annum* to be imposed on their total monetary awards computed from finality of judgment until full satisfaction thereof.

On a final note, it is a time-honored rule that in controversies between a worker and his employer, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the worker's favor.[44] The policy of the State is to extend the applicability of the decree to a greater number of employees who can avail of the benefits under the law, which is in consonance to giving maximum aid and protection to labor.[45] Accordingly, the Court upholds the solidary liability of petitioners against respondents' money claims as discussed above.

WHEREFORE, the petition is **DENIED**. The Decision dated January 14, 2014 and the Resolution dated August 14, 2014 of the Court of Appeals in CA-G.R. SP No. 119224 are **AFFIRMED** with **MODIFICATION** in that legal interest of 6% *per annum* shall be additionally imposed on the total monetary awards to be computed from the finality of this Decision until its full satisfaction.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*) and *Delos Santos, J.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

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[42] *University of Pangasinan, Inc., et al. v. Fernandez, et al.*, 746 Phil. 1019, 1041-1042 (2014), citing *Gonzales v. Solid Cement Corporation, et al.*, 697 Phil. 619, 638 (2012).

[43] 716 Phil. 267 (2013).

[44] *Acuña v. Court of Appeals*, 523 Phil. 325, 335 (2006), citing *Prangan v. NLRC*, 351 Phil. 1070, 1078 (1998).

[45] *Id.*, citing *Sarmiento v. ECC*, 228 Phil. 400, 405 (1986).

THIRD DIVISION

[G.R. No. 214902. January 22, 2020]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF BARTOLOME J. SANCHEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); THE LAND BANK OF THE PHILIPPINES IS EXEMPT FROM PAYING COMMISSIONERS' FEES. — The role of LBP in agrarian reform is more than just the ministerial duty of keeping and disbursing the Agrarian Reform Funds. LBP is also primarily responsible for the valuation and determination of just compensation. In the case of *Land Bank of the Philippines v. Gonzales* and *Land Bank of the Philippines v. Ibarra*, We ruled that LBP is exempt from paying the costs of the suit pursuant to Section 1, Rule 142 of the Rules, since it is an instrumentality performing a governmental function in agrarian reform proceedings charged with the disbursement of public funds. Recently, in the case of *Land Bank of the Philippines v. Baldoza,* We reiterated that since LBP is performing a governmental function in an agrarian reform proceeding, it is exempt from payment of costs of suit, including commissioners' fees, as it is considered part of costs of suit. x x x It must also be pointed out that the conclusion of the CA that the "plaintiff" referred to in Section 12 of Rule 67 of the Rules is the DAR through LBP, is erroneous. In the case of *Land Bank of the Philippines v. Baldoza*, the Court explained that it is the Republic of the Philippines (Republic), which is referred to as the "plaintiff" for it initiates complaints for eminent domain. The complaint is filed by the Republic to determine the propriety of the exercise of the power of eminent domain in the context of the facts involved in the suit. After determining the right of the Republic to exercise the power, determination of just compensation shall proceed. x x x [T]he "plaintiff," who initiated the complaint for the determination of just compensation, is not the Republic, but the Heirs of Sanchez, who found the valuation of the property made by DAR unacceptable. Therefore, even applying Section 12, Rule 67 of the Rules to the agrarian reform proceeding, the conclusion remains the same. LBP is not liable to pay commissioners' fees.

2. ID.; ID.; ID.; WHERE THE CASE IS STILL IN THE TRIAL STAGE, A DECLARATION AS TO THE AMOUNT OF COMMISSIONERS' FEES IS PREMATURE SINCE IT MUST BE BASED ON TIME ACTUALLY SPENT BY THE COMMISSIONERS IN PERFORMING THEIR DUTIES AND IN MAKING THEIR REPORT. — [A] declaration that the amount of ₱120,000.00 commissioners' fees is legally justified, at this stage of the proceedings, would be premature, and requires the remand of the case to the SAC. As pointed out by LBP, the case is still in the trial stage. Moreover, the commissioners have not submitted their report up to now, since the other commissioners have not taken their oath yet. The proper amount of commissioners' fees to be paid by the Heirs of Sanchez must be based on time actually spent by the commissioners in performing their duties and in making their report, as stated in Section 16, Rule 141 of the Rules. Accordingly, We disagree with the ruling of the CA ordering LBP to pay for the commissioners' fees. Nevertheless, We find that the CA correctly directed the SAC to make a detailed computation of the commissioners' fees based on the time actually and necessarily devoted by the commissioners in the performance of their duties, consistent with Section 16, Rule 141 of the Rules.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Palasan and Associates Law Office for respondents.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court (Rules), assailing the Decision[2] dated September 16, 2014 of the Court of Appeals

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[1] *Rollo*, pp. 26-49.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Henri Jean Paul B. Inting (now a Member of this Court) and Pablito A. Perez, concurring; *id.* at 55-61.

(CA) in CA-G.R. SP No. 03926-MIN, filed by petitioner Land Bank of the Philippines (LBP).

Antecedents

The Department of Agrarian Reform (DAR) placed a parcel of land consisting of 42.046 hectares, owned by respondents Heirs of Bartolome J. Sanchez (Heirs of Sanchez) under the coverage of Republic Act No. 6657, otherwise known as the "Comprehensive Agrarian Reform Law." The property was valued at ₱623,725.35, which the Heirs of Sanchez found unreasonable.[3] Hence, in 2002, the Heirs of Sanchez filed a complaint for the determination of just compensation in the Regional Trial Court (RTC) sitting as a Special Agrarian Court (SAC).

During pre-trial the parties agreed to appoint commissioners for the valuation of the property.[4] Thereafter, the appointed commissioners manifested their request for the full payment of their fees in the amount of ₱120,000.00.[5]

Ruling of the Special Agrarian Court

On December 15, 2009, the SAC issued its Order,[6] the dispositive portion of which reads:

IN VIEW THEREOF, the foregoing manifestation is hereby noted. The defendants in the above-captioned case are hereby directed to deposit with the office or the Clerk of Court-RTC, Butuan City the following amount, to wit:

1. Chairman	- Board of Commissioners	-	₱ 40,000.00
2. Member	-do-	-	₱ 30,000.00
3. Member	-do-	-	₱ 30,000.00
4. Technical Assistant	-do-	-	₱ 10,000.00
5. Secretary-Encoder	-do-	-	₱ 10,000.00
TOTAL			**₱120,000.00**

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[3] *Id.* at 165.

[4] *Id.* at 166.

[5] *Id.* at 124.

[6] Penned by Presiding Judge Augustus L. Calo; *id.* at 123-124.

Thereafter, the above-mentioned amount may be withdrawn only by the persons concerned upon order of this Court.

SO ORDERED.[7] (Emphasis in the original)

LBP filed a Motion for Reconsideration,[8] which was denied in a Resolution[9] dated September 9, 2010.[10] LBP filed a petition for *certiorari* in the CA.

Ruling of the Court of Appeals

The CA issued its Decision[11] dated September 16, 2014, the dispositive portion of which reads:

FOR THESE REASONS, the petition for certiorari is DENIED.The assailed Order and Resolution are sustained as to the award of commissioners' fees, but the respondent court is DIRECTED to make a detailed computation of the commissioners' fees based on the time actually and necessarily employed by each of the commissioners in the performance of their duties, consistent with Rule 141, Section 16 of the Rules of Court.

SO ORDERED.[12]

In denying LBP's petition for *certiorari*, the CA held that it failed to substantiate that there was grave abuse of discretion on the part of the SAC in ordering the payment of commissioners' fees.[13] The CA found that the issues raised by LBP do not involve errors of jurisdiction but merely errors in judgment that cannot be corrected by *certiorari*.[14] The CA pointed out that the "plaintiff" referred to in Section 12 of Rule 67 of the Rules,

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[7] *Id.* at 124.

[8] *Id.* at 125-129.

[9] Penned by Presiding Judge Augustus L. Calo; *id.* at 130-131.

[10] *Id.* at 131.

[11] *Supra* note 2.

[12] *Rollo*, pp. 60-61.

[13] *Id.* at 57.

[14] *Id.* at 59-60.

who shall shoulder the costs of the suit, including commissioners' fees, is the DAR, through LBP.[15]

In directing the SAC to compute the commissioners' fees based on the time actually and necessarily employed by each commissioner, the CA explained that this is best resolved by the SAC after reception of evidence on the matter.[16]

In the present petition, LBP maintains that it is exempt from paying legal fees, including commissioners' fees, in connection with a suit relating to its governmental functions.[17] Furthermore, granting that LBP is liable to pay commissioners' fees, LBP claims that the imposition of ₱120,000.00 as commissioners' fees has no factual and legal justification.[18] LBP alleges that there has been no actual and necessary performance of commissioners' duties to justify the payment as the case is still in the trial stage, and there has been no determination of just compensation of the property yet.[19]

In their Comment,[20] the Heirs of Sanchez submit that LBP cannot be exempted from payment of commissioners' fees. Invoking the Pre-Trial Order[21] dated December 8, 2004 of the RTC, they insist that both parties agreed to refer the matter of land valuation to independent commissioners. They also aver that the amount of ₱120,000.00 is fair and just, considering the scope and complexity of the job of commissioners.[22]

Issues

(1) Whether LBP, in the exercise of its governmental functions as a financial intermediary of the agrarian reform program of

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[15] *Id.* at 58.

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

[17] *Id.* at 34-43.

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

[19] *Id.* at 44.

[20] *Id.* at 145-147.

[21] *Id.* at 112-113.

[22] *Id.* at 146.

the government, is exempt from paying commissioners' fees; and

(2) Assuming arguendo that LBP is liable to pay commissioners' fees, whether the amount of ₱120,000.00 is legally justified.

Our Ruling

Petitioner LBP is exempt from paying commissioners' fees.

The role of LBP in agrarian reform is more than just the ministerial duty of keeping and disbursing the Agrarian Reform Funds. LBP is also primarily responsible for the valuation and determination of just compensation.[23] In the case of *Land Bank of the Philippines v. Gonzales*[24] and *Land Bank of the Philippines v. Ibarra*,[25] We ruled that LBP is exempt from paying the costs of the suit pursuant to Section 1, Rule 142 of the Rules, since it is an instrumentality performing a governmental function in agrarian reform proceedings charged with the disbursement of public funds. Recently, in the case of *Land Bank of the Philippines v. Baldoza*,[26] We reiterated that since LBP is performing a governmental function in an agrarian reform proceeding, it is exempt from payment of costs of suit, including commissioners' fees, as it is considered part of costs of suit.[27]

Section 12, Rule 67 of the Rules states:

> Sec. 12. *Costs, by whom paid.* — The fees of the commissioners shall be taxed as a part of the costs of the proceedings. All costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner of the property and the judgment is affirmed, in which event the costs of the appeal shall be paid by the owner.

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[23] *Land Bank of the Philippines v. Rivera*, 649 Phil. 575, 589 (2010).

[24] 711 Phil. 98 (2013).

[25] 747 Phil. 691 (2014).

[26] G.R. No. 221571, July 29, 2019.

[27] *Id.*

It must also be pointed out that the conclusion of the CA that the "plaintiff" referred to in Section 12 of Rule 67 of the Rules is the DAR, through LBP, is erroneous.

In the case of *Land Bank of the Philippines v. Baldoza*,[28] the Court explained that it is the Republic of the Philippines (Republic), which is referred to as the "plaintiff" for it initiates complaints for eminent domain. The complaint is filed by the Republic to determine the propriety of the exercise of the power of eminent domain in the context of the facts involved in the suit. After determining the right of the Republic to exercise the power, determination of just compensation shall proceed.[29] However, the Court pointed out that:

> x x x [I]n agrarian expropriation cases, the owner of the property may voluntarily offer to sell his land as sanctioned in DAR A.O. No. 03, series of 1989. Appropriately, **the initial case filed with the RTC-SAC** is not for the determination of the propriety of the exercise of the power of eminent domain, but **for the resolution of the proper valuation of the property if the landowner disagrees with the findings of the DAR**[.][30] (Emphasis supplied.)

In this case, the "plaintiff," who initiated the complaint for the determination of just compensation, is not the Republic, but the Heirs of Sanchez, who found the valuation of the property made by DAR unacceptable. Therefore, even applying Section 12, Rule 67 of the Rules to the agrarian reform proceeding, the conclusion remains the same. LBP is not liable to pay commissioners' fees.

It is premature to declare the amount of ₱120,000.00 commissioners' fees legally justified.

Section 16, Rule 141 of the Rules states:

> Sec. 16. *Fees of commissioners in eminent domain proceedings.* — The commissioners appointed to appraise land sought to be

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[28] *Id.*

[29] *Id.*

[30] *Id.*

condemned for public uses in accordance with these rules shall each receive a compensation to be fixed by the court of NOT LESS THAN [THREE HUNDRED] (₱300.00) [PESOS] per day **for the time actually and necessarily employed in the performance of their duties and in making their report to the court**, which fees shall be taxed as a part of the costs of the proceedings. (Emphasis supplied.)

In this case, a declaration that the amount of ₱120,000.00 commissioners' fees is legally justified, at this stage of the proceedings, would be premature, and requires the remand of the case to the SAC. As pointed out by LBP, the case is still in the trial stage. Moreover, the commissioners have not submitted their report up to now, since the other commissioners have not taken their oath yet. The proper amount of commissioners' fees to be paid by the Heirs of Sanchez must be based on time actually spent by the commissioners in performing their duties and in making their report, as stated in Section 16, Rule 141 of the Rules.

Accordingly, We disagree with the ruling of the CA ordering LBP to pay for the commissioners' fees. Nevertheless, We find that the CA correctly directed the SAC to make a detailed computation of the commissioners' fees based on the time actually and necessarily devoted by the commissioners in the performance of their duties, consistent with Section 16, Rule 141 of the Rules.

WHEREFORE, the Decision dated September 16, 2014 of the Court of Appeals in CA-G.R. SP No. 03926-MIN pertaining to the liability of petitioner Land Bank of the Philippines to pay commissioners' fees is **SET ASIDE**.

Respondents Heirs of Bartolome J. Sanchez are **DECLARED** liable to pay commissioners' fees.

The case is **REMANDED** to the Regional Trial Court of Butuan City, Branch 5, sitting as a Special Agrarian Court, for the determination of commissioners' fees strictly in accordance with Section 12, Rule 67 and Section 16, Rule 141 of the Rules of Court.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Zalameda*, and *Gaerlan, JJ.*, concur.

SECOND DIVISION

[G.R. No. 216132. January 22, 2020]

AL-MASIYA OVERSEAS PLACEMENT AGENCY, INC. and ROSALINA ABOY, *petitioners, vs.* **HAZEL A. VIERNES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PETITION FOR REVIEW ON *CERTIORARI* IS LIMITED TO REVIEWING ERRORS OF LAW; FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), WHEN AFFIRMED BY THE COURT OF APPEALS (CA), ARE USUALLY CONCLUSIVE; NO JUSTIFICATION EXISTS TO APPLY ANY OF THE EXCEPTIONS. — [It] bears stressing that in a petition for review on *certiorari*, the Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. The Court is not a trier of facts, and this rule applies with greater force in labor cases. Questions of fact are to be resolved by the labor tribunals. It is quite apparent that the present petition raises questions of fact inasmuch as this Court is being asked to reassess the findings of the LA, the NLRC, and the CA regarding the validity, regularity and due execution of the subject resignation letter, Affidavit of Quitclaim and Desistance, and the final settlement allegedly executed by respondent before Assistant Labor Attaché Ofelia M. Castro-Hudson. It has been consistently held that the factual findings of the NLRC, when confirmed by the CA, are usually conclusive on this Court. The Court will not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible. Needless to say, the Court does not try facts or examine testimonial or documentary evidence on record. At times, the relaxation of the application of procedural rules have been resorted to, but only under exceptional circumstances. In this case, however, the Court finds no justification to warrant the application of any of the exceptions.

2. ID.; ID.; ID.; ID.; AS THE LABOR ARBITER, THE NLRC, AND THE CA UNIFORMLY RULED AGAINST THE VALIDITY, REGULARITY, AND DUE EXECUTION OF THE EMPLOYEE'S RESIGNATION LETTER AND AFFIDAVIT OF QUITCLAIM, THE COURT FINDS NO REASON TO DEVIATE FROM THEIR FINDINGS; IT IS BINDING ON THE COURT IN THE ABSENCE OF ARBITRARINESS OR GRAVE ABUSE OF DISCRETION. — [T]he LA, the NLRC, and the CA all ruled against the validity, regularity, and due execution of the subject resignation letter, Affidavit of Quitclaim and Desistance, and the final settlement. The Court finds no reason to deviate from their findings. In any case, within the context of a termination dispute, the rule is that quitclaims, waivers or releases are looked upon with disfavor and are commonly frowned upon as contrary to public policy and ineffective to bar claims for the measure of a worker's legal rights. The reason for this rule is that the employer and the employee do not stand on the same footing, such that quitclaims usually take the form of contracts of adherence, not of choice. At this juncture, it bears to emphasize that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. Unless there is a showing of grave abuse of discretion or where it is clearly shown that the factual findings were reached arbitrarily or in utter disregard of the evidence on record, they are binding upon the Court. In this case, the Court finds no such showing of arbitrariness or grave abuse of discretion on the part of the LA and the NLRC.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, CONCEPT OF. –– In cases of constructive dismissal, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment. "An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbea[r]able to the employee as to leave him or her with no option but to forego his or her continued employment." From this definition, it can be inferred that various situations, whereby the employer intentionally places

the employee in a situation which will result in the latter's being coerced into severing his ties with the former, can result in constructive dismissal.

4. ID.; ID.; ID.; ID.; THE CIRCUMSTANCES OF THIS CASE INDICATE THAT RESPONDENT WAS CONSTRUCTIVELY DISMISSED FROM HER EMPLOYMENT. — [T]he circumstances of the present case strongly indicate that respondent was constructively dismissed. First, Saad Mutlaq, respondent's foreign employer, never secured a working visa for her, in violation of the categorical requirement for an employer's accreditation with the Philippine Overseas Employment Agency. Second, respondent was not properly paid in accordance with the terms of her employment contract. During her three-month stay, she was only paid US$227.75 instead of the stipulated pay of US$400 per month. Third, respondent was not assigned to a permanent employer abroad for the entire contractual period of two years. Upon her arrival in Kuwait, she was consistently promised job placements which were found to be inexistent. As noted by the NLRC, it was clear that Saad Mutlaq intended to use respondent as an entertainer of some sort in places of ill repute; and she would have fallen victim to human trafficking "[w]ere it not for some favorable providence." Finally, similar to the case of *Torreda*, herein respondent was made to copy and sign a prepared resignation letter and this was made as a condition for the release of her passport and plane ticket. In light of these, the Court finds that, indeed, it was logical for respondent to consider herself constructively dismissed. The impossibility, unreasonableness, or unlikelihood of continued employment has left respondent with no other viable recourse but to terminate her employment.

APPEARANCES OF COUNSEL

Urbano Palamos and Fabros for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for Review on *Certiorari* with Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction[1] under Rule 45 of the Rules of Court seeking the reversal of the Decision[2] dated June 27, 2014 and Resolution[3] dated December 23, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 128433. The CA Decision dismissed the Petition for *Certiorari* with Extremely Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction[4] assailing the Resolutions dated September 24, 2012[5] and November 26, 2012[6] of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW (L) 02-000317-12 (NLRC RAB-I-OFW-[L]03-1021-11[IS-2]). The CA Resolution, on the other hand, denied the subsequent motion for reconsideration.[7]

The Antecedents

The case stemmed from the complaint[8] for illegal or constructive dismissal filed by Hazel A. Viernes (respondent) against Al-Masiya Overseas Placement Agency, Inc. (Al-Masiya) and Rosalina Aboy, its Manager, (collectively, petitioners) before

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[1] *Rollo*, pp. 26-43.

[2] *Id.* at 12-22; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring.

[3] *Id.* at 24.

[4] *Id.* at 137-154.

[5] CA *rollo*, pp. 25-34; penned by Commissioner Angelo Ang Palaña with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring.

[6] *Rollo*, pp. 135-136.

[7] *Id.* at 156-162.

[8] Not attached to the *rollo* and the records.

the NLRC, San Fernando City, La Union. The case was docketed as NLRC Case No. RAB-I-OFW(L)-03-1021-11(IS-2).[9]

On November 7, 2010, respondent was deployed in Kuwait by Al-Masiya, through Saad Mutlaq Al Asmi Domestic Staff Recruitment Office (Saad Mutlaq)/Al Dakhan Manpower, to work as a domestic helper. Respondent's stipulated pay was US$400 per month for a period of two years.[10]

Respondent arrived in Kuwait on November 8, 2010 together with other Filipina overseas workers. Due to disagreement in the working conditions, respondent's employment with her first and second employers did not succeed. Her employment with her third employer also did not succeed as the latter could not obtain a working visa for her.[11]

On December 16, 2010, respondent and one Darwina Golle went to the Philippine Embassy where they related their problems about their employment to Atty. William Merginio (Atty. Merginio), Labor Attaché in Kuwait who offered to help them.[12]

On January 5, 2011, respondent left the Philippine Embassy after a certain Mr. Mutlaq offered to give her a job at a chocolate factory. However, this chocolate factory turned out to be inexistent. Then, the employees of Al Rekabi, an employment agency, told her that they would be bringing her to Hawally at night. She refused to take the trip as it was cold and drizzling. She then attempted to report the matter to Atty. Merginio using her cellular phone, but the employees of Al Rekabi confiscated it. Mr. Hassan, the Manager of Al Rekabi, did not accede to her request to postpone the trip to the following day. It came to a point where Mr. Hassan scolded respondent, and forced her to make a written admission that her employers treated her well.[13]

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[9] *Rollo*, pp. 113-123.

[10] *Id.* at 113-114.

[11] *Id.* at 114.

[12] *Id.* at 115.

[13] *Id.*

Sometime after January 6, 2011, respondent was brought to the office of Al Rekabi at Salmiya. On an unspecified date thereafter, at around 7:00 p.m., two men offered her a job at a restaurant in front of the main office of the agency. She accepted the offer. However, instead of being brought to a restaurant in Hawally, where she was supposed to work, respondent was taken to a flat where she was told to apply makeup, and wear attractive and sexy clothes. Another man joined them. Respondent was then told that she would be brought to her place of work. However, she was instead taken to an unlighted area which had buildings but no restaurant or coffee shop signboards. At the area, she saw another man walking. After recognizing that the man was an employee of Al Rekabi, she asked him to bring her to the main office of the agency. She was able to leave at around 11:00 p.m. when the three other men agreed to release her.[14]

On February 7, 2011, respondent was asked to affix her signature on a letter that she copied purportedly showing that she admitted having preterminated her contract of employment and that she no longer had any demandable claim as she was treated well. Respondent's execution of this letter of resignation was made as a precondition to the release of her passport and plane ticket which were in the possession of petitioners.[15]

Respondent arrived in the Philippines on February 12, 2011.[16]

In response to respondent's complaint, petitioners filed a motion to dismiss[17] on May 11, 2011, alleging that on February 7, 2011, respondent executed an Affidavit of Quitclaim and Desistance, Sworn Statement, and Receipt and Quitclaim before Ofelia M. Castro-Hudson, Assistant Labor Attaché in Kuwait, where she allegedly stated that she voluntarily agreed to release Al-Masiya

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[14] *Id.* at 115-116.

[15] *Id.* at 116-117.

[16] *Id.* at 117.

[17] Not attached to the *rollo* and the records.

and Saad Mutlaq, *et al*., from all her claims arising from her employment abroad. They also presented her handwritten statement where she expressed that her cause for terminating her employment was her own personal reasons.[18]

Respondent opposed the motion, arguing that she signed the documents in exchange for the release of her passport and plane ticket. Petitioners refuted this by stating that respondent's reason was self-serving.[19]

After considering the parties' respective arguments, the Labor Arbiter (LA) denied the motion to dismiss and directed the parties to file their respective position papers.[20]

On August 2, 2011, the LA rendered a Decision[21] in favor of respondent. The dispositive portion thereof reads:

> IN VIEW THEREOF, judgment is hereby rendered directing the AL MASIYA OVERSEAS PLACEMENT AGENCY, INC. and ROSALINA ABOY to jointly and severally pay the complainant:
>
> | | |
> |---|---|
> | 1) Salary Differentials | -US$516.75 |
> | 2) Six (6) months['] Salary for the unexpired portion of her contract | - US$2,400.00 |
> | 3) Moral damages | - ₱25,000.00 |
> | 4) Exemplary damages | - ₱25,000.00 |
>
> plus 10% as attorney's fees payable to the Public Attorney's Office.
>
> SO ORDERED.[22]

Petitioners appealed the above Decision to the NLRC.

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[18] *Rollo*, p. 117.

[19] *Id.* at 117-118.

[20] *Id.* at 117.

[21] *Id.* at 113-123; penned by Executive Labor Arbiter Irenarco R. Rimando.

[22] *Id.* at 123.

In its Decision[23] dated April 27, 2012, the NLRC dismissed the appeal on the ground of nonperfection. It observed that petitioners filed a surety bond equivalent to the monetary award, but the attached joint declaration, as required by the 2011 NLRC Rules of Procedure, was not duly signed by their counsel.[24]

Petitioners filed a Motion for Reconsideration[25] of the dismissal of their appeal. The NLRC granted the motion in its Resolution[26] dated September 24, 2012, and gave due course to petitioners' appeal. Nonetheless, the NLRC affirmed *in toto* the Decision of the LA.[27]

Subsequently, petitioners filed a Motion for Reconsideration[28] of the Resolution dated September 24, 2012, but the NLRC dismissed it for lack of merit in its Resolution[29] dated November 26, 2012.

Aggrieved, petitioners filed a Petition for *Certiorari* with Extremely Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction[30] with the CA.

In its Decision[31] dated June 27, 2014, the CA dismissed the petition for lack of merit. It upheld respondent's entitlement to her money claims, which were granted by the LA and affirmed by the NLRC. The LA held that an employee's execution of a document on final settlement does not foreclose the right to pursue a claim for illegal dismissal; and that quitclaims are frowned upon and do not bind courts unless proven to have been voluntarily executed.[32] The CA also found illogical

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[23] *Id.* at 99-101.

[24] *Id.* at 100.

[25] *Id.* at 102-109.

[26] CA *rollo*, pp. 25-34.

[27] *Id.* at 33.

[28] *Rollo*, pp. 124-130.

[29] *Id.* at 135-136.

[30] *Id.* at 137-154.

[31] *Id.* at 12-22.

[32] *Id.* at 20-21.

petitioners' argument that respondent voluntarily resigned from her job abroad.[33] On the contrary, the CA observed that respondent would not have pursued her suit if she did resign.[34]

On December 23, 2014, the CA issued a Resolution[35] denying petitioners' motion for reconsideration.[36]

Hence, the present petition.

Issues

Petitioners impute the following assignment of errors:

A. WITH DUE COURTESY, THE HONORABLE COURT OF APPEALS OVERLOOKED THE EVIDENCE AT HAND PROVING THAT THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION SERIOUSLY COMMITTED AN ERROR WHEN IT FAILED TO RECOGNIZE THE LEGAL IMPORT AND EVIDENTIARY RULE OF THE RESIGNATION LETTER, AFFIDAVIT OF QUITCLAIM AND DESISTANCE AS WELL AS THE FINAL SETTLEMENT WHICH THE [RESPONDENT] SIGNED AND EXECUTED BEFORE ASST. LABOR ATTACH[É] OFELIA M. CASTRO-HUDSON.

B. WITH UTMOST RESPECT, THE HONORABLE COURT OF APPEALS FAILED TO RECOGNIZE THATTHE [*sic*] HONORABLE NATIONAL LABOR RELATIONS [COMMISSION] COMMITTED AN ERROR AND GROSSLY ABUSED ITS DISCRETION—AND THIS ERROR IS CORRECTIBLE ON APPEAL—WHEN IT FAILED TO CONSIDER THE FACT THAT THE ASST. LABOR ATTACH[É] BEFORE AFFIXING HER SIGNATURE, VERIFICATION AND SEAL OF THE POLO OFFICE, FULLY [APPRISED] THE [RESPONDENT] OF ALL HER CONTRACTUAL AND LEGAL RIGHTS.

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[33] *Id.* at 21.

[34] *Id.*

[35] *Id.* at 24.

[36] *Id.* at 156-162.

C. WITH DUE REVERENCE, THE HONORABLE COURT OF APPEALSSHOULD [*sic*] HAVE DELIBERATED ON THE FACT THAT THE NATIONAL LABOR RELATIONS COMMISSION FAILED TO GIVE FULL CREDENCE TO THE DOCUMENTS PERSONALLY SIGNED BY THE [RESPONDENT] BEFORE ASST. LABOR ATTACH[É] OFELIA M. CASTRO-HUDSON.

D. THE ASST. LABOR ATTACH[É] WAS IN THE PERFORMANCE OF HER REGULAR FUNCTIONS AND DUTIES WHEN THE [RESPONDENT] PERSONALLY APPEARED BEFORE HER AND WHEN SHE SIGNED THE VERIFICATION OF THE DOCUMENTS AND PLACED THE STAMP OF THE PHILIPPINE EMBASSY ON THE SAID DOCUMENTS.

E. WITH UTMOST HUMILITY, THE HONORABLE COURT OF APPEALSSHOULD [*sic*] HAVE FOUND GRAVE ABUSE OF DISCRETION WHEN THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION FAILED TO CONSIDER THAT THERE IS NO EVIDENCE ON RECORD WHICH WOULD SHOW THAT ASST. LABOR ATTACH[É] OFELIA M. CASTRO-HUDSON WAS REMISED [*sic*] IN THE PERFORMANCE OF HER FUNCTIONS AS A REPRESENTATIVE OF THE PHILIPPINE GOVERNMENT WHEN THE DOCUMENTS WERE SUBSCRIBED AND SWORN TO BEFORE HER.

F. WITH UTMOST RESPECT, THE HONORABLE COURT OF APPEALSDISREGARDED [*sic*] THE ERROR COMMITTED BYTHE [*sic*] NATIONAL LABOR RELATIONS COMMISSION WHEN IT FAILED TO RECOGNIZE THE LEGAL IMPORTANCE OF THE OFFICIAL FUNCTION OF ASST. LABOR ATTACH[É] OFELIA M. CASTRO-HUDSON CONSIDERING THERE IS NO SCINTILLA OF EVIDENCE WHICH WOULD SHOW THAT ASST. LABOR ATTACH[É] OFELIA M. CASTRO-HUDSON COMMITTED ANY IRREGULARITY WHEN SHE VERIFIED THE DOCUMENTS SIGNED AND EXECUTED BY THE [RESPONDENT].

G. WITH UTTER MODESTY, THE HONORABLE COURT OF APPEALSOVERLOOKED [*sic*] THE ERROR COMMITTED BY THE NATIONAL LABOR RELATIONS

COMMISSION WHEN IT FAILED TO APPRECIATE THE LEGAL SIGNIFICANCE OF THE MEDICAL CERTIFICATE PRESENTED BY THE [RESPONDENT].[37]

The Court's Ruling

The petition has no merit.

At the outset, it bears stressing that in a petition for review on *certiorari*, the Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous.[38] The Court is not a trier of facts, and this rule applies with greater force in labor cases.[39] Questions of fact are to be resolved by the labor tribunals.[40]

It is quite apparent that the present petition raises questions of fact inasmuch as this Court is being asked to reassess the findings of the LA, the NLRC, and the CA regarding the validity, regularity and due execution of the subject resignation letter,[41] Affidavit of Quitclaim and Desistance,[42] and the final settlement[43] allegedly executed by respondent before Assistant Labor Attaché Ofelia M. Castro-Hudson.

It has been consistently held that the factual findings of the NLRC, when confirmed by the CA, are usually conclusive on this Court.[44] The Court will not substitute its own judgment

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

[38] *CrewLink, Inc., et al. v. Teringtering, et al.*, 697 Phil. 302, 309 (2012).

[39] *Id.*

[40] *Guerrero v. Philippine Transmarine Carriers, Inc., et al.*, G.R. No. 222523, October 3, 2018.

[41] *Rollo*, pp. 61-62.

[42] *Id.* at 63.

[43] *Id.* at 64.

[44] *Symex Security Services, Inc., et al. v. Rivera, Jr., et al.*, G.R. No. 202613, November 8, 2017, 844 SCRA 416, 436, citing *Perea v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 206178, August 9, 2017, 836 SCRA 431 and *Madridejos v. NYK-FIL Ship Management, Inc.*, G.R. No. 204262, June 7, 2017, 826 SCRA 452.

for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[45]

Needless to say, the Court does not try facts or examine testimonial or documentary evidence on record.[46] At times, the relaxation of the application of procedural rules have been, resorted to, but only under exceptional circumstances.[47] In this case, however, the Court finds no justification to warrant the application of any of the exceptions.

As found by the LA, respondent was made to copy and sign a resignation letter, which purportedly showed that she admitted having preterminated her contract of employment and that she no longer had any demandable claim as she was treated well.[48] The LA further found that respondent's execution of the resignation letter was made as a precondition to the release of her passport and plane ticket,[49] which were in the possession of petitioners.

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[45] *Madridejos v. NYK-Fil Ship Management, Inc.*, 810 Phil. 704, 724 (2017).

[46] *PNB v. Dalmacio*, 813 Phil. 127, 132 (2017), citing *Cabling v. Dangcalan*, 787 Phil. 187, 197 (2016).

[47] In certain exceptional cases, the Court may be urged to probe and resolve factual issues, *viz.*: (a) When the findings are grounded entirely on speculation, surmises, or conjectures; (b) When the inference made is manifestly mistaken, absurd, or impossible; (c) When there is grave abuse of discretion; (d) When the judgment is based on a misapprehension of facts; (e) When the findings of facts are conflicting; (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) When the CA's findings are contrary to those by the trial court; (h) When the findings are conclusions without citation of specific evidence on which they are based; i) 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; j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. See *De Vera, et al. v. Sps. Santiago, et al.*, 761 Phil. 90, 105 (2015).

[48] *Rollo*, p. 116.

[49] *Id.* at 121.

Moreover, the NLRC judiciously observed:

> x x x Verily, the presumption of regularity of official acts, without a doubt, does not lie in the issue under consideration as the evidence on record point to the unmistakable conclusion that the circumstances surrounding the execution of [respondent's] resignation letter, affidavit of quitclaim, and final settlement are highly suspect. As borne out by the facts of the instant case, the receipt and quitclaim are not notarized while the affidavit of quitclaim and desistance shows that the place of execution is the City of Manila on 7 February 2011 when the same was supposedly verified by the Assistant Labor Attaché within the Philippine Overseas Labor Office premises in Kuwait. Reason and logic would, thus, dictate that there was something patently irregular about the foregoing documents. To allow this supposed settlement — anchored on an inapplicable legal precept — to operate as a bar to [respondent's] legitimate right to institute judicial proceedings in order to advance her welfare would be the height of injustice. x x x [50]

The CA adopted the observation of the NLRC on the patent irregularity of the documents presented by petitioners purportedly showing respondent's voluntarily resignation. In addition, the CA held that respondent would not have pursued her suit if she indeed resigned voluntarily from her work abroad.[51]

Notably, the LA, the NLRC, and the CA all ruled against the validity, regularity, and due execution of the subject resignation letter, Affidavit of Quitclaim and Desistance, and the final settlement. The Court finds no reason to deviate from their findings. In any case, within the context of a termination dispute, the rule is that quitclaims, waivers or releases are looked upon with disfavor and are commonly frowned upon as contrary to public policy and ineffective to bar claims for the measure of a worker's legal rights.[52] The reason for this rule is that the

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[50] CA *rollo,* p. 32.

[51] *Rollo,* p. 21.

[52] *Phil. Employ Services and Resources, Inc. v. Paramio,* 471 Phil. 753, 780 (2004), citing *PEFTOK Integrated Services, Inc. v. NLRC*, 355 Phil. 247, 253 (1998).

employer and the employee do not stand on the same footing, such that quitclaims usually take the form of contracts of adherence, not of choice.[53]

At this juncture, it bears to emphasize that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality.[54] Unless there is a showing of grave abuse of discretion or where it is clearly shown that the factual findings were reached arbitrarily or in utter disregard of the evidence on record, they are binding upon the Court.[55] In this case, the Court finds no such showing of arbitrariness or grave abuse of discretion on the part of the LA and the NLRC.

On the contrary, the finding that respondent was constructively dismissed is amply supported by the evidence on record.

In cases of constructive dismissal, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment.[56] "An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbea[r]able to the employee as to leave him or her with no option but to forego his or her continued employment."[57] From this definition, it can be inferred that various situations, whereby the employer intentionally places the employee in a

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[53] *Wyeth-Suaco Laboratories, Inc. v. NLRC*, 292 Phil. 360, 366 (1993), citing *Cariño, et al. v. Agricultural Credit and Cooperative Financing Adm., et al.*, 124 Phil. 782, 790 (1966).

[54] *Crewlink, Inc., et al. v. Teringtering, et al., supra* note 38 at 309.

[55] *Id.*

[56] *Torreda v. Investment and Capital Corporation of the Philippines*, G.R. No. 229881, September 5, 2018, citing *St. Paul College, Pasig v. Mancol*, G.R. No. 222317, January 24, 2018, 853 SCRA 66, 84.

[57] *Agcolicol v. Casiño*, 787 Phil. 516, 527 (2016). See also *Mandapat v. Add Force Personnel Services, Inc., et al.*, 638 Phil. 150, 156 (2010).

situation which will result in the latter's being coerced into severing his ties with the former, can result in constructive dismissal.[58]

In *SHS Perforated Materials, Inc., et al. v. Diaz*,[59] the employee was forced to resign and submit his resignation letter because his salary was unlawfully withheld by the employer. This Court ruled that the unlawful withholding of salary amounts to constructive dismissal.[60]

In *Tuason v. Bank of Commerce, et al.*,[61] the employer asked the employee to resign to save her from embarrassment, and when the latter did not comply, the employer hired another person to replace the employee. This Court ruled that this was a clear case of constructive dismissal.[62]

In *Torreda v. Investment and Capital Corporation of the Philippines*[63] (*Torreda*), this Court said that it cannot allow the employer to resort to an improper method of forcing the employee to sign a prepared resignation letter. It held that the employee's resignation letter must be struck down for being involuntary.[64] It also declared that when the employer has no legitimate basis to terminate its employee, the latter cannot be forced to resign from work because it would be a dismissal in disguise,[65] *i.e.*, a constructive dismissal. "Under the law, there are no shortcuts in terminating the security of tenure of an employee."[66]

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[58] *Agcolicol v. Casiño, supra.*

[59] 647 Phil. 580 (2010).

[60] *Id.* at 600.

[61] 699 Phil. 171 (2012).

[62] *Id.* at 183.

[63] G.R. No. 229881, September 5, 2018.

[64] *Id.*

[65] *Id.*

[66] *Id.*

In a similar vein, the circumstances of the present case strongly indicate that respondent was constructively dismissed. First, Saad Mutlaq, respondent's foreign employer, never secured a working visa for her, in violation of the categorical requirement for an employer's accreditation with the Philippine Overseas Employment Agency.[67] Second, respondent was not properly paid in accordance with the terms of her employment contract.[68] During her three-month stay, she was only paid US$227.75 instead of the stipulated pay of US$400 per month.[69] Third, respondent was not assigned to a permanent employer abroad for the entire contractual period of two years.[70] Upon her arrival in Kuwait, she was consistently promised job placements which were found to be inexistent.[71] As noted by the NLRC, it was clear that Saad Mutlaq intended to use respondent as an entertainer of some sort in places of ill repute; and she would have fallen victim to human trafficking "[w]ere it not for some favorable providence."[72] Finally, similar to the case of *Torreda*,[73] herein respondent was made to copy and sign a prepared resignation letter and this was made as a condition for the release of her passport and plane ticket. In light of these, the Court finds that, indeed, it was logical for respondent to consider herself constructively dismissed. The impossibility, unreasonableness, or unlikelihood of continued employment has left respondent with no other viable recourse but to terminate her employment.[74]

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[67] CA *rollo*, p. 30.

[68] *Id.*

[69] CA *rollo*, pp. 30-31.

[70] *Rollo*, p. 122.

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

[72] *Id.*

[73] See *Torreda v. Investment and Capital Corporation of the Philippines*, *supra* note 63.

[74] *Id.*

Petitioners also argue that the CA overlooked the error committed by the NLRC when it failed to appreciate the legal significance of the medical certificate presented by respondent showing that she suffered an incomplete abortion on April 9, 2011. Petitioners allege that respondent was probably pregnant while she was in Kuwait and this is the reason that she requested for her repatriation.

The argument deserves scant consideration in view of petitioners' failure to faithfully comply with the terms of respondent's contract of employment. Notably, none among the LA, the NLRC and the CA delved into this issue. Besides, the Court need not rule on each and every issue raised, particularly if the issue will not vary the tenor of the Court's ultimate ruling.[75]

As the Court declared in *Olarte v. Nayona*:[76]

> Our overseas workers belong to a disadvantaged class. Most of them come from the poorest sector of our society. Their profile shows they live in suffocating slums, trapped in an environment of crimes. Hardly literate and in ill health, their only hope lies in jobs they find with difficulty in our country. Their unfortunate circumstance makes them easy prey to avaricious employers. They will climb mountains, cross the seas, endure slave treatment in foreign lands just to survive. Out of despondence, they will work under sub-human conditions and accept salaries below the minimum. The least we can do is to protect them with our laws.[77]

On that note, the Court reminds petitioners to observe common decency and good faith in their dealings with their unsuspecting employees, particularly in undertakings that ultimately lead to waiver of workers' rights.[78] The Court will not renege on its duty to protect the weak against the strong, and the gullible against the wicked, be it for labor or for capital.[79] The Court

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[75] *Macababbad, Jr., et al. v. Masirag, et al.*, 596 Phil. 76, 98 (2009).

[76] 461 Phil. 429 (2003).

[77] *Id.* at 431 citing *Chavez v. Hon. Bonto-Perez*, 312 Phil. 88, 99 (1995).

[78] *Hotel Enterprises of the Phils., Inc. (HEPI) v. SAMASH-NUWHRAIN*, 606 Phil. 490, 512 (2009).

[79] *Id.*

scorns petitioners' reprehensible conduct. As employers, petitioners are bound to observe candor and fairness in their relations with their hapless employees.

WHEREFORE, the Petition is **DENIED**. The assailed Decision dated June 27, 2014 and the Resolution dated December 23, 2014 issued by the Court of Appeals in CA-G.R. SP No. 128433 are **AFFIRMED** with **MODIFICATION** in that all of the monetary awards granted by the Labor Arbiter in favor of respondent Hazel A. Viernes shall earn legal interest at the rate of 6% *per annum* from the date that this Decision becomes final and executory until full satisfaction.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*) and *Delos Santos, J.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 221046. January 22, 2020]

SPOUSES AGERICO ABROGAR and CARMELITA ABROGAR, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI,* NATURE OF; NOT A SUBSTITUTE FOR A LOST APPEAL. –– It is settled that a special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. "The extraordinary remedy of *certiorari* is not a substitute for a lost appeal; it is not allowed

when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse." As the remedies of appeal and *certiorari* are *mutually exclusive*, *certiorari* will *not* prosper if appeal is an available remedy to a litigant, even if the ground is grave abuse of discretion.

2. ID.; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 41 IS THE PROPER RECOURSE FOR PETITIONER IN THE INSTANT CASE AND NOT *CERTIORARI* UNDER RULE 65; COUNSEL'S NEGLIGENCE IN CHOOSING THE WRONG REMEDY BINDS PETITIONERS IN VIEW OF THEIR FAILURE TO PROVE THAT THEIR FORMER COUNSEL WAS MOTIVATED BY MALICE. –– In this case, the proper recourse for petitioners was to appeal the Decision dated April 1, 2011, which was rendered by the RTC in the exercise of its original jurisdiction, under Section 2(a) of Rule 41 and *not* to resort to *certiorari* under Rule 65 of the Rules of Court. Since the remedy of an ordinary appeal was undeniably available to petitioners, the CA correctly dismissed their Petition for *Certiorari* for being the wrong mode of appeal. In an attempt to justify their plea for the liberal application of the Rules, petitioners insist that they should not be bound by their former counsel's negligence in choosing to file the wrong remedy because it would deprive them of their property without due process of law. This argument, however, is untenable. After all, "the negligence of the counsel binds the client, even mistakes in the application of procedural rules." The only exception to this doctrine is "when the reckless or gross negligence of the counsel deprives the client of due process of law." In such a case, the counsel's error must be so *palpable* and *maliciously exercised* that it would viably be the basis for disciplinary action. Thus, "for the exception to apply, the client must prove by clear and convincing evidence that he was maliciously deprived of information that he could not have acted to protect his interests." Here, petitioners clearly failed to allege and prove that their former counsel was motivated by malice in choosing to file a *certiorari* petition instead of an ordinary appeal before the CA. x x x Petitioners' mere allegation of gross negligence, *without* any showing of malicious intent on the part of their former counsel, does not suffice for the exception to apply. To

be sure, "malice is never presumed but must be proved as a fact." This, petitioners evidently failed to do.

APPEARANCES OF COUNSEL

Sarmiento Tamayo & Bulawan Law Offices for petitioners.
Land Bank Legal Services Group for respondent.

R E S O L U T I O N

INTING, *J.*:

The Court resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Resolutions dated June 23, 2014[2] and October 22, 2015[3] of the Court of Appeals (CA) in CA-G.R SP No.134435.

The Antecedents

On October 14, 1996, Spouses Agerico and Carmelita Abrogar (petitioners) obtained a loan amounting to ₱11,250,000.00 from respondent Land Bank of the Philippines (Land Bank). The loan was secured by a real estate and chattel mortgage[4] executed by petitioners in Land Bank's favor.[5]

Petitioners, however, eventually defaulted in the payment of their loan. This prompted Land Bank to commence extra-judicial foreclosure proceedings on the mortgaged properties.[6] To stop the foreclosure proceedings, petitioners filed a

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

[2] *Id.* at 49-54; penned by Associate Justice Michael P. Elbinias with Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes, concurring.

[3] *Id.* at 61-63; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Danton Q. Bueser and Edwin D. Sorongon, concurring.

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

[5] *Id.* at 21.

[6] *Id.*

Complaint[7] against Land Bank before Branch 51, Regional Trial Court (RTC), Puerto Princesa City for specific performance and damages with application for a writ of preliminary injunction and/or temporary restraining order. Petitioners prayed, among others, that the RTC order Land Bank to allow them to settle their obligation pursuant to the Letter[8] dated October 5, 1998 which contained the bank's proposed terms and conditions for the restructuring of their loan.[9]

Ruling of the RTC

In its Decision[10] dated April 1, 2011, the RTC dismissed the Complaint for lack of a cause of action.[11] It explained that:

> [Petitioners'] lawful obligation is to settle its delinquent account with [Land Bank] in order that the latter may perform its mandate of extending financial assistance to those who are qualified.
>
> x x x [Petitioners] ought to bear in mind that restructuring their loan is not part of their original contract. It is merely a privilege accorded to them by [Land Bank]. They cannot invoke that as a demandable right. When [Land Bank] refused to adopt their own interpretation, they should have taken that as being equivalent to a denial of their request for restructuring. x x x[12]

The RTC likewise denied petitioners' Motion for Reconsideration[13] in its Order[14] dated November 25, 2013. Petitioners thereafter elevated the case *via* a Petition for *Certiorari*[15] under Rule 65 of the Rules of Court before the CA.

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[7] *Id.* at 102-114.

[8] *Id.* at 75-76.

[9] *Id.* at 113.

[10] *Id.* at 21-23; penned by Acting Presiding Judge Perfecto E. Pe.

[11] *Id.* at 23.

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

[13] *Id.* at 24-27.

[14] *Id.* at 28-29; penned by Presiding Judge Ambrosio B. De Luna.

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

Ruling of the CA

In its Resolution[16] dated June 23, 2014, the CA dismissed the Petition for *Certiorari* for: (a) being the wrong mode of appeal;[17] and (b) lack of an affidavit of service, pursuant to Section 13, Rule 13 of the Rules of Court.[18]

The CA stressed that the proper recourse for petitioners was to file an ordinary appeal under Section 2(a), Rule 41 and *not* to resort to the extraordinary remedy of *certiorari* under Rule 65 of the Rules of Court.[19] Moreover, the CA noted that even if the Petition for *Certiorari* was treated as an ordinary appeal, it would still be dismissed for having been filed beyond the 15-day reglementary period provided under Rule 41.[20]

Petitioners moved for reconsideration,[21] but the CA denied the motion in its Resolution[22] dated October 22, 2015. Consequently, petitioners filed the present Petition for Review on *Certiorari*[23] before the Court assailing the CA Resolutions.

The Issue

The sole issue for the Court's resolution is whether the CA correctly dismissed the Petition for *Certiorari* outright for being the wrong mode of appeal.

The Court's Ruling

The petition is without merit.

It is settled that a special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other

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[16] *Id.* at 49-54.

[17] *Id.* at 50.

[18] *Id.* at 53.

[19] *Id.* at 50-52.

[20] *Id.* at 53.

[21] *Id.* at 55-58.

[22] *Id.* at 61-63.

[23] *Id.* at 3-18.

plain, speedy, and adequate remedy in the ordinary course of law.[24] "The extraordinary remedy of *certiorari* is not a substitute for a lost appeal; it is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse."[25] As the remedies of appeal and *certiorari* are *mutually exclusive*, *certiorari* will *not* prosper if appeal is an available remedy to a litigant, even if the ground is grave abuse of discretion.[26]

In this case, the proper recourse for petitioners was to appeal the Decision dated April 1, 2011, which was rendered by the RTC in the exercise of its original jurisdiction, under Section 2(a)[27] of Rule 41 and *not* to resort to *certiorari* under Rule 65 of the Rules of Court. Since the remedy of an ordinary appeal was undeniably available to petitioners, the CA correctly dismissed their Petition for *Certiorari* for being the wrong mode of appeal.

In an attempt to justify their plea for the liberal application of the Rules, petitioners insist that they should not be bound by their former counsel's negligence in choosing to file the wrong remedy because it would deprive them of their property without due process of law.[28]

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[24] RULES OF COURT, Rule 65, Section 1.

[25] *Villalon v. Lirio*, 765 Phil. 474, 481 (2015).

[26] *Id.*

[27] SEC. 2. *Modes of appeal*. —

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appeal from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

[28] *Rollo*, p. 13.

This argument, however, is untenable. After all, "the negligence of the counsel binds the client, even mistakes in the application of procedural rules."[29] The only exception to this doctrine is "when the reckless or gross negligence of the counsel deprives the client of due process of law."[30] In such a case, the counsel's error must be so *palpable* and *maliciously exercised* that it would viably be the basis for disciplinary action.[31] Thus, "for the exception to apply, the client must prove by clear and convincing evidence that he was maliciously deprived of information that he could not have acted to protect his interests."[32]

Here, petitioners clearly failed to allege and prove that their former counsel was motivated by malice in choosing to file a *certiorari* petition instead of an ordinary appeal before the CA. For clarity and precision, the pertinent portion of their petition is quoted below:

> The petitioners herein appear to be deprived of the benefits of the [₱6,000,000.00] appraisal of their property by [Land Bank], arising from the gross negligence of their former counsel on record. The error of the former counsel on record in choosing [to file a] petition for [*certiorari*] under [R]ule 65 of the 1997 Revised Rules of Civil Procedure, rather than ordinary appeal, must be considered gross negligence on the part of the counsel, and such gross negligence will cause the petitioners deprivation of property without due process of law. x x x[33]

Petitioners' mere allegation of gross negligence, *without* any showing of malicious intent on the part of their former counsel, does not suffice for the exception to apply.[34] To be sure, "malice

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[29] *Ong Lay Hin v. Court of Appeals, et al.*, 752 Phil. 15, 23 (2015), citing *Bejarasco, Jr. v. People*, 656 Phil. 337, 340 (2011).

[30] *Id.* at 24.

[31] *Id.* at 25.

[32] See *Baclaran Mktg. Corp. v. Nieva, et al.*, 809 Phil. 92, 104 (2017).

[33] *Rollo*, p. 13.

[34] See *Baclaran Mktg. Corp. v. Nieva, et al.*, *supra* note 32.

is never presumed but must be proved as a fact."[35] This, petitioners evidently failed to do.

Based on these considerations, the Court finds no basis to relax the rules of procedure in this case. The Court notes that the RTC Decision dated April 1, 2011 has long attained finality, given petitioners' failure to interpose an appeal within the reglementary period provided under the Rules. Consequently, the Court can no longer exercise its appellate jurisdiction to review this Decision, even *if* it is meant to correct erroneous conclusions of fact and law.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Resolutions dated June 23, 2014 and October 22, 2015 of the Court of Appeals in CA-G.R SP No. 134435 are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*) and *Delos Santos, J.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

FIRST DIVISION

[G.R. No. 222212. January 22, 2020]

COMSCENTRE PHILS., INC., and PATRICK BOE, *petitioners, vs.* **CAMILLE B. ROCIO,** *respondent.*

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[35] *Id.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ARBITERS; CLOTHED WITH ORIGINAL AND EXCLUSIVE JURISDICTION OVER CLAIMS FOR DAMAGES ARISING FROM EMPLOYER-EMPLOYEE RELATIONSHIP; REASONABLE CAUSAL CONNECTION WITH THE EMPLOYER-EMPLOYEE RELATIONSHIP IS A REQUIREMENT NOT ONLY IN EMPLOYEES' MONEY CLAIMS AGAINST THE EMPLOYER BUT IS, LIKEWISE, A CONDITION WHEN THE COMPLAINANT IS THE EMPLOYER; CASE AT BAR. — Article 224 of the Labor Code clothes the labor tribunals with original and exclusive jurisdiction over claims for damages arising from employer-employee relationship. x x x In ***Bañez v. Valdevilla***, the Court elucidated that the jurisdiction of labor tribunals is comprehensive enough to include claims for all forms of damages "arising from the employer-employee relations." Thus, the Court decreed therein that labor tribunals have jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code. Further, in ***Supra Multi-Services, Inc. v. Labitigan***, while we recognized that Article 224 of the Labor Code had been invariably applied to claims for damages filed by an employee against the employer, we held that the law should also apply with equal force to an employer's claim for damages against its dismissed employee, provided that the claim arises from or is necessarily connected with the fact of termination and should be entered as a counterclaim in the illegal dismissal case. Thus, the "reasonable causal connection with the employer-employee relationship" is a requirement not only in employees' money claims against the employer but is, likewise, a condition when the claimant is the employer. x x x It is clear that petitioners' claim for payment is inseparably intertwined with the parties' employer-employee relationship. For it was respondent's act of prematurely severing her employment with the company which gave rise to the latter's cause of action for payment of "employment bond." As aptly found by the NLRC, petitioners' claim was *"an offshoot of the resignation of [respondent] and the complications arising therefrom and which eventually led to the filing of the case before the Labor Arbiter."* Verily, petitioners' claim falls within the original and exclusive jurisdiction of the labor tribunals.

APPEARANCES OF COUNSEL

The Law Firm of Balbin Lucman & Partners for petitioners.
Maria Elizabeth H. Fruelda-Licup for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition seeks to nullify the following dispositions of the Court of Appeals in CA-G.R. SP No. 134623:

1. Decision[1] dated July 8, 2015 which disallowed the offsetting of petitioners' claim for payment of "employment bond" against the monetary award in favor of respondent; and

2. Resolution[2] dated January 12, 2016 denying petitioners' motion for reconsideration.

Antecedents

On April 4, 2011, petitioners Comscentre Phils., Inc. and its Country Manager Patrick Boe hired respondent Camille B. Rocio as a Network Engineer.[3]

On August 5, 2011, respondent informed petitioners of her intention to resign effective September 9, 2011. Prior to the effectivity of her resignation, Comscentre's Human Resource Manager Jennifer Hachero and Support Manager Allan Calanog informed respondent she had to pay an "employment bond" of Eighty Thousand Pesos (₱80,000.00) for resigning within twenty-four (24) months from the time she got employed as provided in her employment contract, *viz*:

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[1] Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Francisco P. Acosta and Victoria Isabel A. Paredes, concurring, *rollo*, pp. 27-34.

[2] *Rollo*, pp. 36-37.

[3] *Id.* at 207.

MINIMUM EMPLOYMENT LENGTH

You agree to remain in our employ for a minimum of twenty-four (24) months from your start date. This period will enable you to avail of the training and development programs, in the form of formal plus on-the-job training, that will prepare you for a meaningful career with Comscentre.

If you for any reason, terminate your employment with the company at your volition (*sic*) or were terminated for cause before you complete the twenty-four (24) months of service from your start date, your *(sic)* agree to indemnify the company the amount of ₱80,000 to cover all expenses incurred in relation to your employment. This includes, but not limited to, recruitment expenses, formal on-the job training and other related administrative costs. xxx xxx xxx.[4]

On August 24, 2011, respondent e-mailed Comscentre's Australian Human Resource Manager Lianne Glass asking for clarification regarding the "employment bond."[5]

The following day on August 25, 2011, Hachero issued a show-cause letter to respondent seeking her explanation why she should not be subjected to disciplinary action for raising her concerns directly to Manager Glass and allegedly going around her colleagues' workstations during working hours to discuss her resignation. The show-cause letter, however, indicated that respondent was already placed on preventive suspension, *viz*:

Relatively, you are hereby required to submit your written explanation on 29 August 2011, why you should not merit corresponding penalty of disciplinary action. You are hereby advised of an administrative hearing on 30 August 2011, 10:00 am at the Corporate Office, xxx xxx.

Taking into consideration that your alleged actions are already causing chaos, disarray/turmoil amongst co-employees and the whole working environment and is now disruptive of work output, thus, jeopardizing and putting the company operations at high risk and

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[4] *Id.* at 39.

[5] *Id.* at 280.

hampering over-all productivity, which the Company cannot anymore tolerate, you are hereby placed on preventive suspension immediately upon receipt of this notice under further notice.[6]

On August 29, 2011, respondent submitted her explanation. An administrative hearing was thereafter conducted on September 2, 2011. On September 9, 2011, petitioners issued a Letter of Suspension (Without Prejudice)[7] to respondent stating she was preventively suspended without pay from August 25, 2011 to September 9, 2011.

On September 16, 2011, respondent sued petitioners for unfair labor practice, illegal suspension, illegal deduction, underpayment of salaries, non-payment of wages, service incentive leave pay and 13th month pay, damages (moral and exemplary), and attorney's fees.[8]

Respondent claimed she neither discussed her resignation with her colleagues during work hours nor disobeyed any company directive. Too, Manager Glass advised employees to communicate with her directly if they were not comfortable with the way local management handled their concerns. Thus, the allegations in the show-cause letter were unfounded.[9]

On the other hand, petitioners maintained that respondent was validly placed under preventive suspension for willful disregard of company directives and loitering on work hours. Petitioners, though, admitted respondent was entitled to tax refund and the proportionate monetary equivalent of her vacation leaves and 13th month pay. All other claims were denied by petitioners.[10]

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[6] *Id.* at 209.

[7] *Id.* at 209-210.

[8] *Id.* at 210.

[9] *Id.*

[10] *Id.* at 211-212.

The Ruling of the Labor Arbiter

Under Decision dated July 30, 2012, Labor Arbiter Adolfo C. Babiano found respondent's preventive suspension unjustified. Petitioners were, thus, ordered to pay respondent the following amounts, *viz*:

> WHEREFORE, judgment is hereby rendered ordering [petitioner] to pay [respondent] as follows:
>
> 1. ₱67,961.30 (₱2,192.30 x 31 days) representing her wages during her illegal suspension;
> 2. ₱19,000.00 (₱57,000.00 x 4/12) representing her proportionate 13th month pay;
> 3. ₱10,000.00 as moral damages; and
> 4. ₱10,000.00 as exemplary damages
>
> TOTAL AWARD: ₱106,961.30
>
> Attorney's fees at 10% of the total award : ₱10,696.13
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[11]

Petitioners appealed to the National Labor Relations Commission (NLRC). Pursuant to Sec. 6, Rule VI of the NLRC Rules of Procedure,[12] they posted a cash bond[13] of ₱86,961.38 representing the amount of monetary award in favor of respondent, exclusive of damages and attorney's fees .

In their appeal, petitioners maintained that respondent was validly suspended. Petitioners also asserted that respondent was

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[11] *Id.* at 29.

[12] SECTION 6. Bond. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

[13] BDO Manager's Check No. 0000945; *rollo,* p. 157.

liable to pay the Eighty Thousand Pesos (₱80,000.00) "employment bond."[14]

The Ruling of the NLRC

By Resolution dated October 21, 2013, the NLRC affirmed with modification, thus:

> **WHEREFORE**, respondent's appeal is **PARTLY GRANTED** and the Decision promulgated on 30 July 2012 is **AFFIRMED WITH THE FOLLOWING MODIFICATIONS**:
>
> 1. Respondent Comscentre Phils. Inc. is **DIRECTED** to pay complainant ₱85,424.44 broken down as follows, *viz*:
>
> (a) ₱30,692.31 as salaries during her 14 days suspension;
>
> (b) ₱24,880.69 as tax refund;
>
> (c) ₱10,851.44 as monetary equivalent of her vacation leaves; and
>
> (d) ₱19,000.00 as proportionate 13th month pay.
>
> From these amounts shall be deducted the ₱80,000.00 bond due the respondent.
>
> 2. Award of moral and exemplary damages and attorney's fees are **DELETED**;
>
> All other claims are **DISMISSED** for lack of merit.
>
> SO ORDERED.[15]

The NLRC adjusted the computation of respondent's money claims to cover her salary during her fourteen (14)-day illegal suspension, tax refund, and unused leave credits. The award of damages and attorney's fees was deleted for respondent's failure to substantiate its grant. The NLRC, however, ordered the deduction of the Eighty Thousand Pesos (₱80,000.00) "employment

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[14] *Rollo,* p. 212.

[15] Penned by Commissioner Grace E. Maniquiz-Tan and concurred in by Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap; *rollo,* p. 219.

bond" claimed by petitioners from respondent's total monetary award.

Respondent moved for reconsideration which was denied under Resolution dated January 23, 2014.[16] On May 13, 2014, the NLRC had already issued an entry of judgment in favor of petitioners.[17]

Meanwhile, respondent went to the Court of Appeals via a petition for *certiorari*. She claimed that the NLRC gravely abused its discretion when it ordered the deduction of the Eighty Thousand Pesos (₱80,000.00) "employment bond" from her money claims for alleged breach of her employment contract. Respondent argued that an action for breach of contractual obligation is a civil dispute under the jurisdiction of regular courts, not the NLRC.

The Ruling of the Court of Appeals

Under Decision dated July 8, 2015,[18] the Court of Appeals nullified the NLRC's directive to deduct the Eighty Thousand Pesos (₱80,000.00) "employment bond" from the total monetary award due to respondent. It ruled that petitioners' claim for payment of " employment bond" is within the exclusive jurisdiction of regular courts.

Petitioners sought reconsideration, but was denied under Resolution dated January 12, 2016.[19]

The Present Petition

Petitioners now seek affirmative relief from the Court. They reiterate that the NLRC has jurisdiction over their claim for enforcement of the " employment bond" against respondent as it is covered by respondent's "terms and conditions of employment."

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[16] *Rollo*, pp. 222-223.

[17] *Id.* at 254.

[18] *Id.* at 27-34.

[19] *Id.* at 36-37.

In her Comment,[20] respondent ripostes that the Court of Appeals correctly ruled that the NLRC does not have jurisdiction over petitioners' claim for payment of the "employment bond." For it has nothing to do with wages and other terms and conditions of employment.

In their Reply,[21] petitioners insist that respondent's premature termination of her employment makes her liable for payment of "employment bond."

Core Issue

Did the Court of Appeals err when it ruled that petitioners' claim for payment of "employment bond" fell within the jurisdiction of regular courts?

Ruling

We grant the petition.

Article 224[22] of the Labor Code clothes the labor tribunals with original and exclusive jurisdiction over claims for damages arising from employer-employee relationship, *viz*:

> Art. 224. Jurisdiction of Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters 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 non-agricultural:
>
> 1. Unfair labor practices;
>
> 2. Termination disputes;

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[20] *Id.* at 279-301.

[21] *Id.* at 307-315.

[22] Pursuant to Department of Labor and Employment Advisory No. 1, Series of 2015, Renumbering of the Labor Code of the Philippines, as amended, Art. 217 has been renumbered to Art. 224.

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates 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;**

x x x x x x x x x. (emphasis supplied)

In ***Bañez v. Valdevilla***,[23] the Court elucidated that the jurisdiction of labor tribunals is comprehensive enough to include claims for all forms of damages "arising from the employer-employee relations." Thus, the Court decreed therein that labor tribunals have jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code.[24]

Further, in ***Supra Multi-Services, Inc. v. Labitigan***,[25] while we recognized that Article 224 of the Labor Code had been invariably applied to claims for damages filed by an employee against the employer, we held that the law should also apply with equal force to an employer's claim for damages against its dismissed employee, provided that the claim arises from or is necessarily connected with the fact of termination and should be entered as a counterclaim in the illegal dismissal case. Thus, the "reasonable causal connection with the employer-employee relationship" is a requirement not only in employees' money claims against the employer but is, likewise, a condition when the claimant is the employer.[26]

Here, the controversy was rooted in respondent's resignation from the company within twenty-four (24) months from the time she got employed in violation of the "Minimum Employment Length"[27] clause of her employment contract. When respondent informed petitioners of her intention to resign merely five (5)

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[23] 387 Phil. 601, 607-608 (2000).

[24] *Id.*

[25] 792 Phil. 336, 368-369 (2016).

[26] *Portillo v. Rudolf Lietz, Inc., et al.,* 697 Phil. 232, 242-243(2012).

[27] *Rollo,* p. 39.

months after she got hired, they reminded respondent of her obligation to pay the "employment bond" of Eighty Thousand Pesos (₱80,000.00) as indemnity for the expenses the company incurred in her training as Network Engineer.[28] This prompted respondent to seek clarification by e-mail from Comscentre's Australian Human Resource Manager Lianne Glass. But as it was, petitioners found respondent's act of directly addressing her query to Manager Glass to be in violation of company directives. For this supposed infraction, she was suspended until September 9, 2011, the date her resignation was to take effect. Consequently, respondent sued petitioners for illegal suspension and money claims before the labor arbiter. Petitioners, in turn, pursued their claim for payment of "employment bond" in the same proceedings.

It is clear that petitioners' claim for payment is inseparably intertwined with the parties' employer-employee relationship. For it was respondent's act of prematurely severing her employment with the company which gave rise to the latter's cause of action for payment of "employment bond." As aptly found by the NLRC, petitioners' claim was "*an offshoot of the resignation of [respondent] and the complications arising therefrom and which eventually led to the filing of the case before the Labor Arbiter.*" Verily, petitioners' claim falls within the original and exclusive jurisdiction of the labor tribunals.

On this score, we further sustain the NLRC's finding that respondent is liable for payment of "employment bond" pursuant to her undertaking in the employment contract. She herself has not disputed this liability arising as it did from her breach of the minimum employment period clause.[29] Notably, she committed to abide thereby in exchange for the expenses incurred by the company for her training as Network Engineer. As correctly ruled by the NLRC:

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[28] *Id.* at 311-312.

[29] *Id*. at 217-218.

There is basis to [petitioners'] claim that [respondent] is "liable to pay the employment bond, in the sum of Eighty Thousand Pesos (₱80,000.00)". [Respondent] did not dispute the Minimum Employment Length provision in her contract which reads:

x x x x x x x x x

Except for claiming that the matter of refund was raised for the first time on appeal, **(respondent] did not dispute the existence and validity of such provision in her employment contract, a contract which she voluntarily entered into, fully understanding its meaning and repercussions.** It should be stated that contrary to [respondent's] argument, this claim was already ventilated in the proceedings before the Labor Arbiter, as stated in their Position Paper.[30] (emphasis supplied)

Surely, while petitioners are liable to respondent for her illegal suspension and unpaid money claims , respondent, too, is liable to petitioners for payment of the "employment bond." As such, the NLRC correctly ordered the offsetting of their respective money claims against each other. To rule otherwise would be "to sanction split jurisdiction, which is prejudicial to the orderly administration of justice."[31]

So must it be.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated July 8, 2015 and Resolution dated January 12, 2016 of the Court of Appeals in CA-G.R. SP No. 134623 are **REVERSED** and **SET ASIDE**, and the Resolution of the National Labor Relations Commission dated October 21, 2013 in NLRC NCR CN. 09-14294-11 and NLRC LAC NO. 11-003168-12, **REINSTATED**.

SO ORDERED.

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

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[30] *Id.*

[31] *Supra* note 23.

FIRST DIVISION

[G.R. No. 224324. January 22, 2020]

NATIONAL POWER CORPORATION, *petitioner*, *vs.* **HEIRS OF SALVADOR SERRA SERRA, HEIRS OF GREGORIO SERRA SERRA, MARGARITA SERRA SERRA, FRANCISCA TERESA SERRA SERRA, FRANCISCO JOSE SERRA SERRA, SPOUSES PRIMITIVO HERNAEZ and PAZ BACOL, SPOUSES BERNARDINO MONCERA and ROGACIANA HERNAEZ, SPOUSES AMBROSIO FORTALIZA and LUISA HERNAEZ; BANK OF THE PHILIPPINE ISLANDS, represented by its Manager, LUIS A. PUENTEVELLA and ARSENIO AL ACUÑA**, *respondents.* **BONIFACIO PEÑA,** *intervenor-respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, ONLY QUESTIONS OF LAW DISTINCTLY SET FORTH IN THE PETITION OUGHT TO BE RAISED THEREIN; CASE AT BAR. — "Factual findings of the trial and appellate courts will not be disturbed by this Court unless they are grounded entirely on speculations, surmises, or conjectures, among others." NAPOCOR's submission raises a new factual allegation. As a rule, this Court is not a trier of facts. Only questions of law distinctly set forth in the petition ought to be raised before this Court. The petition now refers to a particular period — that is, the year 2006 — on which allegedly, the trial court erroneously based its determination. This strains the Court to review the evidence. We, however, find no valid ground that would warrant a reversal of the factual findings of the appellate court or any reasonable basis to treat this case as an exception.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FORBEARANCE OF MONEY; THE DIFFERENCE BETWEEN THE FINAL AMOUNT AS ADJUDGED BY THE COURT AND THE INITIAL PAYMENT MADE BY THE GOVERNMENT SHOULD EARN LEGAL INTEREST; ACCRUAL OF LEGAL INTEREST SHOULD

BEGIN FROM THE ISSUANCE OF THE WRIT OF POSSESSION SINCE IT IS FROM THIS DATE THAT THE FACT OF DEPRIVATION OF PROPERTY CAN BE ESTABLISHED; CASE AT BAR. — Having addressed the RTC's ascertainment of the value and character of the properties, we now tackle the interest rate imposed on the amount to be paid to the respondents. It is settled that "the difference in the amount between the final amount as adjudged by the court and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner - should earn legal interest as a forbearance of money." Here, the amount deposited by NAPOCOR with PNB-Kabankalan constitutes the initial payment that was accordingly deducted by the RTC from the final amount adjudged as just compensation. To recall, in the RTC's May 26, 2011 Decision, it ordered the payment of legal interest on the balance of the just compensation computed from the taking of possession of the properties until fully paid. When the CA-Cebu City sustained the RTC's valuation of the properties, it specified the legal interest as 12% per annum, still computed from taking of possession until fully paid. However, in the CA-Cebu City's subsequent resolution on reconsideration, it modified the reckoning period to commence from the time of the filing of the complaint until fully paid. It appears that the reckoning point in Rule 67 for the valuation of expropriated property was similarly applied by the appellate court to the interest rate imposable on the just compensation. In *Republic v. Macabagdal*, we had occasion to point out that accrual of legal interest should begin "*not* from the date of the filing of the complaint but from the date of the issuance of the Writ of Possession xxx, since it is from this date that the fact of the deprivation of property can be established." x x x As to the applicable interest rate specified by the CA-Cebu City as 12% p.a., this is applicable only until June 30, 2013, in line with *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, which upheld the applicability of Banko Sentral ng Pilipinas-Monetary Board Circular No. 799, Series of 2013 to forbearances of money in expropriation cases. Accordingly, the applicable legal interest is 6% per annum from July 1, 2013 until the finality of this resolution. Thereafter, the total amount due shall earn legal interest of 6% per annum from finality of the Court's resolution until full payment.

CAGUIOA, *J., separate opinion:*

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FORBEARANCE OF MONEY; DEFINED AS A CONTRACTUAL OBLIGATION OF A LENDER OR CREDITOR TO REFRAIN, DURING A GIVEN PERIOD OF TIME, FROM REQUIRING THE BORROWER OR DEBTOR TO REPAY A LOAN OR DEBT THEN DUE AND PAYABLE; REQUISITES; CASE AT BAR. — I reiterate my position in my *Concurring & Dissenting Opinion in Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, that not all obligations consisting in the payment of a sum of money should be considered forbearance within the authority of the Bangko Sentral ng Pilipinas (BSP). The term "forbearance" **must be construed in the narrow context of the Usury Law** and in relation to the other provisions found therein. Hence, I subscribe to the definition provided in *Eastern Shipping Lines, Inc. v. Court of Appeals*, which adopted the definition that a forbearance, within the context of the usury law, is a "contractual obligation of [a] lender or creditor to refrain, during [a] given period of time, from requiring [the] borrower or debtor to repay [a] loan or debt then due and payable." **In other words, a forbearance should be understood as akin to a loan and must involve 1) an agreement or contractual obligation; 2) to refrain from enforcing payment or to extend the period for the payment of; 3) an obligation that has become due and demandable; and 4) in return for some compensation, *i.e.*, interest**. The foregoing requisites are not present in the instant case. Notably, there is no contractual obligation on the part of the property owner to refrain from enforcing payment of just compensation in exchange for the payment of interest. Rather, the property owner merely fails to exact payment as the amount of just compensation must still be determined. **As the proceedings for the determination of just compensation has absolutely nothing to do with usury, the BSP-prescribed rate of 12% *per annum* until June 30, 2013 and 6% *per annum* thereafter should not apply.**

2. ID.; ID.; INTERESTS; LIABILITY OF THE STATE FOR INTEREST ON THE PAYMENT OF JUST COMPENSATION IS NOT BECAUSE THE AMOUNT DUE CONSTITUTES A FORBEARANCE OF MONEY UNDER THE USURY

LAW NOR BECAUSE THE STATE IS IN DEFAULT UNDER THE ARTICLE 2209 OF THE CIVIL CODE AND THUS LIABLE FOR COMPENSATORY INTEREST; INTEREST IS AWARDED AS INDISPENSABLE PART OF JUST COMPENSATION, IN ORDER TO ENSURE THAT THE OWNER IS FULLY PLACED IN A POSITION AS WHOLE AS HE WAS BEFORE THE TAKING OCCURRED. — At the same time, however, I recognize that a significant period often runs between the time the State takes the property and the time the courts finally adjudge the amount of just compensation due. **Strictly speaking, there is no "in delay" or "in default" or "*mora*" pursuant to Article 2209 of the Civil Code because the amount of just compensation due at the time of taking is, at said time, undetermined.** Hence, the State should not be held liable for compensatory interest for the delay in the payment of just compensation as the amount owed to the property owner has yet to be determined with finality. Nevertheless, the opportunity cost of the money that the property owner failed to receive in full at the time of the taking of the property cannot be ignored. In true sales, the property owner and the prospective buyer are free to negotiate on a higher selling price should payment be at a later date or on installment. x x x Hence, it is reasonable to require the State to pay interest to compensate the property owner for the opportunity cost of immediately losing his or her property without receiving immediate full payment therefor. I thus wholly agree that **"[i]nterest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness."** In other words, since full payment of just compensation cannot, in reality, be made at the time of the taking of the property, the State must compensate the property owner for the loss he or she incurs from the actual delay (not legal "in delay" or "*mora*" under Article 2209) in the payment of the compensation due. Therefore, the State is liable for interest on the payment of just compensation, not because the amount due constitutes a forbearance of money under the Usury Law nor because the State is "in default" under Article 2209 of the Civil Code and thus liable for compensatory interest. **Interest is awarded as an indispensable part of *just compensation*, in order "to ensure that the owner is fully placed in a position as whole as he was before the taking occurred."** Under these premises and for lack of any other

convenient metric, I find it reasonable to impose ***by analogy*** the legal interest rate of 6% *per annum* under Article 2209 of the Civil Code.

3. ID.; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; THE STATE'S LIABILITY FOR COMPENSATORY INTEREST UNDER ARTICLE 2209 OF THE CIVIL CODE BEGINS TO RUN ON THE TOTAL JUST COMPENSATION WHEN THE DECISION AWARDING JUST COMPENSATION BECOMES FINAL AND EXECUTORY. — Once the decision awarding just compensation becomes final and executory however, the obligation of the State to immediately pay the total amount awarded becomes **liquidated and immediately demandable**. Hence, compensatory interest under Article 2209 of the Civil Code begins to run on the total just compensation value at the 6% legal rate from the time the decision becomes final and executory until full payment.

APPEARANCES OF COUNSEL

Lorebette G. Grandea, co-counsel for respondent Heirs of Rogaciana-Hernaez.

The Law Office Of Mirano Mirano Mirano & Mirano for respondent intervenor.

Malunes Mampang & Montoro Law Office for respondent Estate of Primitivo Hernaez, *et al.*

Salvador T. Sabio for respondent Rogaciana Hernaez-Moncera.

R.R. Barrales & Associates for Heirs of Primitivo Rogaciana and Luisa Hernaez.

Sy Law Firm for respondent Lourdes Moncera.

Lyndon P. Caña for Wilfredo Gayares, Sr., Judicial Administrator and Heirs of Luisa Hernaez, *et al.*

R E S O L U T I O N

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

This is a Petition for Review filed under Rule 45 of the Rules of Court against the Decision[1] dated October 29, 2014 and Resolution[2] dated April 8, 2016 of the Court of Appeals-Cebu City (CA-Cebu City) in CA-G.R. CV No. 04256, which affirmed with modification the Decision[3] dated May 26, 2011 of the Regional Trial Court (RTC) of Kabankalan City, Branch 61, in a case for eminent domain.

The pertinent facts follow.

Petitioner National Power Corporation (NAPOCOR) is a government-owned and controlled corporation, created and existing by virtue of Republic Act No. 6395, as amended.[4]

On October 16, 1998, NAPOCOR filed a Complaint for eminent domain before the RTC of Kabankalan City against the Heirs of Salvador Serra Serra, Heirs of Gregorio Serra Serra, Margarita Serra Serra, Francisca Teresa Serra Serra, Francisco Jose Serra Serra, Spouses Primitivo Hernaez and Paz Bacol, Spouses Bernardino Moncera and Rogaciana Hernaez, Spouses Ambrosio Fortaliza and Luisa Hernaez, Arsenio Al Acuña and the Bank of the Philippine Islands, represented by its Manager, Luis A. Puentevella (respondents).[5] The complaint alleges that to enable NAPOCOR to construct and maintain its Kabankalan-Maricalum 138KV Transmission Line Island Grid Project, a

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[1] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Jhosep Y. Lopez and Marie Christine A. Jacob, concurring; *rollo*, pp. 43-61.

[2] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi, concurring; *id.* at 65-70.

[3] *Rollo*, pp. 27-28.

[4] *Id.* at 23.

[5] *Id.* at 25.

project for public purpose, it is both necessary and urgent to acquire easement of right of way over portions of parcels of land, particularly Lot Numbers 2746 and 1316, owned and possessed by the respondents, consisting of more or less a total area of 54,060 square meters.[6]

After depositing the amount of ₱258,000.00 with the Philippine National Bank, Kabankalan Branch (PNB-Kabankalan), representing the provisional and assessed value of the property affected, NAPOCOR was placed in possession of the subject properties on August 3, 1999.[7]

Due to the need to include Lot 2747 and its improvements, considering NAPOCOR has also taken possession of the property, NAPOCOR was directed to amend its complaint on March 10, 2000.[8] Thus, the Amended Complaint included Lot 2747 and increased the total area for expropriation to more or less 60,526.50 sq. meters.[9]

In an Order dated April 29, 2003, the RTC dismissed the case without prejudice, for failure to prosecute for an unreasonable length of time, which was reconsidered and set aside on October 15, 2003.[10] It then constituted a Board of Commissioners to determine the just compensation for the affected properties, which submitted its report on October 25, 2007.[11]

Eventually, on May 26, 2011, the RTC rendered its Decision ordering the expropriation of the lands in question.[12] In determining just compensation, the RTC took into account and

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[6] *Id.* at 45.

[7] *Id.* at 47.

[8] *Id.* at 48.

[9] *Id.* at 49.

[10] *Id.* at 51.

[11] *Id.* at 52.

[12] *Id.* at 52-54.

gave weight to the empirical data provided by Department of Finance Department Order No. 60-97, which assigned zonal values for 1997.[13] It also considered the fact that the lots were planted with sugarcane despite its residential classification, as well as the extent of disturbance that the expropriation would cause to the respondents.[14] As disposed:

> WHEREFORE, premises considered, in the interest of justice, judgment is hereby rendered in favor of [NAPOCOR] as follows:
>
> (a) An order of expropriation is hereby issued declaring x x x NAPOCOR to have the lawful right to take the properties of the [respondents] as alleged in the amended complaint particularly in Lot(s) No. 1316 with an affected area of 16,560 sq. meters, more or less; Lot Nos. 2746 (717-A) with an affected area of 37,500 sq. meters more or less and Lot No. 2747 (717-B) with an affected area of 6,466.50 more or less, as shown by the respective sketch plans for the areas affected as annexed to the complaint, for the purpose of the operation of [NAPOCOR's] Kabankalan-Maricalum 138 KV Transmission Island Grid Project. [NAPOCOR] having been installed in the possession of the areas expropriated shall continue to possess the same.
>
> (b) x x x NAPOCOR is hereby ordered to pay the Estate of Primitivo Hernaez, Luisa Hernaez and Rogaciana Hernaez, through its Judicial Administrators, just compensation for the properties expropriated as follows:
>
> 1) ₱9,356,400.00 representing just compensation for Lot 1316 with an affected area of 16,560 sq. meters more or less;
>
> 2) ₱8,156,250.00 representing just compensation for Lot 2746 (717-A) with an affected area of 37,500 sq. meters more or less;
>
> 3) ₱1,406,463.75 representing just compensation for Lot 2747 (717-B) with an affected area of 6,466.50 sq. meters more or less;

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[13] *Id.* at 56.

[14] *Id.* at 57.

(c) The amount of ₱258,000.00 earlier deposited with the Philippine National Bank shall be deducted from the total amount of just compensation of the subject properties and thus the remaining balance to be paid by [NAPOCOR] to [respondents] as just compensation shall be ₱18,661,113.75 with legal interest from taking of possession until fully paid.

SO ORDERED.[15]

On appeal, the CA-Cebu City rendered the assailed Decision dated October 29, 2014, affirming with modification the decision of the RTC. [16] It found the trial court's reliance on other indices of the value of the properties, including but not limited to their actual use and potential, proper and well founded.[17] Thus:

WHEREFORE, premises considered, the appeal is **DENIED**. The [May 26, 2011] Decision of the Regional Trial Court (RTC), [6th] Judicial Region, Branch [61] of [Kabankalan City], in Civil Case No. [861] is **AFFIRMED, with MODIFICATION**, in that paragraph (c) thereof should read:

(c) the amount of [₱]258,000.00 earlier deposited with the Philippine National Bank shall be deducted from the total amount of just compensation of the subject properties and thus the remaining balance to be paid by [NAPOCOR] to [respondents] as just compensation shall be ₱18,661,113.75 **with legal interest of 12% per annum** from taking of possession until fully paid.

SO ORDERED.[18]

On April 8, 2016, the CA denied NAPOCOR's Motion for Reconsideration, but amended its dispositive portion in the

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[15] *Id.* at 53-54.

[16] *Supra* note 1.

[17] *Rollo*, pp. 57-58

[18] *Id.* at 60-61, in relation to subsequent court action to correct typographical errors, *id*. at 68-69.

assailed decision on account of errors.[19] The amended portion presently reads:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The May 26, 2011 Decision of the Regional Trial Court (RTC), 6th Judicial Region, Branch 61 of Kabankalan City, in Civil Case No. 861 is **AFFIRMED, with MODIFICATION**, in that paragraph (c) thereof should read:
>
> (c) the amount of [₱]258,000.00 earlier deposited with the Philippine National Bank shall be deducted from the total amount of just compensation of the subject properties and thus the remaining balance to be paid by [NAPOCOR] to [respondents] as just compensation shall be ₱18,661,113.75 **with legal interest of 12% per annum** from the time of the filing of the complaint until fully paid.
>
> **SO ORDERED**.[20]

Undeterred, NAPOCOR filed this petition, raising the lone issue of whether or not:

> The amount of just compensation awarded to respondents should be based on the prevailing price and character of the property at the time [of] filing of the Complaint for eminent domain [in] 1998.[21]

NAPOCOR submits that the court *a quo* erred by considering the improvements on the property as of 2006 in fixing the amount of just compensation.[22] On the other hand, respondents argue that NAPOCOR misleads us by contending that the RTC erroneously determined just compensation which the RTC based on established factors affecting the value of the properties in 1998 conformably with Rule 67 of the Rules of Court.[23]

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[19] *Supra* note 2.

[20] *Id.* at 70.

[21] *Id.* at 28.

[22] *Id.* at 29.

[23] *Id.* at 91-92.

Upon careful review of the petition, we find no need to remand this case for a re-determination of just compensation.

As correctly noted by the CA-Cebu City, the RTC properly ascertained the value and character of the property as of the time of the filing of the complaint (the year 1998), pursuant to the appropriate period under the Rules of Court and jurisprudence.[24] The appellate court observed that the trial court did not consider the improvements on the subject properties as of 2006, which is certainly not the proper period for the correct determination of just compensation in this case. The assailed decision partly reads:

> Though the trial court made mention of the observations of the Commissioners, particularly the improvements had on the subject properties, after the year 1998 or after the filing of the original expropriation complaint thereon; a closer scrutiny of the ratiocinations of the trial court reveals, that it did not take into consideration these improvements in determining just compensation.[25]

"Factual findings of the trial and appellate courts will not be disturbed by this Court unless they are grounded entirely on speculations, surmises, or conjectures, among others."[26] NAPOCOR's submission raises a new factual allegation. As a rule, this Court is not a trier of facts. Only questions of law distinctly set forth in the petition ought to be raised before this Court.[27] The petition now refers to a particular period — that is, the year 2006 — on which allegedly, the trial court erroneously based its determination. This strains the Court to review the evidence. We, however, find no valid ground that would warrant

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[24] RULES OF COURT, Rule 67, Sec. 4; *National Power Corporation v. Sps. Asoque*, 795 Phil. 19, 52 (2016); *National Power Corporation v. Tiangco*, 543 Phil. 637, 647 (2007); *National Power Corporation v. Spouses Igmedio*, 452 Phil. 649, 664 (2003); *National Power Corporation v. CA*, 325 Phil. 29, 43 (1996).

[25] *Rollo*, pp. 91-92.

[26] *National Power Corporation v. Sps. Asoque*, 795 Phil. 19, 49 (2016).

[27] RULES OF COURT, Rule 45, Sec. 1.

a reversal of the factual findings of the appellate court or any reasonable basis to treat this case as an exception.

In the first place, the allegation does not hold. NAPOCOR either misconstrues the ruling of the appellate court or makes it appear that in determining just compensation, the courts *a quo* recognized the improvements in the year 2006. As alleged in NAPOCOR's petition:

> The trial court fixed the assailed amount of just compensation of the subject properties taking into consideration the fact that there were existing improvements within the vicinity of these properties. x x x This ruling was affirmed by the Court of Appeals, ruling that the values proposed by respondents were "based on a comparative analysis of the fair market value of the properties' peripheral area in the year 2006."
>
> It is respectfully submitted that the courts *a quo* erred in considering said improvements as of the year 2006 in fixing the amount of just compensation. (Underscoring supplied)[28]

The portion of the decision from which the quoted phrase was lifted reveals that the statement refers to respondents' proposal, which the court *a quo* expressly did not take into account because it was "based on generalities" and "not hinged upon the relevant period." The relevant portion, in fact, reads:

> From the foregoing, it is therefore beyond cavil that the amounts arrived at by the court deserve more merit, than the figures proposed by either [NAPOCOR or respondents] before it. It is worth mentioning that the values proposed by [NAPOCOR] in the complaint were solely based on the tax declarations of the subject properties issued in 1996. The values proposed by [respondents] were, on the other hand, "based on a comparative analysis of the fair market value of the properties' peripheral area in the year 2006." While [NAPOCOR's] tax declaration, cannot, by and of itself, be an absolute substitute to just compensation. The comparative analysis of [respondents] is to Us plainly based on generalities and not hinged upon the relevant period. (Underscoring supplied)[29]

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[28] *Rollo*, pp. 28-29.

[29] *Id.* at 59-60.

A complete textual reading does not in any way show that the RTC, as affirmed by the CA, adopted respondents' proposal in arriving at the fair market value of the subject properties. The RTC properly based its valuation on the year 1998, and not 2006. It plainly arrived at the disputed amount independently, after considering the commissioners' report and both parties' respective proposals.

Having addressed the RTC's ascertainment of the value and character of the properties, we now tackle the interest rate imposed on the amount to be paid to the respondents. It is settled that "the difference in the amount between the final amount as adjudged by the court and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money."[30] Here, the amount deposited by NAPOCOR with PNB-Kabankalan constitutes the initial payment that was accordingly deducted by the RTC from the final amount adjudged as just compensation.

To recall, in the RTC's May 26, 2011 Decision, it ordered the payment of legal interest on the balance of the just compensation computed from the taking of possession of the properties until fully paid. When the CA-Cebu City sustained the RTC's valuation of the properties, it specified the legal interest as 12% per annum, still computed from taking of possession until fully paid. However, in the CA-Cebu City's subsequent resolution on reconsideration, it modified the reckoning period to commence from the time of the filing of the complaint until fully paid. It appears that the reckoning point in Rule 67 for the valuation of expropriated property was similarly applied by the appellate court to the interest rate imposable on the just compensation.

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[30] *Evergreen Manufacturing Corp. v. Rep. of the Phils.*, 817 Phil. 1048, 1069 (2017).

In *Republic v. Macabagdal*,[31] we had occasion to point out that accrual of legal interest should begin "*not* from the date of the filing of the complaint but from the date of the issuance of the Writ of Possession x x x, since it is from this date that the fact of the deprivation of property can be established."

In *Evergreen Manufacturing Corp. v. Republic*,[32] the filing of the expropriation complaint also preceded the actual taking of the property and we ruled that "the just compensation shall be appraised as of [the date of filing of the complaint]," and clarified that "no interest shall accrue as the government did not take possession of the subject premises." We then held that the legal interest, on the difference between the final amount adjudged by the Court and the initial payment made, shall accrue from when the government was able to take possession of the property. Here, it was established that the amount deposited by NAPOCOR with PNB-Kabankalan caused it to be placed in possession of the expropriated properties on August 3, 1999. Hence, it is from this date that legal interest should begin to run.

As to the applicable interest rate specified by the CA-Cebu City as 12% p.a., this is applicable only until June 30, 2013, in line with *Secretary of the Department of Public Works and Highways v. Spouses Tecson*,[33] which upheld the applicability of *Bangko Sentral ng Pilipinas*-Monetary Board Circular No. 799, Series of 2013 to forbearances of money in expropriation cases. Accordingly, the applicable legal interest is 6% per annum from July 1, 2013 until the finality of this resolution.[34] Thereafter, the total amount due shall earn legal interest of 6% per annum from finality of the Court's resolution until full payment.[35]

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[31] G.R. No. 227215, January 10, 2018, citing *National Power Corp. v. Heirs of Ramoran*, 787 Phil. 77, 85 (2018).

[32] *Supra* note 30, at 1070-1071.

[33] 758 Phil. 604, 639 (2015).

[34] *Id.*

[35] *Supra* note 33, at 640-642, citing *Nacar v. Gallery Frames*, 716 Phil. 267, 282 (2013).

WHEREFORE, the Decision dated October 29, 2014 and Resolution dated April 8, 2016 of the Court of Appeals-Cebu City in CA-G.R. CV No. 04256 are **AFFIRMED subject to the MODIFICATION** imposing legal interest at the rate of 12% per annum on the difference between the total amount of just compensation and the initial deposit, which is PhP18,661,113.75, computed from August 3, 1999 until June 30, 2013. Thereafter, the remaining balance of the just compensation shall earn legal interest of 6% per annum from July 1, 2013 until the finality of this resolution. Moreover, the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this resolution until full payment.

SO ORDERED.

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

SEPARATE OPINION

CAGUIOA, *J.*:

I concur, except as to the imposition of interest.

I reiterate my position in my *Concurring & Dissenting Opinion* in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,[1] that not all obligations consisting in the payment of a sum of money should be considered forbearance within the authority of the Bangko Sentral ng Pilipinas (BSP). The term "forbearance" **must be construed in the narrow context of the Usury Law** and in relation to the other provisions found therein. Hence, I subscribe to the definition provided in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[2] which adopted the definition that a forbearance, within the context of the usury law, is a "contractual obligation of [a] lender or creditor to refrain, during [a] given period of time, from requiring [the] borrower or debtor to repay [a] loan or debt then due and

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

[2] 304 Phil. 236 (1994).

payable."[3] **In other words, a forbearance should be understood as akin to a loan and must involve 1) an agreement or contractual obligation; 2) to refrain from enforcing payment or to extend the period for the payment of; 3) an obligation that has become due and demandable; and 4) in return for some compensation, *i.e.*, interest**.[4]

The foregoing requisites are not present in the instant case. Notably, there is no contractual obligation on the part of the property owner to refrain from enforcing payment of just compensation in exchange for the payment of interest. Rather, the property owner merely fails to exact payment as the amount of just compensation must still be determined. **As the proceedings for the determination of just compensation has absolutely nothing to do with usury, the BSP-prescribed rate of 12% *per annum* until June 30, 2013 and 6% *per annum* thereafter**[5] **should not apply.**

At the same time, however, I recognize that a significant period often runs between the time the State takes the property and the time the courts finally adjudge the amount of just compensation due. **Strictly speaking, there is no "in delay" or "in default" or "*mora*" pursuant to Article 2209 of the Civil Code because the amount of just compensation due at the time of taking is, at said time, undetermined.** Hence, the State should not be held liable for compensatory interest for the delay in the payment of just compensation as the amount owed to the property owner has yet to be determined with finality.[6] Nevertheless, the opportunity cost of the money that the property owner failed to receive in full at the time of the taking of the property cannot be ignored. In true sales, the

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[3] *Id.* at 251, citing *Black's Law Dictionary* (1990 ed., 644), which in turn cited the case of *Hafer v. Spaeth*, 22 Wash. 2d 378, 156 P. 2d 408, 411.

[4] *Supra* note 1.

[5] *Ponencia*, p. 8.

[6] See CIVIL CODE, Article 2213 which states that:

Article 2213. Interest cannot be recovered upon **unliquidated claims** or damages, except when the demand can be established with reasonable certainty.

property owner and the prospective buyer are free to negotiate on a higher selling price should payment be at a later date or on installment.[7] In *Republic of the Philippines v. Spouses Bunsay*,[8] the Court explained however:

> x x x **[T]he transfer of real property by way of expropriation is *not* an ordinary sale contemplated under Article 1458 of the Civil Code. Rather, it is akin to a "forced sale" or one which arises *not* from the consensual agreement of the vendor and vendee, but by compulsion of law. Unlike in an ordinary sale wherein the vendor sets the selling price, the compensation paid to the affected owner in an expropriation proceeding comes in the form of just compensation determined by the court.**
>
> In turn, just compensation is defined as the **fair and full equivalent of the loss incurred by the affected owner**. More specifically:
>
> > x x x [J]ust compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. **The word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample.**" x x x[9]

Hence, it is reasonable to require the State to pay interest to compensate the property owner for the opportunity cost of immediately losing his or her property without receiving immediate full payment therefor. I thus wholly agree that **"[i]nterest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness."**[10]

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[7] See discussion on time-price doctrine in my Concurring and Dissenting of Opinion in *Lara's Gifts Decors, Inc. v. Midtown Industrial Sales, Inc.*, *supra* note 1.

[8] G.R. No. 205473, December 11, 2019.

[9] *Id.* at 8. Citations omitted, additional emphasis and underscoring supplied.

[10] *Evergreen Manufacturing Corp. v. Republic*, 817 Phil. 1048, 1065 (2017).

In other words, since full payment of just compensation cannot, in reality, be made at the time of the taking of the property, the State must compensate the property owner for the loss he or she incurs from the actual delay (not legal "in delay" or "*mora*" under Article 2209) in the payment of the compensation due. Therefore, the State is liable for interest on the payment of just compensation, not because the amount due constitutes a forbearance of money under the Usury Law nor because the State is "in default" under Article 2209 of the Civil Code and thus liable for compensatory interest. **Interest is awarded as an indispensable part of *just compensation*, in order "to ensure that the owner is fully placed in a position as whole as he was before the taking occurred."**[11] Under these premises and for lack of any other convenient metric, I find it reasonable to impose ***by analogy*** the legal interest rate of 6% *per annum* under Article 2209 of the Civil Code.

Once the decision awarding just compensation becomes final and executory however, the obligation of the State to immediately pay the total amount awarded becomes **liquidated and immediately demandable**.[12] Hence, compensatory interest under Article 2209 of the Civil Code begins to run on the total just compensation value at the 6% legal rate from the time the decision becomes final and executory until full payment.

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[11] *Republic v. Decena*, G.R. No. 212786, July 30, 2018.

[12] CIVIL CODE, Art. 2213; see also my Concurring and Dissenting Opinion in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, *supra* note 1.

THIRD DIVISION

[G.R. No. 226486. January 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GLECERIO PITULAN *y* BRIONES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DETERMINATION THEREOF IS LEFT TO THE TRIAL COURTS WHICH HAVE THE UNIQUE OPPORTUNITY TO OBSERVE THEIR CONDUCT IN COURT. — The determination of witnesses' credibility is left to the trial courts, which have the unique opportunity to observe their conduct in court. The trial courts' findings are generally binding on this Court and will not be overturned without a showing of any fact or circumstance that was overlooked, misunderstood, or misapplied, which may change the results of a case. If these findings are affirmed by the Court of Appeals, then all the more will this Court be stringent in applying the rule.

2. ID.; ID.; DENIAL; ABSENT ANY CLEAR AND CONVINCING EVIDENCE, BARE DENIAL WILL NOT OUTWEIGH AN AFFIRMATIVE TESTIMONY FROM A CREDIBLE WITNESS. — [D]enial is an inherently weak defense. Absent any clear and convincing evidence, bare denial will not outweigh an affirmative testimony from a credible witness. Without "any showing of ill motive on the part of the eyewitness testifying on the matter, a categorical, consistent and positive identification of the accused prevails over denial and alibi."

3. CRIMINAL LAW; MURDER; PRESENTATION OF THE MURDER WEAPON IS NOT INDISPENSABLE TO PROVE THE *CORPUS DELICTI*, AS ITS PHYSICAL EXISTENCE IS NOT AN ELEMENT OF MURDER; TWIN REQUIREMENTS TO PROVE THE *CORPUS DELICTI*. — In *People v. Tuniaco*, this Court held that the presentation of the murder weapon is not indispensable to prove the *corpus delicti*, as its physical existence is not an element of murder.

To prove the *corpus delicti*, the prosecution only needs to show that: "(a) a certain result has been established ... and (b) some person is criminally responsible for it." Here, the prosecution was able to fulfill the twin requirements and prove the *corpus delicti*. First, it offered in evidence PO1 Monteroso's death certificate showing the cause of his death as "hemorrhagic shock secondary to a gunshot wound to the chest." Second, it established the identity of the shooter through the clear and positive testimony of PO1 De Vera, a credible eyewitness. Even without the gun, there is no dispute that the prosecution sufficiently established the *corpus delicti*.

4. ID.; ID.; PARAFFIN AND BALLISTIC TESTING ARE NOT INDISPENSABLE TO PROVE THE GUILT OF THE ACCUSED. — [T]he Court of Appeals is correct in ruling that paraffin and ballistic testing are not indispensable to prove accused-appellant's guilt. In *De Guzman*, this Court discussed that paraffin testing is conclusive only as to the presence of nitrate particles in a person, but not as to its source, such as from firing a gun. By itself, paraffin testing only indicates a possibility, not infallibility, that a person has fired a gun. x x x Similarly, ballistic testing establishes only a likelihood that a bullet was fired from a specific weapon. By itself, it is not enough to prove when the weapon was fired and who fired the weapon. In *Lumanog*, this Court held that ballistic testing, along with the presentation of the weapon and bullets used, are indispensable if there is no credible eyewitness to the shooting. To sustain a conviction, it is sufficient that the *corpus delicti* is established and the eyewitness, through a credible testimony, identifies the accused as the assailant. x x x Finally, in *People v. Casanghay*, this Court ruled that the absence of paraffin and ballistic testing is not fatal to the prosecution's case. It has no effect on the evidentiary value of an eyewitness testimony positively identifying the accused as the assailant.

5. ID.; ID.; REQUIREMENTS FOR CONVICTION OF AN ACCUSED. — Every conviction requires that the prosecution prove: (1) the identity of the accused; and (2) the fact of the crime. The second requirement is fulfilled when all the elements of the crime charged are present.

6. ID.; DIRECT ASSAULT; TWO FORMS THEREOF; ELEMENTS OF THE SECOND FORM; CASE AT BAR.

— Direct assault may be carried out in two (2) modes: (1) through committing an act equivalent to rebellion or sedition, but without public uprising; and (2) through employing force and resisting any person in authority while engaged in the performance of duties. The elements of the second mode of direct assault are as follows: Appellants committed the second form of assault, the elements of which are: 1) that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; 2) the assault was made when the said person was performing his duties or on the occasion of such performance; and 3) the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority. In this case, accused-appellant was identified as the driver of the van and the shooter who attacked and killed PO1 Monteroso. When the shooting happened, PO1 Monteroso and his team were responding to a report of a suspicious group of men aboard a van. He was also in complete uniform and aboard a police mobile. When accused-appellant shot PO1 Monteroso, he knew that he was a person of authority in the exercise of official duties. Thus, all the elements of direct assault are present.

7. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS; DIRECT ASSAULT WITH HOMICIDE, PROPER OFFENSE IN CASE AT BAR. — In *People v. Vibal*, this Court held that when the assault leads to the death of an agent or a person in authority, the resulting offense is the complex crime of direct assault with murder or homicide. The lower courts convicted accused-appellant of direct assault with murder. This Court modifies the conviction to the complex crime of direct assault with homicide, there being no treachery which qualified the killing of PO1 Monteroso to murder. The essence of treachery is "in the suddenness of the attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself [or herself] and thereby ensuring the commission of the offense without risk to the offender arising from the defense which the offended party might make." For treachery to qualify the killing to murder, the following elements must be proven: "(1) that at the time of the attack, the victim was not in a position to defend himself [or herself], and (2) that the offender consciously adopted the particular means,

method or form of attack employed by him [or her]." The prosecution was not able to establish the existence of treachery here.

8. ID.; PENALTY FOR A COMPLEX CRIME; MAXIMUM PENALTY OF THE GRAVER OFFENSE; PROPER PENALTY IN CASE AT BAR. — Article 48 of the Revised Penal Code requires that the penalty for a complex crime is the maximum penalty of the graver offense. The penalty for homicide is *reclusion temporal* while the penalty for direct assault is *prision correccional*. Thus, the proper penalty to be imposed for the complex crime of direct assault with homicide is *reclusion temporal*, subject to the Indeterminate Sentence Law.

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.*:

In homicide, the prosecution's failure to present the weapon is not fatal to its case. An eyewitness' credible testimony on the fact of the crime and the assailant's identity is sufficient to prove the *corpus delicti*. Moreover, the prosecution's failure to conduct paraffin and ballistic testing has no effect on the evidentiary value of an eyewitness' positive identification of the accused as the assailant. The accused's bare denial, on its own, cannot outweigh the eyewitness' positive identification.

This Court resolves the Notice of Appeal[1] assailing the Decision[2] of the Court of Appeals, which affirmed the Regional

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[1] *Rollo*, pp. 20-23.

[2] *Id.* at 2-19. The Decision dated August 12, 2015 and docketed as CA-G.R. CR-HC No. 06017 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Ricardo R. Rosario and Eduardo B. Peralta, Jr. of the Sixteenth Division, Court of Appeals, Manila.

Trial Court Decision[3] finding Glecerio Pitulan y Briones (Pitulan) guilty beyond reasonable doubt of the complex crime of direct assault with murder.

Three (3) Informations were filed against Pitulan for direct assault with murder of police Officer 1 Aldy Monteroso (PO1 Monteroso), direct assault with attempted murder of police Officer 1 Alberto Cirilo Dionisio (PO1 Dionisio), and direct assault with frustrated murder of PO1 Benito De Vera (PO1 De Vera). The Informations read:

Criminal Case No. Q-03-116802
against Glecerio Pitulan y Briones
for Direct Assault with Murder

"That on or about the 20th day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (sic) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, attack, assault and employ personal violence upon the person of PO1 ALDY MONTEROSO y BELTRAN, a bonafide member of the PNP CPDO, assigned at Police Station 3, Talipapa Police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. revolver, hitting him on the chest, thereby inflicting upon him fatal injury which was the direct cause of his death, to the damage and prejudice of the heirs of said PO1 Aldy B. Monteroso.

CONTRARY TO LAW."

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[3] CA *rollo*, pp. 51-66. The decision dated January 21, 2013 and docketed as Criminal Case Nos. Q-03-116802 to 116804 was penned by Acting Presiding Judge Maria Filomena D. Singh.

Criminal Case No. Q-03-116803
against Glecerio Pitulan y Briones
for Direct Assault with Attempted Murder

That on or about the 20th day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (*sic*) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, commence the commission of the crime of Murder directly by overt acts upon the person of one PO1 ALBERTO CIRILO DIONISIO *y* DELACRUZ, a bonafide member of the PNP, CPDO, assigned at police Station 3, Talipapa police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. [r]evolver, but said accused was not able to perform all the acts of execution which should produce the crime of Murder by reason of some cause or accident other than his own spontaneous desistance, to the damage and prejudice of the said PO1 Alberto Cirilo Dionisio y Dela Cruz.

CONTRARY TO LAW."

Criminal Case No. Q-05-133382
against Glecerio Pitulan y Briones
For Direct Assault with Frustrated Murder

"That on or about the 20th day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (*sic*) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, attack, assault and employ personal violence upon the person of (*sic*) commence the commission of the crime of Murder directly by overt acts upon the person of one PO1 BENITO DE VERA y JOPSON, a bonafide member of the PNP, CPDO, assigned at Police

Station 3, Talipapa police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. [r]evolver, hitting him on the different parts of his body, thereby inflicting upon him fatal injuries, the offender performing all the acts of execution which would produce death as a consequence but which nevertheless did not produce it by reason of some causes independent of the will of the perpetrator, to the damage and prejudice of the said PO1 Benito De Veyra (*sic*) y Jopson.

CONTRARY TO LAW."[4]

Pitulan was arraigned on all the charges, to which he pleaded not guilty. Trial thus ensued.[5]

For its part, the prosecution presented PO1 De Vera, PO1 Dionisio, and Police Officer 3 Eric Cortez (PO3 Cortez) as witnesses. The parties stipulated on the testimonies of the prosecution's other witnesses, the case investigator and the medico-legal officer.[6]

From their testimonies, the prosecution alleged that on April 20, 2003, the group of PO1 De Vera, PO1 Dionisio, and PO1 Monteroso responded to a report that of a group of armed men aboard a Hyundai van was acting suspiciously along General Avenue, Barangay Bahay Toro, Project 8, Quezon City. Thus, the officers, in complete uniform, rode their police mobile patrol to the reported location.[7]

On their way to General Avenue, the officers saw a van, with plate no. PVY-701, matching the description of the vehicle they were looking for. They ordered the van to halt, but it gave chase instead, until the officers overtook and blocked its path along Road 20.[8]

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

[5] *Id.* at 53.

[6] *Id.*

[7] *Id.* at 81.

[8] *Id.* at 56-57 and 104.

The officers ordered the riders to step out of the vehicle. When all but the driver complied, PO1 Monteroso opened the door opposite the driver's side to check on him. However, as soon as he did so, the driver—who was later identified as Pitulan—shot him thrice on the chest.[9]

Simultaneously, the other van passengers, later identified as Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan, and Augusto Torres, wrestled with PO1 De Vera and PO1 Dionisio.[10] One (1) of them was able to get PO1 Monteroso's gun and fired at PO1 De Vera, injuring him in the shootout.[11]

Pitulan then attempted to escape, but on his way, he encountered PO3 Cortez and his team who was responding to a radio message of the gun battle.[12]

PO3 Cortez's team ordered the van to stop and attempted to approach the van. However, its driver, whom he later identified as Pitulan, opened fire at their patrol car. The officers fired back and, in the shootout that ensued, hit the van's left tire. The van hit an island at the intersection of Visayas Avenue and Congressional Avenue.[13]

The other van passengers turned out dead in the shootout,[14] leaving Pitulan to surrender to the police. Once PO3 Cortez and his team arrested him, they brought Pitulan to the East Avenue Medical Center for treatment.[15] The officers were able to recover from him a .38 cal. revolver, four (4) live ammunitions, and two (2) empty shells.[16]

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[9] *Id.* at 81.

[10] *Id.*

[11] *Id.* at 105.

[12] *Id.* at 112-113.

[13] *Id.* at 82.

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

[15] *Id.* at 106.

[16] *Id.*

Pitulan solely testified for the defense. He alleged that on April 20, 2003, he was with his four (4) brothers on a Besta van driven by a certain Rudy Pagador. Pitulan fell asleep on the road, only to be awakened later on by successive gunfire, from which he sustained wounds that caused him to fall unconscious on the floor of the van. He later woke up in a hospital, where he was told that his brothers were all dead.[17]

In its January 21, 2013 Decision,[18] the Regional Trial Court convicted Pitulan of the complex crime of direct assault with murder. It found no dispute that Pitulan was in the van during the shootout, save for his denial that he participated as driver and shooter.[19] It gave credence to the eyewitness account of PO1 De Vera over Pitulan's bare denial.[20]

In ruling that treachery attended PO1 Monteroso's killing, the trial court noted that PO1 Monteroso was shot thrice after opening the door opposite the driver's side, leaving him no opportunity to defend himself.[21] Moreover, since the officer was killed during the performance of his duties, Pitulan was convicted of the complex crime of direct assault with murder.[22]

As for the other charges, the trial court found no conspiracy among the van's passengers who were involved in the shootout. Hence, it acquitted Pitulan of direct assault with attempted murder and direct assault with frustrated murder against PO1 Dionisio and PO1 De Vera, respectively.[23]

The Regional Trial Court imposed the penalty of *reclusion perpetua* for the complex crime of direct assault with murder.

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[17] *Id.* at 45.

[18] *Id.* at 51-66.

[19] *Id.* at 55.

[20] *Id.* at 55-60.

[21] *Id.* at 61.

[22] *Id.*

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

Pitulan was ordered to pay the heirs of PO1 Monteroso ₱75,000.00 as civil indemnity *ex delicto*, moral damages of ₱50,000.00, exemplary damages of ₱30,000.00, and temperate damages of ₱30,000.00, and costs of suit. The dispositive portion of the Decision read:

> WHEREFORE, judgment is hereby rendered finding the accused Glecerio Pitulan y Briones in Criminal Case No. Q-03-116802 GUILTY beyond reasonable doubt of the crime of Direct Assault with Murder and he is hereby sentenced to suffer the penalty of *reclusion perpetua*.
>
> Accused Glecerio Pitulan y Briones is hereby further ordered to pay the heirs of PO1 Aldy Monteroso y Beltran the following amounts:
>
> 1) Php75,000.00 as civil indemnity;
> 2) Php50,000.00 as moral damages;
> 3) Php30,000.00 as exemplary damages;
> 4) Php30,000.00 as temperate damages; and
> 5) costs of suit.
>
> In Criminal Case No. Q-03-116803 and Criminal Case No. Q-03-116804, judgment is hereby rendered ACQUITTING the accused Glecerio Pitulan y Briones of the offenses of Direct Assault with Attempted Murder and Direct Assault with Frustrated Murder, for lack of evidence.
>
> SO ORDERED.[24]

Pitulan appealed his case. However, the Court of Appeals, in its August 12, 2015 Decision,[25] affirmed his conviction. It found the police officers' testimonies clear that it was Pitulan who fired successive shots at PO1 Monteroso, the same one who drove off only to be arrested by PO3 Cortez's team.[26] It also affirmed the trial court's findings that the killing of PO1 Monteroso was attended with treachery, qualifying the complex crime to direct assault with murder.[27]

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[24] *Id.*

[25] *Id.* at 107-118.

[26] *Id.* at 113-114.

[27] *Id.* at 114-115.

The Court of Appeals dismissed Pitulan's contention that in failing to present the gun and conduct paraffin and ballistic testing, the prosecution failed to prove his guilt beyond reasonable doubt.[28] It held that paraffin testing is extremely unreliable for not being conclusive as to whether the nitrates came from the discharge of a firearm.[29] Moreover, it stated that the lack of ballistic testing does not affect the evidentiary value of an eyewitness' positive identification of the assailant, as in this case.[30]

On September 18, 2015, Pitulan filed his Notice of Appeal.[31] The Court of Appeals, having given due course to his appeal, elevated the case records to this Court.[32]

This Court later required the parties to file their supplemental briefs.[33] However, both accused-appellant and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, manifested that they would no longer do so. Instead, they would adopt their Briefs filed before the Court of Appeals.[34]

In his Brief,[35] accused-appellant alleges that the lower courts erred in convicting him of direct assault with murder despite the prosecution failing to establish his identity as PO1 Monteroso's assailant.[36]

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[28] *Id.* at 115-116.

[29] *Id.* at 116.

[30] *Id.* citing *People v. Casanghay*, 440 Phil. 317 (2002) [Per J. Corona, Third Division].

[31] *Id.* at 128-131.

[32] *Rollo*, pp. 1 and 24.

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

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

[35] CA *rollo*, pp. 38-50.

[36] *Id.* at 46-47.

Expounding on this, accused-appellant claims that PO1 De Vera's eyewitness account should not have been given credence, as he was behind the police mobile during the shootout and, thus, could not have seen the driver who shot PO1 Monteroso. He also insists that the prosecution's failure to conduct ballistic and paraffin testing was fatal, as the officers failed to determine whether he really fired any gun. He also faults the prosecution for failing to present the gun used in the shooting.[37]

On the other hand, plaintiff-appellee argues in its Brief[38] that PO1 De Vera's testimony was clear and unequivocal, successfully establishing accused-appellant's identity as the assailant. Contrary to accused-appellant's claim, the officer had directly witnessed the shooting because the back of the police mobile was positioned in front of the van.[39]

Moreover, plaintiff-appellee, citing *People v. Fernandez*,[40] asserts that the presentation of the murder weapon is not indispensable "when the accused has positively been identified."[41] Finally, it points out that this Court has rendered both paraffin and ballistic testing inconclusive, citing *People v. De Guzman*[42] and *Lumanog v. People*.[43]

The issues for this Court's resolution are as follows:

First, whether or not the prosecution's failure to conduct paraffin and ballistic testing was fatal in proving the guilt of accused-appellant Glecerio Pitulan *y* Briones; and

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[37] *Id.* at 47.

[38] *Id.* at 75-95.

[39] *Id.* at 89-90.

[40] 434 Phil. 224 (2002) [Per *J.* Quisumbing, Second Division].

[41] CA *rollo*, p. 92.

[42] 320 Phil. 158 (1995) [Per *J.* Puno, Second Division].

[43] 644 Phil. 296 (2010) [Per *J.* Villarama, Jr., *En Banc*].

Second, whether or not accused-appellant was correctly convicted of the complex crime of direct assault with murder.

This Court sustains accused-appellant's conviction only for the complex crime of direct assault with homicide.

The determination of witnesses' credibility is left to the trial courts, which have the unique opportunity to observe their conduct in court. The trial courts' findings are generally binding on this Court and will not be overturned without a showing of any fact or circumstance that was overlooked, misunderstood, or misapplied, which may change the results of a case. If these findings are affirmed by the Court of Appeals, then all the more will this Court be stringent in applying the rule.[44]

Moreover, denial is an inherently weak defense. Absent any clear and convincing evidence, bare denial will not outweigh an affirmative testimony from a credible witness.[45] Without "any showing of ill motive on the part of the eyewitness testifying on the matter, a categorical, consistent and positive identification of the accused prevails over denial and alibi."[46]

In this case, accused-appellant assailed his conviction allegedly based on compelling doubt that he was the assailant. However, based on PO1 De Vera's testimony, both the Regional Trial Court and the Court of Appeals found that of the van's passengers, only accused-appellant did not alight when ordered to do so. As he was the only one in the van, no other person could have shot PO1 Monteroso from inside. PO1 De Vera testified:

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[44] *People v. Gerola*, 813 Phil. 1055, 1064 (2017) [Per J. Caguioa, First Division] citing *People v. Gahi*, 727 Phil. 642 (2014) [Per J. Leonardo-De Castro, First Division].

[45] *People v. Buclao*, 736 Phil. 325, 339 (2014) [Per J. Leonen, Third Division] citing *People v. Alvero*, 386 Phil. 181 (2000) [*Per Curiam, En Banc*].

[46] *People v. Magallanes*, 457 Phil. 234, 257 (2003) [*Per Curiam, En Banc*] citing *People v. Villaver*, 422 Phil. 207 (2001) [Per J. Vitug, Third Division] and *People v. Basquez*, 418 Phil. 426 (2001) [Per J. Panganiban, Third Division].

Q: (Prosecutor Luis Maceren)
Mr. Witness, you said that you responded to a shootout. When was this when you responded to a shootout?
A: (PO1 Benito De Vera, Jr.)
Responded to an alarm, sir.

Q:
Alright, responded to an alarm, when was that?
A:
April 20, 2003, sir.

Q:
You mentioned that you responded to an alarm, what was that alarm about?
A:
A Hyundai van was parked with persons inside the van and some were outside the van with '*may nakabukol*' and looking suspiciously, sir.

Q:
No[w], Mr. Witness, when you received this alarm, what did you and Mobile Patrol QC 15 do?
A:
We proceeded to the place, sir.

Q:
By the way, Mr. Witness, you mentioned that your Mobile Patrol QC 15 is a marked vehicle, could you tell us what was the attire of the group including yourself at the time that you were in the performance of your duty as a member of the mobile group?
A:
We were in complete uniform, sir.

Q:
You said that you, together with your fellow officers proceeded to or responded to this alarm, where did you proceed to?
A:
General Avenue near Road 20, sir.

Q:
Were you able to arrive at this area?
A:
No, sir because we met the van.

Q:
Where did you encounter or meet the van?
A:
Along Road 20, sir.

Q:
Now, when you saw the van along Road 20, what happened then?
A:
We chased the van and we asked them to pull over but they did not stop, Sir.

Q:
You said that you chased the van and asked them to pull over, how did you ask them to pull over?
A:
We sounded the siren, sir.

Q:
You said that they did not stop, what did you do?
A:
Our driver overtook the van, sir.

Q:
After over taking (*sic*) the van, what happened then?
A:
They were forced to stop, sir.

Q:
Where were they forced to stop, what particular place where (*sic*) they forced to stop?
A:
Along Road 20 in front of House No. 126, sir.

Q:
Where is this Road 20, what city is it located, Mr. Witness?
A:
Brgy. Bahay Toro, Project 8, Quezon City.

Q:
Now, Mr. witness, after you said that your driver was able to stop, what happened when you were able to stop them?
A:
We ordered them to get off the van, sir.

Q:
Where were you when this order for them to alight from the van was made?
A:
We also alighted from the Mobile Patrol car, sir.

Q:
Let us go directly to you, Mr. witness. Where were you then standing at that time when they were being asked to alight from their van?
A:
I was behind our Mobile Patrol car, sir.

Q:
What happened when ... who in particular who was ordering the occupants of the van to alight?
A:
All of us, sir shouting [at] them to alight from the van.

Q:
Then what happened?
A:
Some alighted but some remained inside the van, sir.

Q:
When some of the occupants [in that] van alighted, what happened then, while others remained inside the van, what happened then?
A:
We asked those who remain inside the van to also alight from the van, sir.

Q:
When you were asking them to ... those who remain inside to alight, what happened then?
A:
The rest alighted except for one, sir.

Q:
When this one person did not alight from the van, what happened next?
A:
We ordered them to raise their hands, sir.

Q:
What happened when you asked them to raise their hands?
A:
They didn't raise their hands, sir.

Q:
What did PO1 Alvin (*sic*) Monteroso do when you said one of the person (*sic*) did not alight from the van?
A:
He opened the door of the van on the right sir.

Q:
By the way, Mr. Witness, where was this person who did not alight from the van seated?
A:
At the driver's seat, sir.

Q:
You said that PO1 Alvin (*sic*) Monteroso opened the van on the right, what do you mean on the right?
A:
The door on the right side opposite the driver, sir.

Q:
What happened then when Officer Monteroso opened the said door?
A:
That's when he was shot at, sir.

Q:
What happened to Officer Monteroso when he was shot at?
A:
What I saw was when he was shot at he stepped back and started turning around (*nagpaikot-ikot*), sir.

Q:
Who shot at Officer Monteroso?
A:
That person, sir.

Interpreter:
Witness pointing to a person seated inside the court room when ask (*sic*) to identify himsel[f] he gave his name as Glecerio Pitulan.

Q:
After Officer Monteroso was shot, what happened then?
A:
"*Kinuyog niya kami*", his gun was taken from them [him], sir.

Q:
You said "*kinuyog*," what do you mean by "*kinuyog*," Mr. Witness?
A:
He was attacked and his gun was taken from him, sir.

Q:
Who attacked him?
A:
The companions of Pitulan, sir.[47]

Moreover, PO3 Cortez testified that the driver of the van whom they arrested was none other than accused-appellant himself. PO3 Cortez stated:

TSN dated March 21, 2006.
PO3 Eric Cortez

Prosecutor Andres

. . . . . .

Q: So after receiving that radio message from your radio operator regarding that gun battle and after you were directed to proceed to Road 20, Project 8, Quezon City, what did you and your companions do, if any?

A: We proceeded and while we were approaching Mindanao Avenue we received a radio message coming from CPD-Pre[c]inct 3 regarding the description of the vehicle.

. . . . . .

Q: And while you were already approaching the target area, what transpired there?

A: While we were approaching Congressional Avenue at the time, we spotted the said vehicle, Hyundai van, so we got close to it and after that we ordered the driver to stop, sir.

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[47] CA *rollo*, pp. 55-60, TSN dated September 16, 2004 as cited by the Regional Trial Court.

Q: After ordering the driver of that Hyundai van with Plate No. PVT-701 as you said to stop, what is the reaction of the driver, if any to your order?

A: The driver fired [at] our mobile patrol car C-172, sir.

Q: So, after your group was fired upon, what were (*sic*) you and your companions do, if any?

A: We retaliated, and shot the rear left wheel of the said van, Sir.

Q: After hitting the rear left wheel as you said of the Hyundai van, what happened next, if any?

A: The Hyundai van hit an island near the stop light at the intersection of Visayas Avenue and Congressional Avenue.

Q: After the said Hyundai van hit the island near the stop light at the intersection of Visayas Avenue and Congressional Avenue, what else happened, if any?

A: We ordered the driver of the van to surrender. When we were approaching to (sic) the said vehicle with maximum precaution, the drive of the said van surrendered peacefully and we confiscated to (sic) his possession and control a .38 revolver sir.[48]

As the trial court aptly noted, there is no dispute as to where accused-appellant was at the time of the incident. He categorically admitted during trial that he was inside the van when the shootout happened:

> There is no dispute that there was a gun battle between the group of the police officers-complainants and the group of the accused. The accused himself admitted this, in addition to the fact that he and his companions (his four brothers and one Rudy Pagador and Augusto Torres) were on board a blue Hyundai Besta/Grace Van, qualifying his statement only by asserting that he was not driving the said van and he was asleep when he woke up to the sound of gunfire, but he never shot at anybody and he lost consciousness, waking up much later already confined in a hospital.[49]

To this, accused-appellant only denied his involvement in the shooting and claimed that he was knocked unconscious from

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[48] *Id.* at 112-113.

[49] *Id.* at 55, TSNs of accused-appellant.

the wounds he allegedly sustained. This bare denial, without substantial evidence, cannot controvert the clear and positive identification of PO1 De Vera that he saw accused-appellant shoot PO1 Monteroso.

Accused-appellant further assailed his conviction on the ground that the prosecution failed not only to present the gun in evidence, but also to conduct paraffin and ballistic testing—ultimately failing to prove that it was he who shot PO1 Monteroso dead.

These defenses fail. The lower courts correctly convicted accused-appellant for the killing of PO1 Monteroso.

In *People v. Tuniaco*,[50] this Court held that the presentation of the murder weapon is not indispensable to prove the *corpus delicti*, as its physical existence is not an element of murder. To prove the *corpus delicti*, the prosecution only needs to show that: "(a) a certain result has been established ... and (b) some person is criminally responsible for it."[51]

Here, the prosecution was able to fulfill the twin requirements and prove the *corpus delicti*. First, it offered in evidence PO1 Monteroso's death certificate[52] showing the cause of his death as "hemorrhagic shock secondary to a gunshot wound to the chest."[53] Second, it established the identity of the shooter through the clear and positive testimony of PO1 De Vera, a credible eyewitness. Even without the gun, there is no dispute that the prosecution sufficiently established the *corpus delicti*.

Likewise, the Court of Appeals is correct in ruling that paraffin and ballistic testing are not indispensable to prove accused-appellant's guilt. In *De Guzman*,[54] this Court discussed that

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[50] 624 Phil. 345 (2010) [Per *J.* Abad, Second Division].

[51] *Id.* at 351 citing *People v. Cabodoc*, 331 Phil. 449, 509-510 (1996) [Per *J.* Davide, Jr., Third Division].

[52] CA *rollo*, p. 14, Index of Exhibits, Exhibits "I" to "I-2" of the Prosecution.

[53] *Id.* at 55.

[54] 320 Phil. 158 (1995) [Per *J.* Puno, Second Division].

paraffin testing is conclusive only as to the presence of nitrate particles in a person, but not as to its source, such as from firing a gun. By itself, paraffin testing only indicates a possibility, not infallibility, that a person has fired a gun:

> In a recent case, we reiterated the rule that paraffin test is inconclusive. We held: "Scientific experts concur in the view that the paraffin test has ... proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalta (*sic*). A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco." The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.[55] (Citations omitted)

Similarly, ballistic testing establishes only a likelihood that a bullet was fired from a specific weapon. By itself, it is not enough to prove when the weapon was fired and who fired the weapon. In *Lumanog*,[56] this Court held that ballistic testing, along with the presentation of the weapon and bullets used, are indispensable if there is no credible eyewitness to the shooting. To sustain a conviction, it is sufficient that the *corpus delicti* is established and the eyewitness, through a credible testimony, identifies the accused as the assailant. This Court held:

> As this Court held in *Velasco v. People* —
>
> As regards the failure of the police to present a ballistic report on the seven spent shells recovered from the crime scene, the same does not constitute suppression of evidence. A ballistic report serves only

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[55] *Id.* at 169-170.

[56] 644 Phil. 296 (2010) [Per J. Villarama, Jr., *En Banc*].

as a guide for the courts in considering the ultimate facts of the case. It would be indispensable if there are no credible eyewitnesses to the crime inasmuch as it is corroborative in nature. **The presentation of weapons or the slugs and bullets used and ballistic examination are not prerequisites for conviction.** The *corpus delicti* and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction. Even without a ballistic report, the positive identification by prosecution witnesses is more than sufficient to prove accused's guilt beyond reasonable doubt. In the instant case, **since the identity of the assailant has been sufficiently established, a ballistic report on the slugs can be dispensed with in proving petitioner's guilt beyond reasonable doubt**.[57] (Emphasis in the original)

Finally, in *People v. Casanghay*,[58] this Court ruled that the absence of paraffin and ballistic testing is not fatal to the prosecution's case. It has no effect on the evidentiary value of an eyewitness testimony positively identifying the accused as the assailant:

The absence of a ballistic examination comparing the bullets fired from the fatal gun with the deformed slug recovered at the scene of the crime cannot nullify the evidentiary value of the positive identification of the appellant by prosecution eyewitnesses. Likewise, the failure of the police to conduct a paraffin test on the appellant is not fatal to the case of the prosecution. Scientific experts agree that the paraffin test is extremely unreliable. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites is the discharge of a firearm.[59] (Citation omitted)

With the identity of accused-appellant as PO1 Monteroso's assailant established, the only issue left is whether he was properly convicted of direct assault with murder.

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[57] *Id.* at 403.

[58] 440 Phil. 317 (2002) [Per *J.* Corona, Third Division].

[59] *Id.* at 329.

Every conviction requires that the prosecution prove: (1) the identity of the accused; and (2) the fact of the crime. The second requirement is fulfilled when all the elements of the crime charged are present.[60]

Article 148 of the Revised Penal Code provides:

> Article 148. Direct assaults. — Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prision correccional* in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional* in its minimum period and a fine not exceeding 500 pesos shall be imposed.

Direct assault may be carried out in two (2) modes: (1) through committing an act equivalent to rebellion or sedition, but without public uprising; and (2) through employing force and resisting any person in authority while engaged in the performance of duties. The elements of the second mode of direct assault are as follows:

> Appellants committed the second form of assault, the elements of which are: 1) that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; 2) the assault was made when the said person was performing his duties or on the occasion of such performance; and 3) the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority.[61] (Citation omitted)

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[60] *People v. Vibal*, G.R. No. 229678, June 20, 2018, 867 SCRA 370, 387 [Per *J.* Peralta, Second Division].

[61] *Id.* at 392.

In this case, accused-appellant was identified as the driver of the van and the shooter who attacked and killed PO1 Monteroso. When the shooting happened, PO1 Monteroso and his team were responding to a report of a suspicious group of men aboard a van. He was also in complete uniform and aboard a police mobile.[62] When accused-appellant shot PO1 Monteroso, he knew that he was a person of authority in the exercise of official duties. Thus, all the elements of direct assault are present.

In *People v. Vibal*,[63] this Court held that when the assault leads to the death of an agent or a person in authority, the resulting offense is the complex crime of direct assault with murder or homicide.

The lower courts convicted accused-appellant of direct assault with murder. This Court modifies the conviction to the complex crime of direct assault with homicide, there being no treachery which qualified the killing of PO1 Monteroso to murder.

The essence of treachery is "in the suddenness of the attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself [or herself] and thereby ensuring the commission of the offense without risk to the offender arising from the defense which the offended party might make."[64]

For treachery to qualify the killing to murder, the following elements must be proven: "(1) that at the time of the attack, the victim was not in a position to defend himself [or herself], and (2) that the offender consciously adopted the particular means, method or form of attack employed by him [or her]."[65]

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[62] CA *rollo*, pp. 56-58.

[63] G.R. No. 229678, June 20, 2018, 867 SCRA 370, 393 (Per *J.* Peralta, Second Division] citing *People v. Abalos*, 328 Phil. 24, 36 (1996) [Per *J.* Regalado, Second Division].

[64] *Id.* at 393-394 citing *People v. Escote, Jr.*, 448 Phil. 749 (2003) [Per *J.* Callejo, *Sr., En Banc*].

[65] *People v. Ordona*, 818 Phil. 670, 681 (2017) [Per *J.* Leonen, Third Division] citing *People v. Abadies*, 469 Phil. 132, 105 (2002) [Per *J.* Callejo, Sr., Second Division].

The prosecution was not able to establish the existence of treachery here. After the chase, PO1 De Vera's team ordered the van's passengers to alight and raise their hands. Because the driver, accused-appellant, refused to heed the order, PO1 Monteroso approached the vehicle to accost him. PO1 Monteroso was a fully armed and trained police officer; his training and police work would have prepared him for the possible hostilities that a person impending arrest may commit. The previous car chase and accused-appellant's refusal to heed police order should have warned him of a possible violent behavior to evade arrest.

Thus, it is not possible that PO1 Monteroso was in no position to defend himself at the time of the attack. This Court has held that when a police officer had been forewarned of brewing violence, he or she could not have been completely taken by surprise by the attack. In such instance, therefore, treachery could not have attended the killing.[66]

Here, without the first element of treachery, the killing of PO1 Monteroso cannot be qualified to murder. Accused-appellant is, therefore, guilty of the complex crime of direct assault with homicide.

Article 48 of the Revised Penal Code requires that the penalty for a complex crime is the maximum penalty of the graver offense. The penalty for homicide is *reclusion temporal* while the penalty for direct assault is *prision correccional*. Thus, the proper penalty to be imposed for the complex crime of direct assault with homicide is *reclusion temporal*, subject to the Indeterminate Sentence Law.

Pursuant to *People v. Jugueta*,[67] the civil indemnity awarded to the heirs of PO1 Monteroso should be decreased to ₱50,000.00, moral damages retained at ₱50,000.00, and temperate damages

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[66] *People v. Feliciano*, 418 Phil. 88, 105 (2001) [Per *J.* Quisumbing, *En Banc*].

[67] 783 Phil. 806 (2016) [Per *J.* Peralta, *En Banc*].

increased to ₱50,000.00. There being no aggravating or qualifying circumstance proven during trial, the award of exemplary damages should be deleted.

WHEREFORE, the findings of fact and conclusions of law of the Court of Appeals are **PARTIALLY REVERSED**. The assailed August 12, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06017 is **MODIFIED**. Accused-appellant Glecerio Pitulan *y* Briones is found **GUILTY** of the complex crime of direct assault with homicide. He is sentenced to an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

Accused-appellant is ordered to pay the heirs of Police Officer 1 Aldy Monteroso civil indemnity, moral damages, and temperate damages worth ₱50,000.00 each.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.[68]

SO OREDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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

FIRST DIVISION

[G.R. No. 230005. January 22, 2020]

SEVENTH FLEET SECURITY SERVICES, INC., *petitioner, vs.* **RODOLFO B. LOQUE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; "FLOATING STATUS" OR TEMPORARY "OFF-DETAIL" OF AN EMPLOYEE IS A FORM OF TEMPORARY RETRENCHMENT OR LAY-OFF. — While there is no specific provision in the Labor Code governing the "floating status" or temporary "off-detail" of employees, the Court, applying Article 301 [286] of the Labor Code by analogy, considers this situation as a form of temporary retrenchment or lay-off. Article 301 [286] of the Labor Code reads: ART. 301. [286] *When Employment not Deemed Terminated.* — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months x x x shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty. Conformably with the above provision, the placement of an employee on "floating status" must not exceed six months. Otherwise, the employee may be considered constructively dismissed. Furthermore, the burden of proving that there are no posts available to which the security guard can be assigned rests on the employer. However, the mere lapse of six months in "floating status" should not automatically result to constructive dismissal. The peculiar circumstances of the employee's failure to assume another post must still be inquired upon.

2. ID.; ID.; ID.; PLACING AN EMPLOYEE ON FLOATING STATUS FOR MORE THAN SIX MONTHS WITHOUT BEING DEPLOYED TO A SPECIFIC ASSIGNMENT IS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL. —

Considering that Loque was placed on floating status for more than six months without being deployed to a specific assignment, and that the letters dated May 14, 2014 and May 28, 2014 are bereft of any reference to any specific client or indication that he would be assigned to a specific client, Loque is therefore deemed constructively dismissed. It follows then that Loque could not have abandoned his employment with Seventh Fleet, for abandonment is incompatible with constructive dismissal.

3. ID.; ID.; ID.; ABANDONMENT AS A JUST CAUSE FOR TERMINATION, DEFINED; ELEMENTS THAT MUST CONCUR; CIRCUMSTANCES IN CASE AT BAR NEGATE THE EXISTENCE OF A CLEAR INTENTION TO SEVER THE EMPLOYER-EMPLOYEE RELATIONSHIP ON THE PART OF THE EMPLOYEE. — Abandonment, as a just cause for termination, requires "a deliberate and unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his or her work." The following elements must therefore concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. There is no showing that Loque intended to sever his employment with Seventh Fleet. On the contrary, there is strong indication that Loque wanted to resume work. As shown by the records, after serving his 10-day suspension, Loque reported for work but was instead told that he was being placed on floating status and instructed to wait for Seventh Fleet's call. x x x He also filed the instant complaint for constructive dismissal shortly after the lapse of his six-month floating status. His immediate filing of the complaint is proof enough of his desire to return to work and negates any suggestion of abandonment. In addition, Loque has been in the service of Seventh Fleet since 2006, or for eight years already before his dismissal in 2014 and, thus, could not have had such intention to abandon his work. The totality of these circumstances negates the existence of a clear intention to sever the employer-employee relationship on the part of Loque.

4. ID.; ID.; ID.; WHERE REINSTATEMENT IS NO LONGER APPROPRIATE IN VIEW OF STRAINED RELATIONS BETWEEN THE PARTIES, THE AWARD OF

BACKWAGES AND SEPARATION PAY IS PROPER. — Having been illegally dismissed from employment, Loque is, therefore, entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay may be awarded in lieu of reinstatement. Considering that Loque no longer asked to be reinstated, the Court takes it as an *indicum* of strained relations between Loque and Seventh Fleet which makes reinstatement no longer appropriate. Thus, the award of backwages and separation pay in lieu of reinstatement is proper in this case. However, a re-computation of the backwages and separation pay is in order considering that backwages and separation pay must be computed until the finality of the decision ordering the payment of separation pay.

5. ID.; ID.; ID.; AN AWARD OF ATTORNEY'S FEES TO AN ILLEGALLY DISMISSED EMPLOYEE WHO WAS IMPELLED TO LITIGATE TO PROTECT HIS INTEREST IS PROPER. — Anent the award of attorney's fees, the Court finds the award of such relief proper. Contrary to Seventh Fleet's proposition, the lack of bad faith does not necessarily negate the award of attorney's fees. In *Tangga-an v. Philippine Transmarine Carriers, Inc.*, the Court, citing *Kaisahan ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, upheld the award of attorney's fees in favor of an employee who had been illegally dismissed and impelled to litigate to protect his interests.

APPEARANCES OF COUNSEL

Aristeo B. Lastica, Jr. for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the

[1] *Rollo*, pp. 32-45.

Decision[2] dated September 22, 2016 and Resolution[3] dated February 16, 2017 of the Court of Appeals (CA) in CA G.R. SP No. 143182 which annulled the Resolutions dated July 30, 2015[4] and September 29, 2015[5] of the National Labor Relations Commission (NLRC).

Facts

The facts, as narrated by the CA, are as follows:[6]

Sometime in May 2006, respondent Rodolfo B. Loque (Loque) was hired as a security guard by petitioner Seventh Fleet Security Services, Inc. (Seventh Fleet) and its President, Medy Lastica (Lastica). Loque alleged that he was treated with hostility after he filed a complaint for underpayment of wages and other money claims against Seventh Fleet and Lastica in September 2013. Loque claimed that on December 25, 2013, he was suddenly relieved from his post upon request of Second Midland Offices Condominium Corp. (Second Midland), Seventh Fleet's client and Loque's place of assignment. The next day, Loque received an order suspending him for 10 days. After the lapse of his 10-day suspension, or on January 7, 2014, Loque allegedly reported for work, but he was informed that he was placed on "floating status" and was advised to wait for a call from Seventh Fleet.

On May 16, 2014, a Friday, Loque received a letter from Seventh Fleet directing him to report to its office within 48 hours from receipt thereof. Loque went to Seventh Fleet's office on May 19, 2014, a Monday, but was not allowed to enter and was made to wait outside the office. Before leaving the premises, Loque handed a letter to security guard Dario Amores, Jr.

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[2] *Id.* at 16-27. Penned by Associate Justice Rodil V. Zalameda (now a Member of this Court) and concurred in by Associate Justices Florito S. Macalino and Pedro B. Corales.

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

[4] *Id.* at 95-102.

[5] *Id.* at 105-106.

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

(Amores), informing Seventh Fleet that he was ready to report for duty on the same day. Seventh Fleet wrote a second letter dated May 28, 2014, allegedly to make it appear that Loque failed to report to work despite Seventh Fleet's return to work order.

In a letter dated July 11, 2014, Loque inquired with Seventh Fleet regarding the status of his employment. Loque stressed that he was refused to return to work by Seventh Fleet even though he obeyed the return to work order.

On July 28, 2014, Loque filed a complaint for constructive dismissal, and payment of separation pay and full backwages. He argued that since he was placed on floating status from January 7, 2014 to July 28, 2014, or a period of more than six months, he is deemed to have been constructively dismissed.

Seventh Fleet, on the other hand, denied Loque's allegation that he was constructively dismissed. Seventh Fleet also refuted the allegation that Loque was treated with hostility after he filed a complaint for underpayment of wages and other money claims against Seventh Fleet and Lastica. Instead, Seventh Fleet asserted that Loque was actually treated with kindness as if there was no ongoing labor dispute between them.

Seventh Fleet also added that it received a report from the security guards assigned at Second Midland regarding an offense committed by Loque. According to the security guards, in the late evening of November 7, 2013, Loque, who was then no longer on duty, went out of Second Midland and rode a motorbike with Ferdinand Manaois (Manaois), a security guard from a different agency. Loque returned to Second Midland at around midnight, used the backdoor to gain entry, and got a key from the drawer of the guard's table. Loque then opened the gate located at the building's basement so Manaois could enter the building without passing through the guards on duty. Loque and Manaois stayed in the building overnight. To avoid any argument, the guards on duty did not confront Loque but decided to write a report informing Seventh Fleet of the incident.

Seventh Fleet required Loque to explain why he returned to Second Midland with his companion and stayed beyond his hours of duty, knowing that neither Seventh Fleet's Code of Disciplinary Rules and Regulations nor Second Midland authorize, the same. In his letter, Loque reasoned that due to inclement weather he was forced to ask Engr. Nicolas Dayalo, Jr. (Engr. Dayalo), the building administrator of Second Midland, if he could stay in the building overnight. Loque also claimed that he offered to help the other guards in case of emergency or flooding in the area.

In order to avoid getting involved in the issue between Seventh Fleet and Loque, Engr. Dayalo requested that Loque be replaced. Subsequently, upon recommendation of Renato Morelos, Seventh Fleet's Operation Manager, Loque was suspended for a period of 10 days, starting December 26, 2013.

Seventh Fleet alleged that on May 14, 2014, they sent Loque a letter directing him to report for posting, but Loque did not comply with the directive. On May 28, 2014, Seventh Fleet sent Loque another letter reiterating the instruction to report for posting. However, Seventh Fleet still received no word from Loque. Seventh Fleet was surprised to learn that Loque had filed a complaint for illegal dismissal, and payment of separation pay and full backwages.

Ruling of the Labor Arbiter

The Labor Arbiter rendered a Decision[7] dated February 12, 2015 finding Seventh Fleet and Lastica guilty of illegal constructive dismissal, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding Respondents guilty of illegal constructive dismissal. Accordingly, Respondents are ordered to pay jointly and severally Complainant his separation pay in the sum of ₱125,820.00 and full backwages in the amount of ₱209,076.53, and 10% attorney's fees in the sum of ₱33,489.65.

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[7] *Id.* at 161-177.

All other claims are dismissed for lack of merit.

SO ORDERED.[8]

The Labor Arbiter noted that Loque was not given any work assignment after his 10-day suspension, or from January 7, 2014 until he filed the complaint for constructive dismissal on July 28, 2014. In other words, Loque was on floating status for more than six months. Thus, the Labor Arbiter, citing *Sebuguero v. NLRC*,[9] held that Loque is already deemed constructively dismissed.

The Labor Arbiter also rejected Seventh Fleet's argument that Loque was guilty of abandonment, noting that Loque was repeatedly refused entry to Seventh Fleet's office and was ignored every time he would attempt to report for duty. Moreover, the Labor Arbiter found that there was no clear intention on the part of Loque to sever his employment relationship with Seventh Fleet.

Aggrieved, Seventh Fleet and Lastica appealed the ruling of the Labor Arbiter to the NLRC.

Ruling of the NLRC

The NLRC promulgated a Resolution[10] dated July 30, 2015, reversing and setting aside the ruling of the Labor Arbiter, and dismissing the complaint for lack of merit.

The NLRC held that placing Loque on floating status was a valid exercise of Seventh Fleet's management prerogative. The NLRC rejected Loque's allegation that he went to Seventh Fleet's office and was not allowed to enter. Instead, the NLRC gave credence to the sworn statement of Amores, the security guard stationed at the gate of the village where Seventh Fleet's office is located, who narrated that Loque did not proceed to Seventh Fleet's office but only left a copy of his letter with him at the

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[8] *Id.* at 176-177.

[9] 318 Phil. 635 (1995).

[10] *Rollo*, pp. 95-103.

village guardhouse. Moreover, the NLRC held that Loque's inquiry on the status of his employment cannot be construed as evidence to support his allegation that he was not allowed to report for duty for six months.

Loque's motion for reconsideration of the NLRC Resolution was denied in a Resolution[11] dated September 29, 2015, prompting him to file a Petition for *Certiorari* before the CA.

Ruling of the Court of Appeals

On September 22, 2016, the CA promulgated the assailed Decision granting the petition for *certiorari*, annulling and setting aside the NLRC Resolution, and reinstating the Labor Arbiter's Decision with modification. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Certiorari is hereby **GRANTED**. Accordingly, the assailed Resolutions dated 30 July 2015 and 29 September 2015 issued by the National Labor Relations Commission are **ANNULLED** and **SET ASIDE**. Accordingly, the Decision of the Labor Arbiter dated 12 February 2015 finding that petitioner was illegally dismissed is hereby **REINSTATED** with the **MODIFICATION** that private respondent Seventh Fleet Security Services, Inc. is ordered to pay petitioner Rodolfo Balat Loque his separation pay in the sum of one hundred twenty-five thousand eight hundred twenty (₱125,820.00) pesos, full backwages in the amount of two hundred nine thousand seventy-six pesos and fifty-three centavos (₱209,076.53), and attorney's fees in the sum of thirty-three thousand four hundred eighty-nine pesos and sixty-five centavos (₱33,489.65).
>
> In consonance with the prevailing jurisprudence, the monetary judgment due to the petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of the Decision until fully satisfied.
>
> Further, for lack of legal basis, the Complaint against private respondent Medy Lastica is **DISMISSED** and she is **ABSOLVED** from liability in the payment of separation pay and full backwages to petitioner Loque.

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[11] *Id.* at 105-106.

SO ORDERED.[12]

Concurring with the Labor Arbiter, the CA held that Seventh Fleet's act of putting Loque on floating status for more than six months is tantamount to constructive dismissal. The CA further held that Loque is not guilty of abandonment. The CA also stated that Loque could not have afforded to turn down any job posting while waiting to be recalled to work considering that he had been without a regular job since January 7, 2014, and was only able to work on a reliever basis.

On the other hand, the CA absolved Lastica for want of proof of negligence or bad faith on her part.

Seventh Fleet sought reconsideration of the CA Decision but was denied in a Resolution dated February 16, 2017. Hence, this Petition.

In his Comment dated December 12, 2017, Loque insisted on his version of facts and argued that his placement on floating status for more than six months already amounted to constructive dismissal.

On the other hand, in their Reply dated August 6, 2018, Seventh Fleet and Lastica once again belied Loque's allegation that he was barred from reporting at their office. Instead, Seventh Fleet and Lastica argued that Loque failed to report to work despite the directives from Seventh Fleet.

Issue

Whether Loque was constructively dismissed from employment and, thus, entitled to his money claims.

The Court's Ruling

The Petition lacks merit.

The jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 is limited only to questions of law.[13]

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[12] *Id.* at 26.

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

In labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC.[14]

Here, the CA held that the NLRC committed grave abuse of discretion in reversing the Decision of the Labor Arbiter and dismissing the complaint of Loque. The Court agrees with the CA.

The instant controversy centers on the legality of Loque's "floating status." In security services, the "floating status" or temporary "off-detail" of an employee may take place when there are no available posts to which the employee may be assigned — which may be due to the non-renewal of contracts with existing clients of the agency, or from a client's request for replacement of guards assigned to it.[15]

While there is no specific provision in the Labor Code governing the "floating status" or temporary "off-detail" of employees, the Court, applying Article 301 [286] of the Labor Code by analogy, considers this situation as a form of temporary retrenchment or lay-off.[16] Article 301 [286] of the Labor Code reads:

> ART. 301. [286] *When Employment not Deemed Terminated.* — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

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[14] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014).

[15] *Salvaloza v. NLRC*, 650 Phil. 543, 557 (2010).

[16] *Superior Maintenance Services, Inc. v. Bermeo*, G.R. No. 203185, December 5, 2018.

Conformably with the above provision, the placement of an employee on "floating status" must not exceed six months. Otherwise, the employee may be considered constructively dismissed.[17] Furthermore, the burden of proving that there are no posts available to which the security guard can be assigned rests on the employer.[18] However, the mere lapse of six months in "floating status" should not automatically result to constructive dismissal. The peculiar circumstances of the employee's failure to assume another post must still be inquired upon.[19]

In this case, it is undisputed that Loque was placed on floating status beginning on the lapse of his 10-day suspension on January 7, 2014. Thus, at the time he filed the complaint for constructive dismissal and money claims on July 28, 2014, he has been on "floating status" for six months and 21 days.

To avoid liability for constructive dismissal, Seventh Fleet asserted that it had directed Loque "*to report to [Seventh Fleet's office] for posting within forty eight (48) hours*"[20] through the letters dated May 14, 2014 and May 28, 2014. Seventh Fleet faulted Loque for not complying with its directive. On the other hand, Loque claimed that he went to Seventh Fleet's office to report for work on two occasions — on May 19, 2014 and July 11, 2014, as shown by his even dated letters. Loque further alleged that he was barred from entering the premises of Seventh Fleet on those dates and, thus, was constrained to write those letters instead.

As with the CA, the Court is likewise inclined to believe the allegations of Loque. The Court notes that other than bare denials, Seventh Fleet was not able to show that Loque was not barred from entering its premises. Thus, Loque could not be faulted

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[17] *Ibon v. Genghis Khan Security Services*, 811 Phil. 250, 247 (2017).

[18] *Nationwide Security and Allied Services, Inc. v. Valderama*, 659 Phil. 362, 370 (2011).

[19] *Exocet Security and Allied Services v. Serrano*, 744 Phil. 403, 420 (2014).

[20] *Rollo*, pp. 143, 145.

for merely leaving the letter dated May 19, 2014 with security guard Amores, and for sending the letter dated July 11, 2014 through private courier. Also noteworthy, Seventh Fleet did not dispute the July 11, 2014 letter but merely attempted to discredit Loque by saying that the letter was merely "crafted"[21] in preparation to the filing of the complaint. Then again, Seventh Fleet did not respond nor refute the contents of said letter. At this point, it bears stressing that the factual findings of the CA are generally binding on the Court,[22] and the latter retains full discretion on whether to review the factual findings of the CA.[23] In this case, the Court finds no cogent reason to disturb the findings of the CA that Loque went to the office of Seventh Fleet.

At any rate, the letters dated May 14, 2014 and May 28, 2014 sent by Seventh Fleet to Loque are in the nature of general return to work orders. Such general return to work orders will not absolve Seventh Fleet since jurisprudence requires not only that the employee be recalled to the agency's office, but that the employee be deployed to a *specific client* before the lapse of six months. As held by the Court in *Ibon v. Genghis Khan Security Services*,[24] *viz*.:

> In *Tatel v. JLFP Investigation* ([*JLFP*] *Investigation*), the Court initially found that the security guard was constructively dismissed notwithstanding the employer's letter ordering him to report back to work. It expounded that in spite of the report-to-work order, the security guard was still constructively dismissed because he was not given another detail or assignment. On motion for reconsideration, however, the Court reversed its ruling after it was shown that the security guard was in fact assigned to a specific client, but the latter refused the same and opted to wait for another posting.

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[21] Memorandum of Appeal dated June 2, 2015, *id.* at 185.

[22] *Pascual v. Burgos, et al.*, 776 Phil. 167, 169 (2016).

[23] *Id.* at 169.

[24] *Supra* note 17. See also *Padilla v. Airborne Security Service, Inc.*, G.R. No. 210080, November 22, 2017, 846 SCRA 310.

A holistic analysis of the Court's disposition in [*JLFP*] *Investigation* reveals that: [1] an employer must assign the security guard to another posting within six (6) months from his last deployment, otherwise, he would be considered constructively dismissed; and [2] the security guard must be assigned to a specific or particular client. A general return-to-work order does not suffice.

In *Exocet Security and Allied Services Corporation v. Serrano (Exocet Security)*, the Court absolved the employer even if the security guard was on a floating status for more than six (6) months because the latter refused the reassignment to another client, to wit:

> In the controversy now before the Court, there is no question that the security guard, Serrano, was placed on floating status after his relief from his post as a VIP security by his security agency's client. Yet, there is no showing that his security agency, petitioner Exocet, acted in bad faith when it placed Serrano on such floating status. What is more, the present case is not a situation where Exocet did not recall Serrano to work within the six-month period as required by law and jurisprudence. Exocet did, in fact, make an offer to Serrano to go back to work. x x x
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> Clearly, Serrano's lack of assignment for more than six months cannot be attributed to petitioner Exocet. On the contrary, records show that, as early as September 2006, or one month after Serrano was relieved as a VIP security, Exocet had already offered Serrano a position in the general security service because there were no available clients requiring positions for VIP security. Notably, even though the new assignment does not involve a demotion in rank or diminution in salary, pay, or benefits, Serrano declined the position because it was not the post that suited his preference, as he insisted on being a VIP Security. x x x
>
> 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. (Emphases in the original omitted)

> Applying the foregoing to the present controversy, respondent should have deployed petitioner to a **specific** client within six (6) months from his last assignment. The correspondences allegedly sent to petitioner merely required him to explain why he did not report to work. He was never assigned to a particular client. Thus, even if petitioner actually received the letters of respondent, he was still constructively dismissed because none of these letters indicated his reassignment to another client. Unlike in *Exocet Security and* [*JLFP*] *Investigation*, respondent is guilty of constructive dismissal because it never attempted to redeploy petitioner to a definite assignment or security detail.[25] (Emphasis in the original; citations omitted)

Considering that Loque was placed on floating status for more than six months without being deployed to a specific assignment, and that the letters dated May 14, 2014 and May 28, 2014 are bereft of any reference to any specific client or indication that he would be assigned to a specific client, Loque is therefore deemed constructively dismissed. It follows then that Loque could not have abandoned his employment with Seventh Fleet, for abandonment is incompatible with constructive dismissal.

Abandonment, as a just cause for termination, requires "a deliberate and unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his or her work."[26] The following elements must therefore concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[27]

There is no showing that Loque intended to sever his employment with Seventh Fleet. On the contrary, there is strong indication that Loque wanted to resume work.

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[25] *Id.* at 258-260.

[26] *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, 514 Phil. 488, 496-497 (2005).

[27] *Icawat v. National Labor Relations Commission*, 389 Phil. 441, 445 (2000).

As shown by the records, after serving his 10-day suspension, Loque reported for work but was instead told that he was being placed on floating status and instructed to wait for Seventh Fleet's call.[28] Loque also sent Seventh Fleet the letter dated May 19, 2014 to inform the latter that he was ready to report for duty, and a letter dated July 11, 2014 to inquire on the status of his employment.[29] He also filed the instant complaint for constructive dismissal shortly after the lapse of his six-month floating status.[30] His immediate filing of the complaint is proof enough of his desire to return to work and negates any suggestion of abandonment.[31] In addition, Loque has been in the service of Seventh Fleet since 2006, or for eight years already before his dismissal in 2014[32] and, thus, could not have had such intention to abandon his work.[33] The totality of these circumstances negates the existence of a clear intention to sever the employer-employee relationship on the part of Loque.

Having been illegally dismissed from employment, Loque is, therefore, entitled to the twin reliefs of full backwages and reinstatement.[34] If reinstatement is not viable, separation pay may be awarded in lieu of reinstatement.[35] Considering that Loque no longer asked to be reinstated,[36] the Court takes it as an *indicia* of strained relations between Loque and Seventh Fleet which makes reinstatement no longer appropriate. Thus,

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[28] CA Decision, *rollo*, p. 17.

[29] *Id.*

[30] Complaint dated July 28, 2014, *rollo*, p. 108.

[31] *Tatel v. JLFP Investigation Security Agency, Inc.*, 755 Phil. 171, 185 (2015).

[32] *Supra* note 30.

[33] *Id.*

[34] *Peak Ventures Corporation v. Heirs of Villareal*, 747 Phil. 320, 323 (2014).

[35] *Id.*

[36] *Supra* note 29.

the award of backwages and separation pay in lieu of reinstatement is proper in this case. However, a re-computation of the backwages and separation pay is in order considering that backwages and separation pay must be computed until the finality of the decision ordering the payment of separation pay.[37]

Anent the award of attorney's fees, the Court finds the award of such relief proper. Contrary to Seventh Fleet's proposition, the lack of bad faith does not necessarily negate the award of attorney's fees. In *Tangga-an v. Philippine Transmarine Carriers, Inc.*,[38] the Court, citing *Kaisahan ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*,[39] upheld the award of attorney's fees in favor of an employee who had been illegally dismissed and impelled to litigate to protect his interests.

Finally, conformably with prevailing jurisprudence, legal interest at the rate of six percent (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 hereby **DENIED**. The Court of Appeals Decision dated September 22, 2016 and Resolution dated February 16, 2017 are hereby **AFFIRMED** subject to **MODIFICATION**. Accordingly, petitioner Seventh Fleet Security Services, Inc. is ordered to pay respondent Rodolfo B. Loque:

1. Full backwages computed from the date of his constructive dismissal until the finality of this Decision;

2. Separation pay computed from the date respondent Rodolfo B. Loque commenced employment until the finality of this Decision at the rate of one (1) month's salary for every year of service, with a fraction of a

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[37] *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 101-102 (2013).

[38] 706 Phil. 339 (2013).

[39] 676 Phil. 262 (2011).

year of at least six (6) months being counted as one (1) whole year; and

3. Attorney's fees equivalent to ten percent (10%) of the total award.

The total monetary award shall be subject to interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full payment.

Let the records of the case be remanded to the Labor Arbiter for proper computation of the award in accordance with this Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 231639. January 22, 2020]

THE HEIRS OF MARSELLA T. LUPENA (in substitution of MARSELLA T. LUPENA), *petitioners, vs.* **PASTORA MEDINA, JOVITO PAGSISIHAN, CENON PATRICIO, and BERNARDO DIONISIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN AN APPEAL VIA *CERTIORARI*, IT IS NOT PROPER FOR THE COURT TO RE-WEIGH AND RE-ASSESS THE EVIDENTIARY VALUE OF THE RELOCATION PLAN, BEING A PURELY FACTUAL ISSUE. — From a precursory

reading of the instant Petition, it becomes readily apparent that the instant Petition puts forward a *purely factual issue*. x x x A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation. It is unmistakably clear that in the instant Petition, the Court is being asked to re-weigh and re-assess the evidentiary value of the Relocation Plan. A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal via *certiorari* before the Court and are not proper for its consideration. The Court is not a trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.

2. ID.; ID.; ID.; THE COURT AFFIRMED THE FACTUAL FINDINGS OF THE COURT OF APPEALS THAT PETITIONERS FAILED TO SUFFICIENTLY ESTABLISH THAT RESPONDENTS ENCROACHED UPON THE SUBJECT PROPERTY. –– [A]fter a careful study of the records of the instant case, the Court finds no cogent reason to reverse the factual finding of the CA that the Relocation Plan presented by the petitioners Heirs of Lupena as their evidence in chief itself showed that the respondents did not encroach on the subject property. In the instant Petition, the petitioners Heirs of Lupena maintain that the aforementioned Relocation Plan that they presented during the trial is admissible and competent to show encroachment. However, as stressed by the CA in the assailed Decision, the Relocation Plan heavily relied upon by the petitioners Heirs of Lupena does not indicate whatsoever that the subject property was encroached upon by the respondents. x x x [W]ith the Relocation Plan submitted into evidence by the petitioners Heirs of Lupena incontrovertibly showing that no buildings, enclosures, and other permanent structures were put up by the respondents on the subject property, the CA did not commit any error in holding that the petitioners Heirs of Lupena failed to sufficiently establish that the respondents encroached upon the subject property.

APPEARANCES OF COUNSEL

Valdez Maulit & Associates for petitioners.

Campanilla Ponce Law Firm for respondents J. Pagsisihan & B. Dionisio.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review[1] (Petition) under Rule 45 of the Rules of Court filed by the petitioners Heirs of Marsella T. Lupena (petitioners Heirs of Lupena), in substitution of Marsella T. Lupena (Lupena) assailing the Decision[2] dated January 13, 2017 (assailed Decision) and Resolution[3] dated May 11, 2017 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. CV No. 106794.

The Facts and Antecedent Proceedings

As culled from the recital of facts in the assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

> On 29 August 2001, the original plaintiff, [Lupena], filed a [Complaint[4] for Recovery of Possession of Real Property (Complaint)] against [respondents] Pastor Medina (Medina), Jovita Pagsisihan (Pagsisihan), Cenon Patricio (Patricio) and Bernardo Dionisio (Dionisio) before the [Regional Trial Court of Pasig City, Branch 155 (RTC)].
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> While the case was pending before the RTC, Lupena died but she was substituted by her heirs[, the petitioners Heirs of Lupena], represented by Hermogenes L. Jose.

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[1] *Rollo*, pp. 8-18.

[2] *Id.* at 20-35. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Danton Q. Bueser and Renato C. Francisco, concurring.

[3] *Id.* at 36-37.

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

[Petitioners Heirs of Lupena's] View

Lupena was the registered owner of a parcel of land with an area of 180 square meters located in Brgy. Bagumbayan, Taguig [(subject property)], covered by Transfer Certificate of Title (TCT) No. 18547. In or about 1985-1986, [respondents Medina, Pagsisihan, Patricio, and Dionisio (respondents)] entered the property of Lupena and unlawfully withheld and deprived the latter of possession over a big portion thereof by force, intimidation, threat, strategy and stealth. Lupena demanded that the [respondents] vacate the premises but they adamantly refused and ignored her plea. Lupena thus hired a licensed surveyor, Engineer Oscar Tenazas (Engr. Tenazas) to determine the extent and exact area of the portion of lot individually encroached by each [respondent]. After the survey, Engr. Tenazas prepared a *Relocation Plan*, which was duly approved by the Land Management Bureau (LMB), Department of Environment and Natural Resources (DENR) and a *Sketch Plan*. The [respondents] were found to have encroached on Lupena's lot as follows: 1) [respondent] Medina occupied 34 square meters; 2) [respondent] Pagsisihan occupied 61 square meters; 3) [respondent] Patricio occupied 8 square meters; and 4) [respondent Dionisio] occupied 15 square meters.

During trial, Francisco Jose and Engr. Oscar Tenazas testified to prove the [petitioners Heirs of Lupena's] cause of action.

Francisco Jose testified that the property subject of the case was owned by his mother, Lupena, as shown by TCT No. [1]8547. They learned that there was an encroachment on their property only after they had it surveyed by Engr. Tenazas. They brought the matter to the barangay but they failed to settle the same.

On cross-examination, Francisco Jose testified that he has visited the subject premises daily since 1991 because he had to tend his mother's store. He cannot, however, recall when the [respondents] built their houses. He, however, admitted that as early as 1991, the houses of the [respondents] were already there on the subject property.

Engr. Tenazas, who is a geodetic and civil engineer, testified, among others, that sometime in July 2000, Lupena, through her son, Francisco Jose, hired him to conduct a relocation survey of their land for ₱10,000.00. To accomplish his job, he did some research work at the Land Registration Commission and LMB. Thereafter, he conducted the actual survey. He found out that a portion of the land that he was tasked to relocate was actually occupied by four

people, namely, [respondents] Pastora Medina, Jovito Pagsisihan, Cenon Patricio and Bernardo Dionisio. After the survey, he prepared a plan and the necessary papers to be submitted to LMB for approval. These papers included the original plan, the resulting completion of the relocation survey, field notes with cover, certified true copy of the land title, transmittal of survey returns and the Geodetic Engineer's report. He was also required by his client to make a sketch of the land in which the houses of the aforementioned occupants were located and what area they occupied on the mentioned lot. He pointed out that in the sketch plan that he prepared, it was shown that [respondent] Pagsisihan occupied an area of 61 square meters; [respondent] Dionisio occupied 15 square meters; [respondent] Medina occupied 34 square meters and [respondent] Patricio occupied 8 square meters. He also testified that the relocation plan that he prepared after he conducted the survey was approved by the LMB on 23 August 2000.

On cross, Engr. Tenazas testified that since the subject lot was titled, there was no need to notify the four occupants, although he notified [respondent] Pastora because the lot of the latter was adjacent to that of Lupena. When he conducted the survey, the four owners were, however, present.

[Respondents'] View

For their part, [respondents] Pagsisihan and Dionisio alleged that they were owners of the parcel of land on which their houses were erected. The respective boundaries of their houses were all within the area covered by TCT No. 268143-(701) in the names of Spouses Bernardo Dionisio and Delicia Leuterio and Spouses Victor and Carmen Dionisio. In 1970, [respondents] Pagsisihan and Dionisio, who were relatives, decided to partition the lot among themselves into two portions. [Respondent] Pagsisihan had established and erected his own residence on the former front yard of the lot in the same year.

[Respondents] Pagsisihan and Dionisio argued that, assuming without admitting, that they had indeed encroached on the property of Lupena, they ought to be considered builders in good faith for way back in 1964, the year in which [respondent] Dionisio erected his family dwelling, Lupena had not informed him that he had encroached on her property, considering that the lot was already enclosed by a wooden fence, which was distinct and made known to the public. Also, the adjoining lot was a pathway which was established and used by the farmers in going to the rice fields as early as 1950.

On the part of [respondent] Medina, she alleged that she was the owner of the parcel of land on which the family residence was erected. Although she admitted that her family had encroached on a nearby lot, such lot was not the lot allegedly owned by Lupena since the adjoining lot was a public alley which was used by the community way back in the 1950's. It used to be a trail utilized by the farmers. [Respondent] Medina further argued that assuming that the encroached portion was indeed the lot of Lupena, the same cannot be reverted to the latter, since in September 1988, Lupena had ceded and transferred to her an aliquot portion of the lot with an area of 100 square meters for and in consideration of ₱40,000.00. She had already made a partial payment of ₱12,000.00, but she had not received from Lupena the 100 square meters of land. She asserted that the partial payment could be applied to the alleged encroached area with reservation on her part to ask for specific performance. Finally, [respondent] Medina argued that she was a builder in good faith because the former lot on which she had erected her family dwelling was owned by Lupena herself and the latter did not warn her that she had allegedly encroached on the subject lot.

Engr. Ervin Boado testified, among others, that he was a licensed geodetic engineer. He knew about the boundary, dispute between Lupena and the [respondents] Pagsisihan and Dionisio because the Mediation Office referred the survey of their lots to him. On 9 October 2004, he conducted a verification survey of the three lots of Lupena, [respondent] Dionisio and [respondent] Medina in order to identify their boundaries. All adjoining parties witnessed his survey. In the first field survey, the geodetic engineer of Lupena, Engr. Tenazas, was not in the area. But the second time around, when he submitted all the final drawings and results of the survey, Engr. Tenazas appeared. He conducted his survey using the following as reference: TCT-2825 in the name of Melchor Medina and Pastora Medina; TCT No. 268143 in the name of Spouses Bernardo Dionisio and Delicia Leuterio and Spouses Victor Santos and Carmen Dionisio; the approved LRC Subdivision Plan in the name of Regina Gutierrez; and the approved survey relocation plan of the lot of Marsella Lupena, Relocation Survey No. 0000094. He placed his findings in a report dated 12 October 2004. In the body of his report, he stated that as per actual land survey of the properties, it was found out that Lot 1 LRC PSD-56868 of [respondents] Dionisio, *et al.* did not encroach on Lot 4-D PSD-007607- 026227-D and Lot 3 LRC PCS-24759, but Lot 4-B was totally encroached by [respondent] Medina. He explained that the

sketch/special plan did not bear the approval of the LMB because he prepared the same upon the request of the Mediation Office and not for the purpose of submission to the LMB. He also explained that when he used the relocation plan prepared by Engr. Tenazas in his first computation, the tie lines of the approved plans did not conform with each other but rather strayed from the nearest adjacent lot. He told Engr. Tenazas that these tie lines should be corrected.

On cross-examination, Engr. Boado testified that albeit the verification survey he was tasked to conduct did not include the relocation of the lots, it was, however, necessary to verify the overlapping of lots that were shown to him by the Mediation Office. He submitted the final plan to the Mediation Office, and there he compared the result of his survey with that of the survey done by Engr. Tenazas. Based on his survey, the lot of Regino Gutierrez, the original owner of the lot of [respondents] Dionisio and Pagsisihan, was intact and in good position. According to him, his verification survey need not bear the approval of the LMB because the lots subject thereof were already titled. In fact, he based his verification on the inscriptions on the land titles approved by the LMB and Land Registration Authority (LRA). He actually talked to the Chief of the Survey Division of LMB and inquired about these things and he was told to go on with the survey so that the division can look into his findings because they are the ones who would approve all the plans.

On redirect examination, Engr. Boado explained that there was a discrepancy in his survey and that of Engr. Tenazas because the LMB and the LRA used different tie lines. In the second paragraph of his report, he recommended that the resurvey of [L]ot 4-B and [L]ot 3 must be made in order to check the technical errors of the lot.

[Respondent] Pagsisihan x x x identified his judicial affidavit in court which stated, among others, that Lupena's allegation that his property encroached on hers was not true. The lot on which his house stood was covered by TCT No. 268143 in the name of spouses Bernardo and Delicia Leuterio and spouses Victor Santos and Carmen Dionisio, with an area of 241 square meters located at Bagumbayan, Taguig. He and Mrs. Dionisio were relatives and in 1970, they partitioned the 241 square-meter lot. Thus, his home stood on the front portion of the lot. He and Mrs. Dionisio obtained a copy of TCT No. 268143 because there was already an ejectment case filed with the Metropolitan Trial Court, Branch 74, docketed as Civil Case No. 1612 entitled *Marcella T. Lupena v. Pastora Medina and Jovito Pagsisihan*. The

case was dismissed on the ground that the dispossession exceeded one (1) year. Further proof that he rightfully owned the lot where his house stood was the Tax Declaration No. FL-001-012264 issued by the Taguig City Assessor in the name of spouses Victor Santos and Carmen Dionisio and spouses Bernardo and Delicia Leuterio. Moreover, there was a fence in front of his lot which he had maintained since 1964.

Also for the [respondents], Engr. Macario Cruz identified his judicial affidavit in court which stated, among others, that he was a taxmapper and a consultant at the Office of the City Assessor of Taguig City. Based on the records of the Assessor's Office, the property covered by TCT No. 268143 in the names of Spouses Victor Santos and Delicia Leuterio and Spouses Victor Santos and Carmen Dionisio and that covered by TCT No. 18547 in the name of Lupena, did not overlap each other.

On cross-examination, Engr. Macario Cruz admitted that he based his conclusion about non-overlapping of the properties on the plotting and tax declaration. He only relied on the tax map, but he did not survey the property from the ground.[5]

The Ruling of the RTC

In its Decision[6] dated November 4, 2015, the RTC dismissed the Complaint for lack of merit.

In sum, the RTC dismissed the Complaint because it found that the evidence presented by the petitioners Heirs of Lupena failed to sufficiently establish that the lots occupied by the respondents were actually part of or overlapped the property covered by TCT No. 18547 registered in the name of Lupena.

As summarized in the assailed Decision, the RTC's Decision held the following:

x x x According to the RTC, Section 643(e) of the *Revised Manual for Land Surveying Regulations in the Philippines* dated 12 March 1998, provides that when conducting a relocation survey, the "*geodetic engineer as required in verification surveys, shall inform any owner*

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[5] *Id.* at 21-28; citations omitted, underscoring and italics in the original.

[6] *Id.* at 64-78. Penned by Judge Maria Gracia A. Cadiz-Casaclang.

affected by the determination of boundaries and obtain a statement from the owner that he has been informed." In the case under review, the RTC noted that the *Relocation Plan* and *Sketch Plan* submitted by the [petitioners Heirs of Lupena] did not contain any indication that the said notice requirement was complied with by Engr. Tenazas, the geodetic engineer who conducted the relocation survey in July 2000. The RTC stressed that while it is true that the *Relocation Plan* is deemed a public document as it had been approved by the LMB, and hence entitled to be presumed correct as to its contents in accordance with Section 23, Rule 132 of the Rules of Court, the presumption under the cited Rule is not conclusive but merely disputable.

The RTC did not uphold the presumption of correctness of the contents of the aforesaid *Relocation Plan* and *Sketch Plan* in the light of the information given by Engr. Tenazas during his cross-examination. The RTC noted that albeit Engr. Tenazas claimed to have verbally informed [respondent] Medina about the survey, such claim was not proven by the evidence on hand since there was no written statement from [respondent] Medina that she had been so informed. Furthermore, Eng. Tenazas admitted in his testimony that he only notified the four occupants, after he was already done with his survey. The RTC held that such admission by Engr. Tenazas cannot simply be brushed aside as it clearly revealed that the notice requirement had not been complied with in accordance with the existing land surveying regulations. The RTC cited *Spouses Casimiro et al. v. Court of Appeals et al.*, where it was held that the requirement of notice and representation in survey proceedings is an essential part of administrative due process of law and cannot be dispensed with The RTC thus held that Engr. Tenaza's admitted failure to notify all the defendants-appellees casted a serious cloud of doubt on the veracity of the results of his relocation survey. As a consequence, the RTC did not consider the *Relocation Plan* and *Sketch* as competent and conclusive proof of the alleged encroachment of [the petitioners Heirs of Lupena's] property by the [respondents].

The RTC was thus constrained to dismiss the case since the [petitioners Heirs of Lupena's] evidence did not sufficiently establish that the lot portions occupied by the [respondents] were actually part of the property covered by TCT No. 18547.[7]

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[7] *Id.* at 28-29; italics in the original, citation omitted.

The petitioners Heirs of Lupena filed a Motion for Reconsideration[8] of the RTC's Decision, which was denied by the RTC in its Order[9] dated February 22, 2016.

Hence, the petitioners Heirs of Lupena filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA denied the appeal for lack of merit. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DENIED** and the decision on appeal is consequently **AFFIRMED**.

IT IS SO ORDERED.[10]

In sum, the CA found that "the RTC did not err in dismissing the complaint for failure of the [petitioners Heirs of Lupena] to sufficiently establish that the lot portions occupied by the [respondents] were actually part of the property of Lupena."[11]

While the CA agreed with the petitioners Heirs of Lupena that the failure of the geodetic engineer who conducted the relocation survey, *i.e.*, Engr. Tenazas, to notify the parties would not cast any serious doubt on the veracity of the results of the said survey, the CA affirmed the RTC's ruling because the Relocation Plan prepared by Engr. Tenazas did not indicate whatsoever that the subject property was encroached by the respondents.

The CA explained that:

x x x [U]nder paragraph "d" of Section 43 of the *Revised Manual for Land Surveying Regulations in the Philippines*, a geodetic engineer, in the conduct of relocation survey, must indicate in his plan the

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[8] *Id.* at 79-84.

[9] *Id.* at 85.

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

[11] *Id.* at 34.

positions of buildings, fences wall and other permanent improvements adversely affected by the determination of the boundaries. Hence, had Engr. Tenazas indeed found that there was an encroachment on Lupena's lot, he should have indicated it in his *Relocation Plan* and not merely in his *Sketch Plan*, since it was the former that embodied the result of his survey and which he submitted for approval to the LMB. Thus, there being no indication in the *Relocation Plan* of any encroachment, the same cannot be considered as competent proof that the lot of Lupena was unlawfully occupied by the [respondents].[12]

Furthermore, the CA noted that the survey and report carried out by an independent surveyor, Engr. Ervin Boado (Engr. Boado), who was commissioned by the Philippine Mediation Center, showed that there are no overlaps.[13]

The petitioners Heirs of Lupena filed a Motion for Reconsideration[14] of the assailed Decision, which was denied by the CA in the assailed Resolution.

Hence, the instant Petition before the Court.

Respondents Pagsisihan and Dionisio filed their Comment[15] to the instant Petition on July 10, 2018, maintaining that the lot being occupied by the respondents did not encroach on the subject property. In response, the petitioners Heirs of Lupena filed a Reply[16] on October 1, 2018, arguing that the Report and Sketch Plan of Engr. Boado was not approved by the LMB.

Issue

Stripped to its core, the solitary issue put forward by the instant Petition is whether the CA misappreciated the evidence on record when it found that the Relocation Plan approved by the LMB failed to show that the respondents encroached on the subject property.

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[12] *Id.*; italics in the original.

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

[14] *Id.* at 104-108.

[15] *Id.* at 114-134.

[16] *Id.* at 160-164.

The Court's Ruling

The instant Petition is *unmeritorious*.

From a precursory reading of the instant Petition, it becomes readily apparent that the instant Petition puts forward a *purely factual issue*. In the instant Petition, the petitioners Heirs of Lupena call for the reversal of the assailed Decision and Resolution based on the argument that the Relocation Plan is allegedly competent proof of encroachment. The petitioners Heirs of Lupena argue that the CA misconstrued the Relocation Plan when it ruled that, based on the said document, there was no encroachment of the subject property.

A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[17]

It is unmistakably clear that in the instant Petition, the Court is being asked to re-weigh and re-assess the evidentiary value of the Relocation Plan. A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal via *certiorari* before the Court and are not proper for its consideration.[18] The Court is not a trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.[19]

In any case, after a careful study of the records of the instant case, the Court finds no cogent reason to reverse the factual finding of the CA that the Relocation Plan presented by the

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[17] *Caiña v. People*, 288 Phil. 177, 182-183 (1992).

[18] *Bautista v. Puyat Vinyl Products, Inc.*, 416 Phil. 305, 309 (2001), citing *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, 298-A Phil. 361, 372 (1993) and *Navarro v. Commission on Elections*, 298-A Phil. 588, 593 (1993).

[19] *Republic of the Phils. v. Sandiganbayan*, 426 Phil. 104, 110 (2002); citation omitted.

petitioners Heirs of Lupena as their evidence in chief itself showed that the respondents did not encroach on the subject property.

In the instant Petition, the petitioners Heirs of Lupena maintain that the aforementioned Relocation Plan that they presented during the trial is admissible and competent to show encroachment. However, as stressed by the CA in the assailed Decision, the Relocation Plan heavily relied upon by the petitioners Heirs of Lupena does not indicate whatsoever that the subject property was encroached upon by the respondents. In fact, the petitioners Heirs of Lupena themselves admit that while Section 643(d) of the Revised Manual for Land Surveying Regulations in the Philippines requires geodetic engineers to indicate in the relocation plan the positions of buildings, fences, walls, and other permanent improvements adversely affected by the determination of the boundaries, in the Relocation Plan they offered as evidence, it states therein that there are no such adverse buildings, fences, walls, and other structures put up in the subject property. Curiously, the petitioners Heirs of Lupena even unequivocally admitted that the respondents did not put up any structure on the subject property.[20]

The petitioners Heirs of Lupena argue however that the failure of the Relocation Plan to indicate the fact that the respondents had erected any structure on the subject property does not damage their theory because "should there be any temporary structures, *e.g*. sheds, shanties, make-shift fences, the same does not need to be indicated in the plan because they are not permanent structures."[21] Simply stated, the petitioners Heirs of Lupena now argue that the respondents encroached on the subject property by erecting temporary structures and not permanent structures.

The petitioners Heirs of Lupena's new theory that the encroachment committed by the respondents was by way of

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[20] *Rollo,* p. 13.

[21] *Id.*; italics supplied, emphasis omitted.

erecting temporary structures fails to convince. During the trial, the petitioners Heirs of Lupena made it abundantly clear that, in their allegation, the respondents encroached on the subject property by building houses and occupying them.[22]

Hence, with the Relocation Plan submitted into evidence by the petitioners Heirs of Lupena incontrovertibly showing that no buildings, enclosures, and other permanent structures were put up by the respondents on the subject property, the CA did not commit any error in holding that the petitioners Heirs of Lupena failed to sufficiently establish that the respondents encroached upon the subject property.

WHEREFORE, the instant Petition is **DENIED**. The assailed Decision dated January 13, 2017 and assailed Resolution dated May 11, 2017 rendered by the Court of Appeals in CA-G.R. CV No. 106794 are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 235586. January 22, 2020]

SPOUSES MILA YAP-SUMNDAD and ATTY. DALIGDIG SUMNDAD, DATU YAP SUMNDAD, JOEL GELITO, and JOHN DOES, *petitioners, vs.* **FRIDAY'S HOLDINGS, INC., represented herein by its Director MARIO B. BADIOLA,** *respondent.*

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[22] *Id.* at 22.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; FILING OF THE MOTION BEYOND THE PRESCRIBED FIFTEEN (15)–DAY PERIOD FORECLOSES THE RIGHT TO APPEAL; THAT THE BELATED FILING WAS DUE TO THE NEGLIGENCE OF THE COUNSEL'S SECRETARY CANNOT JUSTIFY THE LENIENT APPLICATION OR SUSPENSION OF THE RULES. ––** The Motion for Reconsideration was filed beyond the fifteen (15)-day period from the time the denial of the Petition for Review, was received by the counsel. The purpose of filing a motion for reconsideration within the period to appeal is to allow an inferior court to correct itself before review by a higher court. However, if the motion for reconsideration is filed beyond such period, the motion *ipso facto* forecloses the right to appeal. x x x The petitioners admit that a copy of the CA Resolution dated May 15, 2017 was given to the handling counsel only on June 19, 2017. This will not justify the belated filing of the Motion for Reconsideration of the subject Resolution. It is the counsel's duty to adopt and to strictly maintain a system that ensures that all pleadings should be filed and duly-served within the period; and if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel. Further, petitioners' invocation of "the end view of giving substantial justice to all parties" in praying for the leniency of the late filing of their motion for reconsideration, will not automatically compel this Court to suspend the procedural rules. Procedural rules cannot simply be set aside on the basis that their non-observance may have prejudiced a party's substantive rights.

2. **ID.; ID.; ID.; ID.; EFFECTS OF LATE FILING OF THE MOTION FOR RECONSIDERATION. ––** Since the petitioners' Motion for Reconsideration of the CA Resolution dated May 15, 2017 was belatedly filed, the said Resolution became final and executory by operation of law. In other words, the petitioners' failure to file their Motion for Reconsideration within the 15-day reglementary period foreclosed any right which they may have had under the rules: *first*, in seeking reconsideration of the CA's assailed Resolution; and *second*, in exercising their right to assail the CA Resolutions dated May 15, 2017 and October 30, 2017, before this Court.

APPEARANCES OF COUNSEL

A.A. Navarro III Law Offices for petitioners.
Chavez Miranda Aseoche for respondent.

D E C I S I O N

PERALTA, *C.J.*:

This is a Petition for Review on *Certiorari* with Application for Issuance of Temporary Restraining Order *(TRO)*/Writ of Preliminary Attachment, assailing the Court of Appeals' *(CA)* Resolution[1] dated October 30, 2017, which denied the petitioners' Motion for Reconsideration of the CA Resolution[2] dated May 15, 2017 in CA-G.R. CEB-SP No. 10655.

The assailed Petition stems from the case of forcible entry filed by the respondent, praying, among others, that a Decision be rendered in its favor, and to declare him as the actual prior possessor and owner of the subject property and, therefore, entitled to a continuous, exclusive, peaceful and actual possession of the same.[3]

In a Decision[4] dated April 24, 2015, the 5th Municipal Circuit Trial Court *(MCTC)* of Buruanga-Malay ruled in favor of respondent, the dispositive portion of which provides:

WHEREFORE, considering the foregoing, judgment is hereby rendered:

1. Finding plaintiff FRIDAY'S HOLDINGS, INC. to be in better right to possession of the subject property prior to February 15, 2014;

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[1] Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Gabriel T. Ingles and Marilyn Lagura-Yap, concurring; *rollo*, pp. 223-225.

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

[3] *Id*. at 14.

[4] *Id*. at 50-71.

2. Directing defendants Mila Yap-Sumndad, Daligdig Sumndad, Datu Yap Sumndad, Joel Gelito and any person claiming rights under them to restore plaintiff FRIDAY'S HOLDINGS, INC. in peaceful possession of the property;

3. Directing defendant Mila Yap-Sumndad to pay plaintiff reasonable compensation for the use and occupation of the premises in the amount equivalent to 60% of the last rental paid by plaintiff-lessee to defendant-lessor as provided in their Contract of Lease which expired February 14, 2014;and

4. Directing defendant Mila Yap-Sumndad to pay plaintiff FRIDAY'S HOLDINGS, INC. the amount of ₱15,000.00 as attorney[']s fees and the cost of his suit.

SO ORDERED.[5]

On appeal before the Regional Trial Court *(RTC)* Branch 7 of Kalibo, Aklan, the RTC affirmed the 5th MCTC of Buruanga-Malay, with modification in its Decision[6] dated September 5, 2016, the dispositive portion of which reads:

WHEREFORE, based on the foregoing premises, the Decision dated 24 April 2015 is AFFIRMED with modification. The defendants-appellants are DIRECTED to pay, jointly and solidarily, FHI for reasonable compensation for the lost profits equal to Ten Thousand Pesos (₱l0,000.00) per room per day, being the reasonable daily rental income of the nineteen (19) premier rooms involved in the forcible entry for a period from 15 February 2014 up to 14 March 2015 comprising of 392 days in the total amount of Seventy[-]Four Million Four Hundred Eighty Thousand Pesos(₱74,480,000.00).

SO ORDERED.[7]

On March 7, 2017, the petitioners filed a Petition for Review with the CA Cebu City.[8] Petitioner Mila Yap-Sumndad *(Yap-Sumndad)* argued that June 19, 2017 was the actual date of

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

[6] *Id*. at 72-81.

[7] *Id*. at 83.

[8] *Id*. at 10.

receipt by the petitioners' counsel of the CA Resolution dated May 15, 2017.[9] It was on June 19, 2017 when Yap-Sumndad called her lawyer to follow-up the status of her case at the CA, especially with regard to the May 15, 2017 Resolution, which dismissed the Petition for Review.[10] The petitioners' counsel was surprised of the said information and immediately called the attention of the law firm's secretary in charge of case records to verify the information .[11] After the verification, it was found out from the office logbook that on **May 29, 2017**, the law office received the CA Resolution dated **May 15, 2017**.[12] However, due to the office secretary's inadvertence, the same was neither reported to the handling counsel nor attached to the case folder. Thus, it was only on June 19, 2017 that the said Resolution actually came to the attention of the handling counsel.[13] Petitioners admitted fault, and prayed before the CA for leniency because what is in consideration is "a right worthy of careful examination of impartial minds with the end view of giving substantial justice to all parties, rather than clinging basically to technicalities of procedural laws."[14]

With respect to the grounds for dismissal of the Petition, there were several justifications given:[15]

> x x x First, [petitioners] claim that their failure to attach [a] Certificate of Non-Forum Shopping to the petition was a mere oversight. Thus, they attached a Certificate of Non-Forum Shopping in the said motion and prayed that the same be admitted. Second, they argue that while not all the material dates were indicated in the petition, there was sufficient compliance with the Rules because the date of receipt of the denial of their motion for reconsideration was stated in the petition.

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[9] *Id.* at 87.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 87-88.

[15] *Id.* at 224.

Third, they posit that it was their honest belief that all lawful fees have been paid, including those corresponding to the prayer for issuance of injunctive relief. They also manifested that they are willing to pay additional fees if so required. Fourth, they attached copies of all the relevant pleadings and documents that are pertinent to the present petition. Fifth, they assert that the failure to append page 13 of the [April 24,] 2015 Decision of the MCTC is not intentional and should not be used as a ground to dismiss the petition outright.

On May 15, 2017, the CA issued a Resolution dismissing the Petition for Review.[16] In the CA Minute Resolution,[17] the appellate court enumerated reasons and infirmities warranting the dismissal of the Petition for Review:

1. Petitioners failed to file the mandatory Certificate of Non-Forum Shopping in violation of Section 5, Rule 7, in relation to Section 2, Rule 42 of the 1997 Rules of Civil Procedure; and petitioners failed to offer valid justification for their failure to comply with Section 5, Rule 7 of the 1997 Rules of Civil Procedure.

2. Petitioners failed to indicate in the Petition the following material dates, in violation of Section 2, Rule 42 of the 1997 Rules of Civil Procedure, *viz.:*

    a. when notice of the assailed September 5, 2016 Decision of the Regional Trial Court (RTC), Branch 7, Kalibo, Aklan was received;

    b. when Motion for Reconsideration of the assailed September 5, 2016 Decision subject thereof was filed with the RTC, Branch 7, Kalibo, Aklan; and

    c. the date of the assailed December 21, 2016 Order of the RTC, Branch 7, Kalibo, Aklan denying the Motion for Reconsideration of the assailed September 5, 2016 Decision.

3. While Petitioners prayed for injunctive relief, they failed to pay the corresponding lawful fees.

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[16] *Id*.

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

4. Apart from the assailed September 5, 2016 Decision and December 21, 2016 Order, both of the RTC, Branch 7, Kalibo, Aklan, and the April 24, 2015 Decision of the 5th Municipal Circuit Trial Court (MCTC) of Buruanga-Malay, Buruanga, Aklan, petitioners failed to attach copies of all pleadings and documents, which are relevant and pertinent to the Petition, pursuant to Section 2, Rule 42 of the 1997 Rules of Civil Procedure.

5. Page 13 of the April 24, 2015 Decision of the 5th MCTC of Buruanga-Malay, Buruanga, Aklan in Civil Case No. 311-M was not appended to the Petition.

6. There was no competent evidence of identity of petitioner Datu Yap Sumndad in the verification, as required by Section 12, Rule II of the 2004 Rules on Notarial Practice.

7. The Notarial Certificate in the Verification did not contain the province/city where the notary public was commissioned, the expiration date of the commission of the notary public and the place and the date of issuance of the professional tax receipt (PTR) of the notary public, in violation of Rule VIII, Section 2 (c) and (d) of the 2004 Rules on Notarial Practice.

On July 3, 2017, the petitioners filed a Motion for Reconsideration[18] praying that the CA Resolution dated May 15, 2017 be reconsidered, and that the Petition for Review filed before the appellate court, be given due course.

On October 30, 2017, the CA denied the petitioners' Motion for Reconsideration.

Hence, the present Petition for Review on *Certiorari* filed before this Court.

Issue

Whether the CA erred in denying the petitioners' Motion for Reconsideration for belated filing.

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[18] *Id*. at 87-96.

The Court's Ruling

We DENY the Petition.

The CA did not err in denying the petitioners' motion for reconsideration for belated filing.

The petitioners' Motion for Reconsideration was filed beyond the fifteen (15)-day reglementary period.

There is no question that the petitioners filed their Motion for Reconsideration of the CA Resolution dated May 15, 2017, 20 days beyond the fifteen-day reglementary period for filing the motion. The petitioners, through their counsel, received the copy of the said CA Resolution on May 29, 2017, and had only until June 13, 2017 to file their Motion for Reconsideration. It was only on July 3, 2017 that the petitioners filed their Motion for Reconsideration.[19]

Section 1, Rule 52 of the Rules of Court provides that a motion for reconsideration of a judgment or final resolution should be filed within fifteen (15) days from notice. If there is no appeal or motion for reconsideration filed within fifteen (15) days from notice, the judgment or final resolution shall be entered by the clerk of court in the book of entries of judgment.[20]

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[19] *Id.*

[20] The 1997 Rules of Civil Procedure, Rule 51,§ 10.

Rule 51,§ 10 provides:

SECTION 10. *Entry of judgments and final resolutions*. — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment of final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

The Motion for Reconsideration was filed beyond the fifteen (15)-day period from the time the denial of the Petition for Review, was received by the counsel.

The purpose of filing a motion for reconsideration within the period to appeal is to allow an inferior court to correct itself before review by a higher court.[21] However, if the motion for reconsideration is filed beyond such period, the motion *ipso facto* forecloses the right to appeal.[22]

In *Building Care Corporation v. Macaraeg,*[23] the Court emphasized, "the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with[,] for the orderly administration of justice." If the Court relaxes the rules of procedure even in cases where there are no sufficient justification of meritorious and exceptional circumstances attendant, then such relaxation of the Rules will render the latter inutile.[24] The relaxation of the application of the Rules in exceptional cases was never intended to forge a bastion for erring litigants to violate the rules with impunity.[25]

In *Ponciano, Jr. v. Laguna Lake Development Authority, et al.*,[26] the Court refused to admit a motion for reconsideration filed only one day late, and pointed out that the Court has, in the past, similarly refused to admit motion for reconsideration which were filed late without sufficient justification.

The petitioners admit that a copy of the CA Resolution dated May 15, 2017 was given to the handling counsel only on June 19, 2017. This will not justify the belated filing of the Motion for Reconsideration of the subject Resolution. It is the counsel's

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[21] *Barrio Fiesta Restaurant, et al. v. Beronia,* 789 Phil. 520, 535 (2016).

[22] *Id*.

[23] 700 Phil. 749, 755 (2012).

[24] *Rivera-Avante v. Rivera,* G.R. No. 224137, April 3, 2019.

[25] *Id*.

[26] 591 Phil. 194, 211 (2008).

duty to adopt and to strictly maintain a system that ensures that all pleadings should be filed and duly-served within the period; and if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel.[27] Further, petitioners' invocation of "the end view of giving substantial justice to all parties" in praying for the leniency of the late filing of their motion for reconsideration, will not automatically compel this Court to suspend the procedural rules. Procedural rules cannot simply be set aside on the basis that their non-observance may have prejudiced a party's substantive rights.[28]

Since the petitioners' Motion for Reconsideration of the CA Resolution dated May 15, 2017 was belatedly filed, the said Resolution became final and executory by operation of law. In other words, the petitioners' failure to file their Motion for Reconsideration within the 15-day reglementary period foreclosed any right which they may have had under the rules: *first*, in seeking reconsideration of the CA's assailed Resolution; and *second,* in exercising their right to assail the CA Resolutions dated May 15, 2017 and October 30, 2017, before this Court.

With this pronouncement, the Court does not deem it necessary to discuss the other arguments raised in the instant petition for review on *certiorari.*

WHEREFORE, the instant petition is **DENIED**. The Resolutions of the Court of Appeals, promulgated on May 15, 2017 and October 30, 2017, respectively, in CA-G.R. CEB-SP No. 10655, are hereby **AFFIRMED**.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[27] *The Government of the Kingdom of Belgium v. Hon. Court of Appeals,* 574 Phil. 380, 393 (2008), citing *Asian Spirit Airlines (Airlines Employees Cooperative) v. Bautista,* 491 Phil. 476, 484 (2005).

[28] *Foculan-Fudalan v. Spouses Ocial, et al.,* 760 Phil. 815, 829 (2015).

FIRST DIVISION

[G.R. No. 235990. January 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GIRALYN P. ADALIA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; INFANTICIDE; ELEMENTS. —** [T]o convict an accused charged with infanticide, the following elements must be proved: (a) a child was killed; (b) the deceased child was less than three (3) days old; and (c) the accused killed the child.

2. **REMEDIAL LAW; EVIDENCE; DIRECT EVIDENCE; NOT INDISPENSABLE TO CRIMINAL PROSECUTIONS; CIRCUMSTANTIAL EVIDENCE MAY BE OFFERED TO TAKE THE PLACE OF DIRECT EVIDENCE, ESPECIALLY IN CASES INVOLVING CRIMES WHICH BY THEIR NATURE ARE USUALLY COMMITTED IN UTMOST SECRECY. —** The absence alone of direct evidence against an accused does not *per se* compel a finding of innocence. Circumstantial evidence may be offered to take the place of direct evidence, especially in cases involving crimes which by their nature are usually committed in utmost secrecy. ***People v. Pentecostes*** decreed that *circumstantial evidence is by no means a "weaker" form of evidence vis-a-vis direct evidence*. It elaborated: Direct evidence of the commission of a crime is **not indispensable** to criminal prosecutions; a contrary rule would render convictions virtually impossible given that most crimes, by their very nature, are purposely committed in seclusion and away from eyewitnesses.

3. **ID.; ID.; CIRCUMSTANTIAL EVIDENCE; REQUISITES. —** [O]ur rules on evidence and jurisprudence allow the conviction of an accused through circumstantial evidence alone, provided that the following requisites concur: (i) there is more than one circumstance; (ii) the facts from which the inferences are derived are proven; and (iii) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Simply put, an accused may be convicted when the circumstances established form an unbroken chain leading to one fair reasonable

conclusion and pointing to the accused — to the exclusion of all others - as the guilty person.

4. ID.; ID.; CREDIBILITY OF WITNESSES; TRIAL COURT'S FACTUAL FINDINGS THEREON, ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT, ARE ENTITLED TO GREAT RESPECT AND GENERALLY SHOULD NOT BE DISTURBED ON APPEAL UNLESS CERTAIN SUBSTANTIAL FACTS WERE OVERLOOKED WHICH, IF CONSIDERED MAY AFFECT THE OUTCOME OF THE CASE; CASE AT BAR. — At any rate, two (2) of appellant's neighbors heard a baby crying from the shanty of appellant's family. Ranie Japon even saw appellant and her mother inside said shanty with bloodied rags around them. Again, appellant did not present any countervailing proof that the baby was still born. Sans any evidence to the contrary, the trial court aptly found the testimonies of the prosecution witnesses credible. It is settled that the trial court's factual findings, especially when affirmed by the appellate court, are entitled to great respect and generally should not be disturbed on appeal unless certain substantial facts were overlooked which, if considered, may affect the outcome of the case. ***People v. Collamat, et al.*** ordained: In cases where the issue rests on the credibility of witnesses, as in this case, it is important to emphasize the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination."

5. CRIMINAL LAW; INFANTICIDE; PROPER PENALTY IN CASE AT BAR. — Article 255, in relation to Article 248 of the RPC, provides that the offense of infanticide is punishable by *reclusion perpetua* in its maximum period to death. Applying Article 63(2) of the RPC, the lesser of the two (2) indivisible penalties shall be imposed when there is no mitigating or aggravating circumstance which attended the killing, as in this case. Appellant claims, however, that should her conviction be affirmed here, the lesser penalty of *prision correccional*, not *reclusion perpetua*, should be imposed on her. She asserts that as the prosecution itself had purportedly narrated, she committed the crime only because she wanted to conceal her dishonor. The argument utterly lacks merit. There is absolutely

no evidence on record showing that appellant killed her child supposedly to conceal her dishonor for being an unwed mother or a woman who bore a child although she did not have a boyfriend. This alleged circumstance, not being found on the record cannot be used to benefit appellant by reducing the imposable penalty from *reclusion perpetua* to *prision correccional.* Verily, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua*. It is unnecessary, however, to specify that appellant is not eligible for parole. Under Administrative Matter No. 15-08-02-SC, the qualification "*without eligibility for parole*" is only specified when the proper penalty would have been death were it not for the enactment of Republic Act No. 9346. Here, in view of the absence of any aggravating circumstance, appellant should be sentenced to *reclusion perpetua* only, not death. Hence, the term of *reclusion perpetua* need not be qualified by the phrase "*without eligibility for parole*."

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 seeks to reverse the Decision[1] dated July 6, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 02210, affirming the conviction of appellant Giralyn P. Adalia for infanticide under Article 255 of the Revised Penal Code (RPC), sentencing her to *reclusion perpetua* and requiring her to pay ₱100,000.00 as civil indemnity and ₱100,000.00 each as moral damages, exemplary damages, and temperate damages.

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[1] Penned by Associate Justice Edward B. Contreras and concurred in by now Supreme Court Associate Justice Edgardo L. Delos Santos and Associate Justice Geraldine C. Fiel-Macaraig, CA *rollo,* pp. 96-105.

The Proceedings Before the Trial Court

Appellant Giralyn P. Adalia was charged with infanticide under the following Information:

> That on or about the 17th day of July, 2010 at Sitio Arabe, Barangay Mayabon, Zamboanguita, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, after giving birth to a live baby girl on or about said date of July 17, 2010, with intent to kill, did, then and there, willfully, unlawfully and feloniously CARRY said baby girl who was still less than three days of age and THROW her into (the) Arabe Creek in order to drown and be killed, and whose dead body was eventually recovered early in the morning of July 20, 2010 with the umbilical cord and placenta intact.
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> An (act) defined and penalized by Article 255 of the Revised Penal Code.[2]

On arraignment, appellant pleaded not guilty.[3] Trial ensued.

Lorna Maruya, Esterlita Obera, Angelita Paltingca, Juanita Paclarin, PO3 Paquito Diaz, Ranie Japon, Cornelia Samy,[4] and Dr. Delia Futalan testified for the prosecution. On the other hand, appellant manifested that she had no testimonial and documentary evidence to present.[5]

Version of the Prosecution

On December 18, 2009, appellant consulted Dr. Delia Futalan, Municipal Health Officer and Medico-Legal Officer of Zamboanguita, Negros Oriental, for pain in the abdomen and urination. Appellant's urinalysis showed that she had a mild form of urinary tract infection. Dr. Futalan prescribed antibiotics for her.[6]

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[2] Record, p. 2.

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

[4] Sometimes spelled in the transcript as "Samie."

[5] Record, p. 522.

[6] TSN, August 29, 2012, pp. 4-5.

On March 15, 2010, appellant's mother Rogelia Adalia sought Juanita Paclarin, a *manghihilot*, to have the latter check appellant's stomach which was growing bigger and bigger. Appellant complained that she had not had her menstruation for five (5) months already. Paclarin refused to examine appellant considering that she was just a therapist specializing in sprains and not a *mananabang*. Rogelia, however, insisted for Paclarin to examine appellant's stomach. Paclarin obliged. She observed that appellant's tummy was, indeed, big although appellant was not fat. When she touched it, she felt something moved inside. Due to her experience with her own pregnancies, she told appellant she was pregnant. But Rogelia forcefully told her that appellant could not be pregnant because she had no husband or boyfriend. Appellant also insisted that she had not had sexual intercourse with any man. Paclarin then advised appellant to see a medical doctor.[7]

On May 17, 2010, appellant returned to Dr. Futalan's clinic complaining of irregular menstruation and recurrent scanty vaginal bleeding. Upon examination, Dr. Futalan noted that appellant had an abdominal mass compatible to five (5) to seven (7) months pregnancy gestation. When asked, appellant insisted that her last menstruation was in March 2010. Considering appellant's last menstrual period, which was inconsistent with pregnancy, and due to the fact that the rural health center was limited to conducting physical examination, Dr. Futalan directed appellant to seek medical help from the Provincial hospital for further evaluation and management. Before she discharged appellant, however, Dr. Futalan told her she might be pregnant.[8]

Meantime, appellant's neighbors started to notice that appellant was gaining weight and her stomach was getting bigger. Sometime in May 2010, appellant told Lorna Maruya, who worked in the farm with her, that her menstruation was delayed. Maruya told appellant to seek medical help. Later, Maruya

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[7] TSN, October 26, 2011, pp. 4-6.

[8] TSN, August 29, 2012, pp. 5-6.

learned from appellant that a doctor allegedly diagnosed her with kidney failure. Appellant also said that a faith healer told her and her mother that her bulging belly was caused by an "*uray*" or bad spirit. The faith healer described it as an "*octopus getting inside the stomach of a person*." Appellant further told Maruya that she would strangle whatever creature she would give birth to.[9]

Esterlita Obera and Angelita Paltingca similarly noticed that appellant's tummy was getting bigger.[10] Appellant even sought advice from Paltingca on how to cure her bulging belly. Paltingca, who was three (3) months pregnant herself, offered to take appellant to the hospital to have an ultrasound with her but appellant declined.[11]

On July 17, 2010, Maruya was working in the farm with appellant and Rogelia. Appellant suddenly asked Rogelia for permission to go home which the latter granted. Rogelia explained to Maruya that appellant had a headache. Rogelia also mentioned, though, that July 12, 2010 was the ninth (9th) month from appellant's last menstruation. At lunch time, Rogelia told Maruya that she would also be going home as appellant may have given birth already. Rogelia did not come back to work on that day.[12]

Sometime in the morning on that day, Ranie Japon heard a baby crying in the abandoned shanty owned by appellant's family. He was surprised by the sound considering that he knew that the shanty was abandoned. Curious, he moved towards the shanty. Suddenly, the crying stopped. Peeping through the shanty, he saw Rogelia and appellant in blood stained clothes. Blood stained rags also littered the floor. As if sensing his presence, Rogelia and appellant hurriedly collected the rags. Japon, on the other hand, left to tell the neighbors what he saw.[13]

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[9] TSN, July 20, 2011, pp. 5-7.

[10] TSN, September 28, 2011, p. 3; TSN, October 12, p. 2.

[11] TSN, October 12, pp. 2-3.

[12] TSN, July 20, 2011, pp. 9-11.

[13] TSN, November 23, 2011, pp. 6-10.

Esterlita Obera also heard a baby crying inside the abandoned shanty of appellant's family. Less than a minute, though, the crying stopped. She did not think anything unusual about the cry. She only thought something strange when she heard later that day that appellant was bleeding.[14]

Around 1 o'clock in the afternoon, Paltingca saw appellant and Rogelia coming out of the shanty. They were going down the slope. Rogelia was carrying a small pail.[15]

Around 2 o'clock in the afternoon, Rogelia flagged the tricycad driven by Cornelia Samy. Rogelia instructed her to take her and appellant to the health center. Samy asked appellant whether she was about to give birth already, to which appellant replied "*maybe*...." At the health center, a nurse greeted appellant and her sister. She asked what their health concern was. Appellant's sister replied appellant was bleeding. The nurse referred them to Dr. Abella. Samy then drove them to Dr. Abella. Dr. Abella prescribed ferrous sulphate and advised them to go to an OB Gyne. Appellant though decided to go home.[16]

The next day, or on July 18, 2010, Rogelia went to Maruya's house to pick up her umbrella. When Maruya asked about appellant, Rogelia said appellant had given birth, but there was no baby, only blood. Later, Maruya saw appellant. When Maruya greeted appellant, the latter replied that she had given birth already.[17] On the same day, Maruya, Paltingca, and Feliza Adalim went to the abandoned shanty and confirmed the rumor that a lot of blood was left there. There was also a freshly dug hole.[18]

On the same day, Rogelia once again sought Paclarin's help. Rogelia told Paclarin that appellant was bleeding. Paclarin saw appellant lying on the floor in her sister's home. When Paclarin

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[14] TSN, September 28, 2011, p. 5.

[15] TSN, October 12, 2011, pp. 4-7.

[16] TSN, March 14, 2012, pp. 3-7.

[17] TSN, July 20, 2011, pp. 11-12 and 20.

[18] *Id.* at 14-16.

touched appellant's stomach, she noticed that it had shrunk in size. When she asked whether appellant had given birth, appellant denied giving birth and reasoned that she could not have possibly given birth since she had no boyfriend or husband. She also noted that appellant was weak. She advised appellant to go to a doctor, but the latter said that she had already gone to one.[19]

On July 19, 2010, Rogelia confronted Maruya regarding their visit to the shanty. Rogelia angrily asked Maruya whether she thought appellant killed the baby. On the same day, Maruya saw appellant who also asked what she thought happened to the baby. Maruya candidly told her they suspected she would kill the baby she was carrying. Appellant retorted "*why would I not strangle it (it) is better to strangle than to raise something that is due to evil spirit*."[20]

On July 20, 2010, appellant and Rogelia went to Dr. Futalan's clinic to complain of vaginal bleeding. When she physically examined appellant, Dr. Futalan noted that appellant's breasts were engorged and excreted milk, her abdomen was very lax and there was "*linea negro*," the appearance of her cervix was compatible to three (3) months gestation and admitted one (1) finger, her vaginal wall was very lax, and there was discharge of foul smelling blood. Dr. Futalan's conclusion was that appellant had delivered a baby two (2) to three (3) days ago. Appellant retracted her initial statement and admitted that her last menstrual period was in October 2009 and not March 2010.[21]

Meanwhile, PO3 Paquito Diaz received a text message that a baby was found floating in the Arabe creek. Together with other police officers, PO3 Diaz went to the creek. Indeed, an infant girl was on the creek. The baby's umbilical cord was still attached, but her whole body was already bloated. They took pictures of the baby at the *situs criminis* and interviewed some of the people who had milled around the area. A certain

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[19] TSN, October 26, 2011, pp. 8-12.

[20] TSN, July 20, 2011, p. 22.

[21] TSN, August 29, 2012, pp. 8-11.

Cecilia Rico told them that appellant was the only pregnant woman in town and that there was a shanty nearby with bloodstains on it. When their team went to the shanty, they saw blood stained old clothes scattered around the floor and two (2) dug holes.[22]

Later that day, Paclarin was once again summoned to the house of appellant's sister. While she was there, she heard that a dead baby was found beside the creek. She confronted appellant and Rogelia but they both ignored her.[23]

Dr. Futalan was informed that a dead infant was found in the creek and brought to the police station. She went to the police station to examine the baby. She found that the new born baby girl had her placenta intact and her umbilical cord was uncut. In her opinion, the baby would have sustained a life of its own because it was already fully developed. Based on her estimate, the baby died about two (2) to three (3) days from the time it was discovered. She recommended that the baby be buried immediately as the baby's body was already decomposing and forming gas.[24]

Pending trial, the prosecution moved to exhume the child for DNA with appellant,[25] which appellant vehemently opposes. By Order[26] dated August 16, 2013 the trial court granted the motion. Unfortunately, the body of the infant could no longer be found where it was buried.[27]

The prosecution offered the following exhibits: "A" to "A-1-a" — Lorna Maruya's Affidavit;[28] "B" to "B-1"— Esterlita Obera's

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[22] TSN, November 9, 2011, pp. 3-6.

[23] TSN, October 26, 2011, pp. 12-13.

[24] TSN, August 29, 2012, pp. 16-18.

[25] Record, pp. 173-175.

[26] *Id.* at 450-451.

[27] *Id.* at 452.

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

Affidavit;[29] "C" to "C-1" — Angelita Paltingca's Affidavit;[30] "D" to "D-1" — Juanita Paclarin's Affidavit;[31] "E" to "E-1" — PO3 Paquito Diaz's Affidavit;[32] "J" to "M" — Photographs taken by PO3 Paquito Diaz and his team;[33] "N" — Medical Certificate dated December 18, 2009 issued by Dr. Delia Futalan to appellant;[34] "O" — Medical Certificate dated July 20, 2010 issued by Dr. Delia Futalan to appellant;[35] "P" — Certification dated July 27, 2010 executed by Dr. Delia Futalan as to her examination on the body of the dead infant found at the Arabe Creek on July 20, 2010;[36] and "R" — Police Blotter Entry No. 00101 dated July 26, 2010 of the Philippine National Police (PNP) Station of Zamboangita, Negros Oriental.[37]

On the other hand, the defense manifested[38] it was not presenting any evidence.

The Trial Court's Ruling

By Decision[39] dated February 23, 2016, the trial court found appellant guilty as charged, *viz.*:

WHEREFORE, the foregoing considered, this Court therefore finds the Accused GIRALYN P. ADALIA guilty beyond reasonable doubt of the crime of INFANTICIDE and hereby sentences her to suffer the maximum penalty of *reclusion perpetua* to death as amended by

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[29] *Id.* at 15.

[30] *Id.* at 16.

[31] *Id.* at 19.

[32] *Id.* at 20.

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

[34] *Id.* at 32.

[35] *Id.* at 22.

[36] *Id.* at 23.

[37] *Id.* at 24.

[38] *Id.* at 522 and 527.

[39] Penned by Presiding Judge Ma. Mercedita U. Sarsaba, CA *rollo*, pp. 32-47; Record, pp. 544-559.

R.A. 7659. However, pursuant to Republic Act 9346, since the death penalty was abolished accused shall only be sentenced to suffer the penalty of *reclusion perpetua* only.

SO ORDERED.[40]

The trial court found that although there was no direct evidence that appellant slayed her own child, all the attendant circumstances, especially the actions of appellant and Rogelia before and after the child's birth lead to no other conclusion but that appellant was pregnant, gave birth, and threw her child into the creek to die.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction. She argued[41] that the prosecution failed to categorically prove she was pregnant. Dr. Futalan even initially ruled out pregnancy and instead diagnosed her with uterine mass. Dr. Futalan recanted her diagnosis only when a dead infant was found in the creek. Her neighbors' testimonies as to her alleged pregnancy should not be given credence as these witnesses were not experts in the field of gynecology or medicine. Too, the prosecution miserably failed to prove that the child found in the creek belonged to her or whether the child was actually alive at birth. The prosecution witnesses merely testified they allegedly heard a baby crying in the shanty but nobody saw a baby there. Thus, absent any proof that the baby was alive when born, one cannot logically conclude that it was killed. She was merely a "*convenient suspect*" in the killing of the child found floating in the Arabe Creek.

For its part, the Office of the Solicitor General (OSG), through Assistant Solicitor General Raymund I. Rigodon and Associate Solicitor Patricia Ruth E. Peña, countered in the main: jurisprudence does not preclude a finding of guilt on the basis of circumstantial evidence. Considering the nature of the crime,

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[40] CA *rollo*, p. 47; Record, p. 559.

[41] See Appellant's Brief dated August 15, 2016, CA *rollo*, pp. 15-30.

the same is usually done in utmost secrecy. Thus, it is not surprising here that there were no actual eyewitnesses. But it does not mean that the crime did not happen. The following circumstances show that appellant was guilty of infanticide:[42]

(a) Appellant's neighbors noticed her bulging belly. Some of them even elicited admission from appellant herself. Too, after she did a physical examination on appellant in July 2010, Dr. Futalan concluded that appellant had recently given birth. Appellant herself admitted to Dr. Futalan that her last menstrual period was in October 2009;

(b) Appellant's unusual conduct during her pregnancy, *i.e.*, consistently denying her pregnancy, insisting to Dr. Futalan that her last menstrual period was in March 2010, imputing her condition on evil spirit, and confiding in Maruya that she would strangle whatever creature was inside her tummy — all indicate her sinister plot to conceal her pregnancy;

(c) Appellant's actuations on July 17, 2010 spoke one (1) indubitable fact: she gave birth to a child. The testimonies of the prosecution witnesses were lengthy, thus, could not have been *rehearsed;* and

(d) Dr. Futalan already opined that appellant had signs of having recently given birth even before she learned about the discovery of a dead infant found in the Arabe creek.

The Court of Appeals' Ruling

By its assailed Decision[43] dated July 6, 2017, the Court of Appeals affirmed in the main, albeit it pronounced appellant to be ineligible for parole in accordance with Republic Act No. 9346 (RA No. 9346) and made her liable for damages, to wit:

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[42] See Appellee's Brief dated December 20, 2016, *Id.* at 71-85.

[43] Penned by Associate Justice Edward B. Contreras and concurred in by now Supreme Court Associate Justice Edgardo L. Delos Santos and Associate Justice Geraldine C. Fiel-Macaraig, *Id.* at 96-105.

WHEREFORE, the appeal is DENIED. The Decision dated February 23, 2016 of the Regional Trial Court, Branch 31, Dumaguete City in Criminal Case No. 2010-20225 is hereby AFFIRMED with MODIFICATIONS:

a) Appellant is to suffer the penalty of reclusion perpetua without eligibility for parole;

b) Appellant is ordered to pay the heirs of the deceased child ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; ₱100,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

SO ORDERED.[44]

The Court of Appeals held that lack of direct evidence is not conclusive proof of appellant's innocence. Direct evidence is not the sole means of proving guilt beyond reasonable doubt. While there was no direct evidence pointing to appellant's culpability, the prosecution had sufficiently presented a series of unbroken chain of circumstances which led to the conclusion that appellant had given birth and killed her child. Dr. Futalan's findings corroborated this conclusion.

The trial court, however, erred when it failed to award damages to the heirs of the deceased child. Appellant should not only be imprisoned, but must also be liable for damages.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for her acquittal.

For the purpose of this appeal, the OSG manifested[45] that in lieu of supplemental brief, it was adopting its brief before the Court of Appeals.

Appellant, on the other hand, filed her Supplemental Brief.[46] She maintains that there was no direct evidence that she indeed

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[44] *Id.* at 105.

[45] *Rollo*, pp. 23-24.

[46] *Id.* at 38-42.

killed the baby. It must be noted that she is ignorant or uneducated about motherhood and her pregnancy and the child had no proper pre-natal care and was only born in a small shanty. These were aggravated by the fact that her family was very poor. In fact, even prior to giving birth, she was still working in the farm. Under these circumstances, it can be reasonably inferred that the baby lived just for a very short while. Even the prosecution witnesses themselves testified that they heard a baby crying only for a moment. Then it stopped. Too, having just given birth, she was bleeding, very weak, and too much in pain to even have the strength to kill an infant and throw it into the creek.

More, *reclusion perpetua* is too harsh a penalty given the circumstances of the case. The RPC itself provides that when infanticide is committed in order to conceal the dishonor of the accused, the latter shall only suffer the lower penalty of *prision correccional* in its medium and maximum periods. There is evidence showing that she and her mother continuously denied her pregnancy. Too, she remained silent throughout the trial of the case. This is usually a sign of remorse.

Issue

Did the Court of Appeals gravely err when it affirmed the verdict of conviction based on circumstantial evidence?

Ruling

Article 255 of the Revised Penal Code (RPC) reads:

> Art. 255. *Infanticide.* — The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.
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Thus, to convict an accused charged with infanticide, the following elements must be proved: (a) a child was killed; (b) the deceased child was less than three (3) days old; and (c) the accused killed the child.

In the main, appellant asserts that there was no direct evidence to prove that the charge of infanticide against her, hence, she should have been acquitted.

The absence alone of direct evidence against an accused does not *per se* compel a finding of innocence. Circumstantial evidence may be offered to take the place of direct evidence, especially in cases involving crimes which by their nature are usually committed in utmost secrecy. ***People v. Pentecostes***[47] decreed that *circumstantial evidence is by no means a "weaker" form of evidence vis-á-vis direct evidence*. It elaborated:

> Direct evidence of the commission of a crime is **not indispensable** to criminal prosecutions; a contrary rule would render convictions virtually impossible given that most crimes, by their very nature, are purposely committed in seclusion and away from eyewitnesses. Thus, our rules on evidence and jurisprudence allow the conviction of an accused through circumstantial evidence alone, provided that the following requisites concur:
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> (i) there is more than one circumstance;
>
> (ii) the facts from which the inferences are derived are proven; and
>
> (iii) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.
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> Simply put, an accused may be convicted when the circumstances established form an unbroken chain leading to one fair reasonable conclusion and pointing to the accused - to the exclusion of all others — as the guilty person.
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> x x x x x x x x x

In ***People v. Casitas, Jr.***,[48] the Court explained that establishing guilt through circumstantial evidence is akin to weaving a "*tapestry of events that culminate in a vivid depiction of the crime of which the accused is the author*."

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[47] 844 SCRA 610, 619-620 (2017).

[48] 445 Phil. 407, 419 (2003), as cited in *People v. Pentecostes*, *supra*.

Here, the following circumstances make up the chain of events which culminated in a graphic portrayal of how appellant's cold-blooded slaying of her newborn child was committed, *viz*.:

One. Appellant was pregnant starting October 2009 until she gave birth on July 17, 2010. The prosecution witnesses testified:

Dr. Delia Futalan

- On December 18, 2009, appellant went to her "complaining of abdominal pain or epigastric pain as well as peshoria or pain in urination."[49]
- On May 17, 2010, appellant went back to the health center "complaining of irregular menstruation and on-and-off scanty vaginal bleeding for two (2) weeks."[50]
- She interviewed appellant and the latter said that her last monthly menstruation was March 2010, with three (3) days duration. When she examined appellant, she found out that there was abdominal mass in appellant's abdomen "*compatible to about 5 to 6 or 7 months pregnancy gestation*."[51]
- Before letting them leave, she told appellant that she might be pregnant.[52]

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Juanita Paclarin

- Appellant first consulted her on March 15, 2010. Rogelia wanted her to heal appellant's growing tummy despite not being pregnant.[53]

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[49] TSN, August 29, 2012, p. 4.

[50] *Id.*

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

[52] *Id.* at 6.

[53] TSN, October 26, 2011, pp. 4-5.

- Appellant herself complained that her menstrual period has not arrived for five (5) months already beginning November 2009.[54]
- At first, she refused to examine appellant as she was not a "mananabang." She told appellant and her mother to simply go to the doctor "since she is pregnant."[55]
- She concluded that appellant was pregnant because of her own experiences in bearing her own children. She already knows if a person is pregnant judging by the form of her tummy.[56]
- When she touched appellant's tummy, she felt something inside moved. She told appellant that she was pregnant because there is something inside that moved. Rogelia, however, retorted "*why would she be pregnant when she is not married*?," which appellant echoed.[57]
- She then advised appellant to have herself checked up by a doctor.[58]

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Lorna Maruya

- In May 2010, appellant told her that her menstrual period was delayed.[59]
- By that time though, she already observed that appellant's belly was bigger than usual.[60]
- In June 2010, appellant's mother had repeatedly stated to her that she was wondering why appellant's stomach was getting bigger.[61]

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[54] *Id.*

[55] *Id.*

[56] *Id.* at 5.

[57] *Id.* at 6.

[58] *Id.*

[59] TSN, July 20, 2011, p. 5.

[60] *Id.* at 6.

[61] *Id.* at 8.

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Esterlita Obera

- In April 2010, she also started to notice that appellant had gained weight and that in July 2010, her belly became too big. She believed, then, that appellant was pregnant.[62]

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Angelita Paltingca

- When she saw appellant in April 2010 she noticed that the latter had gained weight and her abdomen was getting a little bigger. In fact, appellant complained to her regarding her bulging belly and asked her advise for a cure.[63]
- At the time, she was three (3) months pregnant. She invited appellant to the hospital to have an ultrasound test with her. But appellant declined.[64]
- In July 2010, appellant's belly looked like she was about to give birth.[65]

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Two. Appellant gave birth to a child on July 17, 2010.

Lorna Maruya

- On July 17, 2010 she was working at the farm with appellant and Rogelia.[66]
- Appellant suddenly asked permission from her mother to go home. When she asked Rogelia regarding appellant's condition, Rogelia answered that she had a headache.[67]

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[62] TSN, September 28, 2011, p. 3.

[63] TSN, October 12, 2011, pp. 3-4.

[64] *Id.* at 4.

[65] *Id.*

[66] TSN, July 20, 2011, p. 9.

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

- At lunch time, Rogelia also went home. Rogelia told her "*I have to go back home to Ge, because she might have given birth already*."[68]

- Upon her inquiry, Rogelia told her that "July 12, 2010 was the 9th month since (appellant's) last menstruation."[69]

- She later saw appellant and Rogelia going down the trail and headed to the center because appellant was bleeding.[70]

- On July 18, 2010, Rogelia told her that appellant was bleeding "*but there was no baby*."[71] She also saw appellant. When she greeted her, appellant replied, "*here Ya I have given birth already.*"[72] She observed that appellant's belly was already small.[73]

x x x x x x x x x

Esterlita Obera

- On July 17, 2010, she *heard a crying baby from the dilapidated shanty of appellant's family*.[74]

x x x x x x x x x

Ranie Japon

- On July 17, 2010, while he was on a cigarette break, he *heard a baby crying* from the abandoned shanty of the Adalia family. He *went near the shanty and peeped inside*. Inside, *he saw appellant and Rogelia*.[75] He also saw bloodied rags littering the floor.[76]

x x x x x x x x x

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[68] *Id.*

[69] *Id.* at 11.

[70] *Id.*

[71] *Id.* at 12.

[72] *Id.*

[73] *Id.* at 13.

[74] TSN, September 28, 2011, p. 5.

[75] TSN, November 23, 2011, pp. 7-8.

[76] *Id.* at 8.

Angelita Paltingca

- On July 17, 2010, around 1 o'clock in the afternoon, she saw appellant and Rogelia emerge from their abandoned shanty.[77]
- Appellant walked *very slowly as if holding her buttocks.* She also noticed that appellant's abdomen was not very big anymore and she was pale.[78]

x x x x x x x x x

Juanita Paclarin

- On July 18, 2010, she was once again *fetched* by appellant's family to look at appellant who was apparently *bleeding*.[79]
- She noticed that appellant's tummy appeared to be smaller already.[80]

x x x x x x x x x

Cornelia Samy

- On July 17, 2010, Rogelia flagged her and asked her to bring appellant to the health center.[81] She asked Rogelia whether appellant would be giving birth already, to which Rogelia answered "*maybe she would be giving birth*."[82]
- At the Health Center, when the nurse learned that appellant was bleeding, the nurse referred appellant to another doctor.[83]
- They went to Dr. Abella but Dr. Abella ordered appellant to go to an OBGyne.[84] But appellant opted to just go home.[85]

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[77] TSN, October 12, 2011, pp. 5-6.

[78] *Id.* at 6.

[79] TSN, October 26, 2011, p. 8.

[80] *Id.* at 9.

[81] TSN, March 14, 2012, pp. 3-4.

[82] *Id.* at 4.

[83] *Id.* at 6.

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

[85] *Id.* at 7.

x x x x x x x x x

Dr. Delia Futalan

- When she examined appellant on July 20, 2010, she noted that her breasts were already *engorge* and excrete milk. Appellant's abdomen was *very lax* and there was presence of "*Linea Negro*." Her uterus was *palpable* and it was *compatible to three (3) months gestation*. She also found that there were *perennial lacerations* in appellant's vagina. There were *discharges of foul smelling blood*. Her cervix was *open and admits one (1) finger*. Her conclusion was that appellant recently delivered through her vagina.[86]
- When she interviewed appellant, the latter admitted that her last menstruation was October 10, 2009, which corroborated her conclusion that appellant was pregnant and had recently given birth.[87]

Three. Appellant killed the child at birth.

PO3 Paquito Diaz

- On July 20, 2010, he *received a text message* from his companion telling him that there was an infant floating in Arabe Creek.[88]
- Upon arrival at that creek, he saw a dead baby girl *floating on the water*. The child's body was *already bloated*. And the *umbilical cord was still pinned to the stone*.[89]
- A bystander, Cecilia Rico, narrated to them that appellant was the only pregnant woman in their place.[90]

x x x x x x x x x

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[86] TSN, August 29, 2012, pp. 8-10.

[87] *Id.* at 11-12.

[88] TSN, November 9, 2011, p. 3.

[89] *Id.* at 4.

[90] *Id.* at 5.

Esterlita Obera

- On July 20, 2010, she heard that a lifeless body of an infant was discovered at the Arabe Creek. When she went there to confirm the news, she saw the baby "*with arms raised both sides with the umbilical cord still attached to the baby*." The child was already dead.[91]

x x x x x x x x x

Dr. Delia Futalan

- On July 27, 2010, she examined the body of a dead newborn *fully developed baby*. The baby still has its *umbilical cord and the placenta intact*. The body was already *undergoing decomposition*.[92]
- In her opinion, that baby would have sustained a life of its own when taken care of and not thrown to the creek.[93]
- She estimated that the baby died about 2 to 3 days prior to discovery.[94]

x x x x x x x x x

Lorna Maruya

- On May 10, 2010, appellant told her that her bulging belly was caused by an evil spirit. She told her that "*it is better to give birth normally than giv(e) birth caused by evil spirit*." Appellant retorted, "*if ever I will give birth to this, I will strangle it*."[95]
- On July 19, 2010, Rogelia angrily confronted her about their act in going to the abandoned shanty. Rogelia angrily asked: "*What is your impression? Giralyn killed the baby*?"[96]

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[91] TSN, September 28, 2011, pp. 8-9.

[92] TSN, August 29, 2012, pp. 15-16.

[93] *Id.*

[94] *Id.* at 17.

[95] TSN, July 20, 2011, p. 7.

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

- Appellant also asked "what are you thinking of?" When she told her that they have an impression that she will kill the baby, appellant replied "*why would I not strangle it is better to strangle than to raise something that is due to evil spirit.*"[97]

x x x x x x x x x

Esterlita Obera

- On July 18, 2010, she met Rogelia while walking down the terrain. Rogelia was grumbling about her neighbors allegedly "*acting as if they are better than the police authorities who made a search of their dilapidated shanty*."[98]

x x x x x x x x x

Angelita Paltingca

- Rogelia confronted her personally and asked why they went to her shanty. Rogelia uttered: "*You thought that Giralyn gave birth to a baby?* But I retorted back to her in this manner (:) *Why? When your daughter was still pregnant you come to me but now that she already gave birth, you got angry if we will go to your shanty*?"[99]

More, it is baffling why appellant vehemently opposed the exhumation of the child's body when, as she claimed, she was not guilty. If she truly had nothing to hide, then exhumation of the child and the conduct of DNA testing would not bother her. In fact, the conduct of DNA testing would even be beneficial to her plea of not guilty and her persistent denial that she was the mother of the child found floating on the Arabe creek, in case the result show that she had no relations with the infant.

Notably, too, it could not be just a coincidence that after the trial court ordered for the exhumation of the child, its remains suddenly disappeared from the grave. One thing for sure, there would be no one more interested in stealing and hiding the

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[97] *Id.* at 22.

[98] TSN, September 28, 2011, p. 7.

[99] TSN, October 12, 2011, p. 9.

remains of the child other than appellant herself, who was the one on trial for the death of that child and who would be the most adversely affected should a DNA be done and its result turn out to be positive. She would also be the only one to benefit from the loss of the child's remains from the grave because it meant that DNA test could never take place ever.

The chain of events heretofore stated leads to no other conclusion but that appellant was pregnant and gave birth to a child whom she killed at birth because she and her mother believed the child belonged to an "*evil spirit*." After killing the child, she threw it into the Arabe Creek.

To emphasize, the testimonies of the prosecution witnesses were all unrefuted.

The prosecution witnesses may not be medical experts, but they saw appellant's tummy growing big like a pregnant woman. They saw the inculpatory actuations of appellant and her mother before and after she gave birth. They, too, heard what appellant and her mother uttered on several occasions pertaining to her pregnancy, her giving birth to the child, and her over-all behavior during the period material to this case. From what they observed and heard from appellant and her mother, these prosecution witnesses need not be medical experts to get a grasp of what was really going on with appellant.

Appellant, though, harps on the initial conclusion of Dr. Futalan that she was not pregnant. But, this initial conclusion was due to appellant who fed misleading information to Dr. Futalan, who, on the basis thereof, was also misled about appellant's real physical condition.

First, appellant told Dr. Futalan that her last menstrual cycle was in March 2010. Thus, Dr. Futalan could not have categorically concluded that appellant, who had a bulging belly consistent with five (5) to seven (7) pregnancy gestation months, was pregnant by that much in May 2010. Despite this, though, Dr. Futalan advised appellant to seek further medical evaluation

and management at the Provincial hospital.[100] Notwithstanding appellant's statement, though, Dr. Futalan still told her that she might be pregnant.[101]

Only when Dr. Futalan physically examined appellant on July 20, 2010 did the latter admit that her last menstrual period was actually in October 2009. By that time, appellant had more signs of pregnancy and delivery of a child, *i.e.*, her breasts were engorged and they excreted milk, her abdomen had "*linea negro*" which appears during pregnancy, the appearance of appellant's cervix was compatible to three (3) months gestation, her vaginal wall was very lax, and there was a discharge of foul-smelling blood. This time, Dr. Futalan('s) concluded that appellant had delivered a baby two (2) to three (3) days prior.[102]

Another, appellant speculates that the prosecution failed to prove that the child was born alive. According to her, the child could have been born dead. This is a negative pregnant. Appellant is denying and admitting a fact at the same time. If this is not an admission of guilt, what is?

At any rate, two (2) of appellant's neighbors heard a baby crying from the shanty of appellant's family. Ranie Japon even saw appellant and her mother inside said shanty with bloodied rags around them. Again, appellant did not present any countervailing proof that the baby was still born. Sans any evidence to the contrary, the trial court aptly found the testimonies of the prosecution witnesses credible. It is settled that the trial court's factual findings, especially when affirmed by the appellate court, are entitled to great respect and generally should not be disturbed on appeal unless certain substantial facts were overlooked which, if considered, may affect the outcome of the case.[103] ***People v. Collamat, et al***.[104] ordained:

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[100] TSN, August 29, 2012, pp. 5-6.

[101] *Id.*

[102] *Id.* at 8-11.

[103] *People v. Marzan*, G.R. No. 207397, September 24, 2018.

[104] G.R. No. 218200, August 15, 2018.

In cases where the issue rests on the credibility of witnesses, as in this case, it is important to emphasize the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination."

We explained in *Reyes, Jr. v. Court of Appeals* that the findings of the trial court will not be overturned absent any clear showing that it had *overlooked, misunderstood or misapplied* some facts or circumstances of weight or substance that could have altered the outcome of the case, *viz.*:

> Also, the issue hinges on credibility of witnesses. We have consistently adhered to the rule that **where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect**. These findings will not be ordinarily disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case. It is the trial court that had the opportunity to observe 'the witnesses' manner of testifying, their furtive glances, calmness, sighs or their scant or full realization of their oaths. It had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. Inconsistencies or contradictions in the testimony of the victim do not affect the veracity of the testimony if the inconsistencies do not pertain to material points. (Emphasis supplied)
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> x x x x x x x x x

The Court of Appeals, therefore, did not err when it affirmed the verdict of conviction against appellant.

Penalty

Article 255 provides:

Art. 255. *Infanticide*. — The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If the crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of prision correccional in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be prision mayor.

Article 255, in relation to Article 248 of the RPC,[105] provides that the offense of infanticide is punishable by *reclusion perpetua* in its maximum period to death. Applying Article 63(2) of the RPC,[106] the lesser of the two (2) indivisible penalties shall be imposed when there is no mitigating or aggravating circumstance which attended the killing, as in this case.

Appellant claims, however, that should her conviction be affirmed here, the lesser penalty of *prision correccional*, not *reclusion perpetua*, should be imposed on her. She asserts that as the prosecution itself had purportedly narrated, she committed the crime only because she wanted to conceal her dishonor.

The argument utterly lacks merit.

There is absolutely no evidence on record showing that appellant killed her child supposedly to conceal her dishonor for being an unwed mother or a woman who bore a child although she did not have a boyfriend. This alleged circumstance, not being found on the record cannot be used to benefit appellant by reducing the imposable penalty from *reclusion perpetua* to *prision correccional.*

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[105] Art. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death. xxx

[106] Art. 63. *Rules for the application of indivisible penalties*. — x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

Verily, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua*.

It is unnecessary, however, to specify that appellant is not eligible for parole. Under Administrative Matter No. 15-08-02-SC,[107] the qualification "*without eligibility for parole*" is only specified when the proper penalty would have been death were it not for the enactment of Republic Act No. 9346.[108] Here, in view of the absence of any aggravating circumstance, appellant should be sentenced to *reclusion perpetua* only, not death. Hence, the term of *reclusion perpetua* need not be qualified by the phrase "*without eligibility for parole*."

On the monetary awards, ***People v. Jugueta***[109] pronounced:

> I. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:
>
> x x x x x x x x x
>
> 2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:
>
> a. Civil indemnity - ₱75,000.00
> b. Moral damages - ₱75,000.00
> c. Exemplary damages - ₱75,000.00

Thus, the Court of Appeals' awards of civil indemnity, moral damages, and exemplary damages should be reduced from ₱100,000.00 each to ₱75,000.00 each.

The Court of Appeals also correctly awarded ₱50,000.00 as temperate damages. Obviously, expenses were made in order to put the child's body to rest. ***People v. Gervero, et al.***[110] ruled:

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[107] Guidelines for the Proper Use of the Phrase "without eligibility for parole" in Indivisible Penalties, August 4, 2015; See also *People v. Ursua y Bernal*, 819 Phil. 467, 476 (2017).

[108] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[109] 783 Phil. 806, 847-848 (2016).

[110] G.R. No. 206725, July 11, 2018.

x x x x x x x x x

x x x It was also ruled in *Jugueta* that **when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded**. In addition, interest at the rate of six percent per annum shall be imposed on all monetary awards from the date of finality of this decision until fully paid. (Emphasis supplied)

x x x x x x x x x

ACCORDINGLY, the appeal is **DENIED**. The Decision dated July 6, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 02210 is **AFFIRMED with modification**. Appellant Giralyn P. Adalia is found **GUILTY** of Infanticide under Article 255 of the Revised Penal Code. She is sentenced to *reclusion perpetua*. She is further required to pay the child's qualified heirs the following amounts; (a) **₱75,000.00** each as civil indemnity, moral damages, and exemplary damages, and (b) **₱50,000.00** as temperate damages.

All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from finality of this decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 238298. January 22, 2020]

JOEL F. LATOGAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; NOTICE IN THE MOTION FOR RECONSIDERATION MUST STATE THE TIME, DATE, AND PLACE OF THE HEARING OF THE MOTION; RATIONALE. — The notification prays for the submission of the motion for reconsideration for hearing but without stating the time, date, and place of the hearing of the motion. This is not the notice of hearing contemplated under Sections 4 and 5, Rule 15 of the Rules of Court. The rules are explicit and clear. The notice of hearing shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance. The reason is obvious: unless the movant sets the time and place of hearing, the court would have no way to determine whether the other party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition. The Court is well aware of the judicial mandate that rules prescribing the time which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. With respect to notices of hearing of motions, in particular, the Court has consistently warned that a notice of hearing which does not comply with the requirements of the Rules of Court is a worthless piece of paper and would not merit any consideration from the Court.

2. ID.; ID.; JUDGMENT; FACTORS THAT JUSTIFY THE RELAXATION OF THE RULE ON IMMUTABILITY OF FINAL JUDGMENTS. — Withal, as in the liberal construction of the rules on notice of hearing, the Court has enumerated the factors that justify the relaxation of the rule on immutability of final judgments to serve the ends of justice, including: (a)

matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.

3. ID.; ID.; ID.; COMPELLING CIRCUMSTANCES IN THIS CASE WARRANT RELAXATION OF THE RULES. — After a thorough review of the records, the Court finds that compelling circumstances are extant in this case to justify the relaxation of the rules. Primarily, petitioner's life and liberty are at stake. The trial court has sentenced him to suffer the penalty of *reclusion perpetua* and this conviction attained finality on the basis of a mere technicality, not entirely through his fault or own doing. It is but proper, under the circumstances, that petitioner be given the opportunity to defend himself and pursue his appeal. To do otherwise would be tantamount to grave injustice. Both petitioner's motion for reconsideration before the RTC and his subsequent petition for *certiorari* in the CA also appear to stand on meritorious grounds. In addition, there is lack of any showing that the review sought is merely frivolous and dilatory. In setting aside the aforementioned technicalities, infirmities, and thereby giving due course to tardy appeals and defective petitions, it must be emphasized that the Court is mindful of the extraordinary situations that merit liberal application of the Rules. In this case where technicalities were dispensed with, the Court's decisions were not meant to undermine the force and effectivity of the periods set by the law. On the contrary, in those rare instances, there always existed a clear need to prevent the commission of a grave injustice as in this case. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.

4. ID.; ID.; ID.; ID.; THE RULE THAT MISTAKES OF COUNSEL BIND THE CLIENT MAY NOT BE STRICTLY FOLLOWED IF THE INCOMPETENCE OF THE COUNSEL WAS SO SERIOUS THAT THE CLIENT WAS PREJUDICED BY THE DENIAL OF HIS DAY IN COURT.

> — [I]t is worth emphasizing that the rule which states that the mistakes of counsel bind the client may not be strictly followed where observance of it would result in outright deprivation of the client's liberty or property, or where the interests of justice so require. In rendering justice, procedural infirmities take a backseat against substantive rights of litigants. Corollarily, if the strict application of the rules would tend to frustrate rather than promote justice, the Court is not without power to exercise its judicial discretion in relaxing the rules of procedure. x x x Without doubt, petitioner is entitled to competent legal representation from his counsel. The counsel's mere failure to observe a modicum of care and vigilance in the protection of the interests of the petitioner as the client, as manifested in the multiple procedural infirmities and shortcomings herein, is gross negligence. If the incompetence of counsel was so serious that the client was prejudiced by a denial of his day in court, the latter must be given another chance to present his case and assail his conviction. The legitimate interest of petitioner, specifically his right to have his conviction reviewed by the CA as a superior tribunal, should not be sacrificed in the altar of technicalities.

APPEARANCES OF COUNSEL

Manuel W. Komicho for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

INTING, *J.*:

The Court is fully aware that procedural rules are not to be simply disregarded as they insure an orderly and speedy administration of justice. Nonetheless, it is equally true that courts are not enslaved by technicalities. They have the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to an opportunity to be heard. Cases should be decided only after giving all parties the chance to argue their causes

and defenses. Technicality and procedural imperfection should, as a rule, not serve as bases of decisions. In that way, the ends of justice would be served.[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court seeks to reverse the Resolution[3] dated February 6, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 142093, which denied Joel F. Latogan's (petitioner) Omnibus Motion for Reconsideration and affirmed its previous Resolution[4] dated September 29, 2015, which denied due course and accordingly dismissed his petition for *certiorari* for various procedural infirmities.

The antecedents

In an Information[5] dated February 4, 2010, petitioner was indicted for the crime of Murder, allegedly committed as follows:

> That on or about the 8th day of November, 2009, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with intent to kill, and with treachery, did then and there willfully, unlawfully and feloniously strike a piece of wood on the back of the head of the victim MARY GRACE CABBIGAT and thereafter grab the head of the victim and twisted and grabbed her again and boxed her right eye, thereby inflicting upon the latter — lacerated wound, occipital region, measuring 4x3 cm. bisected by the posterior midline, hematoma, right upper eyelid, measuring 5x3.5 cm. 4 cm. from the anterior midline, scalp hematoma, which injuries resulted to the death of said MARY GRACE CABBIGAT.

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[1] *Tomas v. Santos*, 639 Phil. 656, 660-661 (2010), citing *Bank of the Philippine Islands v. Dando*, G.R. No. 177456, September 4, 2009, 598 SCRA 378, 386-387.

[2] *Rollo*, pp. 3-14.

[3] *Id.* at 17-19; penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando (now a Member of the Court), concurring.

[4] *Id.* at 139-140.

[5] *Id.* at 40.

That the killing was attended by the qualifying circumstance of treachery considering that the accused suddenly attacked the victim who did not have any means to defend herself and did not have the least expectation to be hit and that the aggravating circumstance of disregard of sex also attended the killing considering that the victim is a woman.

CONTRARY TO LAW.[6]

During petitioner's arraignment, he entered a plea of not guilty to the charge.

In the Decision[7] dated June 5, 2015, Branch 5, Regional Trial Court (RTC), Baguio City, convicted petitioner for Murder in Criminal Case No. 30393-R on the basis of circumstantial evidence.

The RTC ruled that the evidence of the prosecution established the following: (1) at about midnight of November 8, 2009, the deceased Mary Grace Cabbigat (Mary Grace) went out with petitioner; (2) at 1:45 a.m. of the following day, petitioner brought Mary Grace to the Baguio General Hospital with severe head injuries that led to her death; and (3) petitioner and Mary Grace were together from the time they left the bar up to the time she was brought to the hospital.[8]

The RTC concluded that petitioner, as the victim's last companion, inflicted the fatal injuries upon her; that Mary Grace and petitioner were romantically involved with each other; and that they could have quarreled before the incident. To justify the conviction of the petitioner, the RTC further ruled that abuse of superior strength qualified the killing to Murder:[9]

WHEREFORE, premises considered, the Court finds Joel Latogan *y* Fias-ayen GUILTY beyond reasonable doubt of the crime of Murder

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[6] *Id.*

[7] *Id.* at 69-78. Penned by Presiding Judge Maria Ligaya V. Itliong-Rivera.

[8] *Id.* at 77.

[9] *Id.*

and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further directed to pay the heirs of Mary Grace Cabbigat ₱50,000.00 as civil indemnity, another ₱50,000.00 as moral damages, and ₱37,900.00 as actual damages. These amounts shall earn interest at the rate of 6% per annum from the finality of this Decision until fully paid.

SO ORDERED.[10]

Aggrieved, petitioner moved for a reconsideration[11] of the RTC Decision, but the motion was denied due to the lack of notice of hearing as required by the Rules of Court.[12]

On July 24, 2015, petitioner filed a Manifestation[13] stating that the RTC should not have denied the motion on a mere technicality considering the gravity of the errors ascribed to it. On the same date, he filed a Notice of Appeal.[14] On July 27, 2015, Private Prosecutor Jennifer N. Asuncion filed a Comment and/or Opposition[15] to the Manifestation and Notice of Appeal of petitioner, and contended that the *pro forma* motion for reconsideration did not toll the running of the period to appeal. Hence, the assailed RTC Decision had become final and executory 15 days from its promulgation on June 30, 2015. Petitioner filed his Reply to Comment and/or Opposition to Accused's Manifestation and Notice of Appeal[16] thereafter.

In an Order[17] dated August 19, 2015, the RTC denied petitioner's appeal explaining:

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[10] *Id.* at 78.

[11] *Id.* at 79-89.

[12] See Order dated July 13, 2015 of Branch 5, Regional Trial Court, Baguio City, *id.* at 90.

[13] *Id.* at 91-93.

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

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

[16] *Id.* at 99-110.

[17] *Id.* at 111-112.

The requirement of notice of hearing in all litigated motions has been part of the Rules for a long time. The alleged gravity of the errors ascribed to the Court or even the gravity of the conviction is not an excuse for disregarding the notice requirement. On the contrary, this should have urged accused to be more careful in adhering to the Rules so that his cause may not be dismissed on mere technicality.

Accused did not ask for a reconsideration of the July 13, 2015 Order. Instead, he filed a Notice of Appeal which was obviously filed beyond the 15-day reglementary period. As the Decision has lapsed into finality, the Court cannot give due course to the appeal.

SO ORDERED.[18]

Dismayed, petitioner initiated a special civil action for *certiorari* under Rule 65 of the Rules of Court before the CA.[19] In a Resolution[20] dated September 29, 2015, the CA dismissed the petition based on the following procedural flaws, *viz.*:

1. The records show that no motion for reconsideration from the Order of the public respondent dated August 19, 2015 denying the petitioner's Notice of Appeal was filed with the court *a quo* before the instant petition was resorted to;
2. The People of the Philippines was not impleaded as respondent in the petition; and the Office of the Solicitor General was not furnished with copy of the petition;
3. There is no proof of service of the petition on the respondents and no affidavit of service as to whether the petition was served by personal service or by registered mail.[21]

After almost five months from receipt of the Resolution dated September 29, 2015, petitioner filed an Omnibus Motion for Reconsideration on March 14, 2016. He claimed that he stands to serve *reclusion perpetua* for a heinous crime he purportedly committed; and that his petition was meant to correct the order

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[18] *Id.*

[19] *Id.* at 20-39.

[20] *Id.* at 139-140.

[21] *Id.*

of the RTC judge denying his appeal. Considering the judge's blatant and grave error in convicting him of Murder instead of Homicide, and in the interest of justice, technicalities should be set aside and his petition, as well as the notice of appeal, should be given due course.[22]

In the meantime, the CA in the Resolution dated February 26, 2016 denied due course to petitioner's Notice of Appeal for being erroneous and belatedly filed remedy.

On February 6, 2018, the CA rendered the assailed Resolution[23] denying petitioner's Omnibus Motion:

> After a careful assessment of the allegations raised in petitioner's Omnibus Motion for Reconsideration, we found no merit in the arguments that have been presented therein. Petitioner did not even bother to explain the procedural lapses of his petition and considerably, he even failed to correct said lapses. Petitioner ought to be reminded that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel courts to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. For while it is true that litigation is not a game of technicalities and that the rules of procedure should not be strictly followed in the interest of substantial justice, it does not mean that the Rules of Court may be ignored at will.
>
> WHEREFORE, petitioner's Omnibus Motion for Reconsideration is DENIED.
>
> SO ORDERED.[24]

Undeterred, petitioner filed the present petition arguing that the CA gravely erred in denying his Omnibus Motion for Reconsideration and Notice of Appeal.[25] Essentially, he points out to the Court that his conviction carries a prison term of

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[22] *Id.* at 18.

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

[24] *Id.* at 18-19.

[25] *Id.* at 5.

reclusion perpetua which, standing alone, is a circumstance exceptional enough to allow him the opportunity to challenge the RTC's Decision for reasons of equity and substantial justice.

We grant the petition.

The notice in the motion for reconsideration filed by petitioner before the RTC reads as follows:

NOTICE:

The CLERK OF COURT
Regional Trial Court
Br. 6, Justice Hall,
Baguio City

Sir:

Upon receipt hereof, please submit the same for hearing for the kind consideration of the Honorable Court. Further, please schedule the same for oral arguments as soon as the Prosecution files its comment thereto.

Thank you very much.[26]

The notification prays for the submission of the motion for reconsideration for hearing but without stating the time, date, and place of the hearing of the motion. This is not the notice of hearing contemplated under Sections 4 and 5, Rule 15[27] of

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[26] *Id.* at 88-89.

[27] Sections 4 and 5, Rule 15 of the Rules of Court provides:

Sec. 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and **shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.** (Emphasis supplied.)

the Rules of Court. The rules are explicit and clear. The notice of hearing shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance. The reason is obvious: unless the movant sets the time and place of hearing, the court would have no way to determine whether the other party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition.[28]

The Court is well aware of the judicial mandate that rules prescribing the time which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. With respect to notices of hearing of motions, in particular, the Court has consistently warned that a notice of hearing which does not comply with the requirements of the Rules of Court is a worthless piece of paper and would not merit any consideration from the Court.[29]

However, procedural rules were precisely conceived to aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. Section 6, Rule 1 of the Rules of Court enjoins the liberal construction of the Rules of Court in order to promote its objective to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.[30] As to be discussed below, given the realities obtaining in this case, the liberal construction of the rules will better promote and secure a just determination of petitioner's culpability.

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[28] *Resurreccion, et al. v. People*, 738 Phil. 704, 722 (2014) citing *Manila Surety and Fidelity Co., Inc. v. Batu Const. and Co., et al.*, 121 Phil. 1221, 1224 (1965).

[29] *Basco v. Court of Appeals*, 383 Phil. 671, 685-686 (2000).

[30] *Id.* at 687.

The CA likewise pointed out several procedural infirmities in petitioner's petition for *certiorari*, such as: (1) the lack of motion for reconsideration from the trial court's order denying petitioner's notice of appeal; (2) failure to implead the respondent People of the Philippines in the petition and furnish the Office of the Solicitor General with a copy of the petition; (3) lack of proof of service and affidavit of service as to whether the petition was served by personal service or by registered mail; and (4) failure to prove that the petition was timely filed. Records show as well that petitioner's Omnibus Motion for Reconsideration of the CA's September 29, 2015 Resolution was filed beyond the 15-day reglementary period and, as a consequence, it already attained finality which bars any review. On this ground alone, his petition was properly dismissed outright.

Withal, as in the liberal construction of the rules on notice of hearing, the Court has enumerated the factors that justify the relaxation of the rule on immutability of final judgments to serve the ends of justice, including: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.[31]

In one case, the CA dismissed petitioner's appeal for failure to timely file a motion for reconsideration of the RTC's Decision. According to the CA, the RTC decision could no longer be assailed pursuant to the doctrine of finality and immutability of judgments. Upon petition for review, though, the Court relaxed the application of the doctrine and held that the doctrine must yield to practicality, logic, fairness, and substantial justice.[32]

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[31] *Heirs of Juan M. Dinglasan v. Ayala Corporation, et al.*, G.R. No. 204378, August 5, 2019.

[32] *Dr. Malixi, et al. v. Dr. Baltazar*, G.R. No. 208224, November 22, 2017, citing *Republic v. Dagondon*, G.R. No. 210540, April 19, 2016, 790 SCRA 414.

After a thorough review of the records, the Court finds that compelling circumstances are extant in this case to justify the relaxation of the rules. Primarily, petitioner's life and liberty are at stake. The trial court has sentenced him to suffer the penalty of *reclusion perpetua* and this conviction attained finality on the basis of a mere technicality, not entirely through his fault or own doing. It is but proper, under the circumstances, that petitioner be given the opportunity to defend himself and pursue his appeal. To do otherwise would be tantamount to grave injustice. Both petitioner's motion for reconsideration before the RTC and his subsequent petition for *certiorari* in the CA also appear to stand on meritorious grounds. In addition, there is lack of any showing that the review sought is merely frivolous and dilatory.

In setting aside the aforementioned technicalities, infirmities, and thereby giving due course to tardy appeals and defective petitions, it must be emphasized that the Court is mindful of the extraordinary situations that merit liberal application of the Rules. In this case where technicalities were dispensed with, the Court's decisions were not meant to undermine the force and effectivity of the periods set by the law. On the contrary, in those rare instances, there always existed a clear need to prevent the commission of a grave injustice as in this case. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.[33]

Finally, it is evident that the case has been marked by gross negligence and incompetence of the petitioner's counsel. The Court notes once again that petitioner's counsel filed a flawed motion for reconsideration before the RTC. Later, the CA denied due course to petitioner's petition for *certiorari*, as well as his subsequent notice of appeal, due to egregious errors of his counsel. The present action was almost dismissed as it is likewise

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[33] *Heirs of Juan M. Dinglasan v. Ayala Corporation, et al., supra* note 31, citing *Neypes v. Court of Appeals*, 506 Phil. 613, 626 (2005).

laden with defects at the beginning, to wit: (a) it was filed out of time and the docket fees were paid late; (b) it lacked a verified statement of material dates; (c) no copy of the assailed September 29, 2015, CA Resolution was attached thereto; (d) the verification was defective; and (e) the affiant in the affidavit of service lacks competent proof of identity. Truth be told, these defects are plainly avoidable with the application of the relevant guidelines existing in our Rules of Court.

At this point, it is worth emphasizing that the rule which states that the mistakes of counsel bind the client may not be strictly followed where observance of it would result in outright deprivation of the client's liberty or property, or where the interests of justice so require.[34] In rendering justice, procedural infirmities take a backseat against substantive rights of litigants.[35] Corollarily, if the strict application of the rules would tend to frustrate rather than promote justice, the Court is not without power to exercise its judicial discretion in relaxing the rules of procedure.[36] In *Aguilar v. CA*[37] the Court held:

> x x x Losing liberty by default of an insensitive lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer. The established jurisprudence holds:
>
> x x x x x x x x x
>
> "The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rule, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule desert its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.

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[34] *Villanueva v. People*, 659 Phil. 418, 429 (2011).

[35] *Id.*

[36] *Id.*, citing *Rutaquio v. Court of Appeals*, G.R. No. 143786, October 17, 2008, 569 SCRA 312, 320.

[37] 320 Phil. 456 (1995).

x x x x x x x x x

The court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it."[38]

Without doubt, petitioner is entitled to competent legal representation from his counsel. The counsel's mere failure to observe a modicum of care and vigilance in the protection of the interests of the petitioner as the client, as manifested in the multiple procedural infirmities and shortcomings herein, is gross negligence. If the incompetence of counsel was so serious that the client was prejudiced by a denial of his day in court, the latter must be given another chance to present his case and assail his conviction. The legitimate interest of petitioner, specifically his right to have his conviction reviewed by the CA as a superior tribunal, should not be sacrificed in the altar of technicalities.[39]

WHEREFORE, the petition is **GRANTED**. The Resolutions dated September 29, 2015 and February 6, 2018 of the Court of Appeals in CA-G.R. SP No. 142093 are **REVERSED** and **SET ASIDE**. The Notice of Appeal filed by petitioner Joel F. Latogan before Branch 5, Regional Trial Court, Baguio City is hereby given **DUE COURSE**.

Let this case be remanded to Branch 5, Regional Trial Court, Baguio City for the latter to act with dispatch on petitioner's Notice of Appeal.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, J. Jr.,*[*] and *Delos Santos, JJ.*, concur.

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[38] *Id.* at 461-462.

[39] *Sanico v. People, et al.*, 757 Phil. 179, 189 (2015).

[*] Designated additional member per Raffle dated August 27, 2019 *vice* Associate Justice Ramon Paul L. Hernando who concurred in the assailed Resolution.

SECOND DIVISION

[G.R. No. 238761. January 22, 2020]

GOOD EARTH ENTERPRISES, INC., *petitioner, vs.* **DANILO GARCIA, JUANITA FAJUTAG, LEONOR GONZALES, RIZAL MEJULIO, ARLENE GUEVARRA, EDWIN MENDOZA, LEONIDA SANCHO, ANALIZA SERILANO, DOMINGO ROCIENTO, RICO GUEVARRA, RUFINO JALMASCO, and RAUL BORLADO, JR.,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; PETITIONER'S BELATED SUBMISSION OF SECRETARY'S CERTIFICATE CONFIRMING THE AUTHORITY OF ITS REPRESENTATIVE TO FILE THE SUIT CONSTITUTES SUBSTANTIAL COMPLIANCE WITH THE RULES; REMAND OF THE CASE TO THE COURT OF APPEALS FOR A RESOLUTION ON THE MERITS IS PROPER. — [A] more circumspect scrutiny of the records would show that — contrary to the CA's finding - petitioner had, in fact, belatedly submitted a Secretary's Certificate confirming Hontiveros' authority to *"file any complaint, action, or claim against… all unlawful occupants of the property covered by T.C.T. No. 50962"* and to *"verify, certify and sign under oath any document, verification or certification"* on its behalf. Records further reveal that on January 5, 2012, petitioner filed a Manifestation dated January 2, 2012 with the MeTC praying for the admission of the foregoing certificate, with an explanation that the failure to attach the same was due to mere inadvertence and oversight. Indeed, the certificate was later marked and made part of the records of the case. Fittingly, case law provides that a party's belated submission of a Secretary's Certificate constitutes substantial compliance with the rules, as it operates to ratify and affirm the authority of the delegate to represent such party before the courts. Clearly, Hontiveros was duly authorized to sign the verification and CNFS attached to petitioner's complaint.

As such, the CA erroneously ordered the dismissal of the complaint solely on the aforementioned ground. Considering that the CA dismissed this case on a purely procedural ground, the Court deems it prudent to remand the case to the CA for a resolution on the merits.

APPEARANCES OF COUNSEL

Paras & Manlapaz Lawyers for petitioner.
The Law Office of Vincent Dandal Romarante for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 18, 2017 and the Resolution[3] dated April 17, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 148265, which reversed and set aside the Decision[4] dated July 27, 2016 of the Regional Trial Court of Parañaque City, Branch 258 (RTC) in Civil Case No. 15-335 affirming the Decision[5] dated March 22, 2013 of the Metropolitan Trial Court of Parañaque City, Branch 78 (MeTC) in Civil Case No. 2011-92; and accordingly, dismissed the complaint for unlawful detainer filed by petitioner Good Earth Enterprises, Inc. (petitioner) against respondents Danilo Garcia, Juanita Fajutag, Leonor Gonzales, Rizal Mejulio, Arlene Guevarra, Edwin Mendoza, Leonida Sancho, Analiza Serilano, Domingo Rociento, Rico Guevarra, Rufino Jalmasco, and Raul Borlado, Jr. (respondents).

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[1] *Rollo*, pp. 10-22.

[2] *Id.* at 26-39. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan, concurring.

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

[4] *Id.* at 187-200. Penned by Judge Noemi J. Balitaan.

[5] *Id.* at 162-186. Penned by Presiding Judge Ramsey Domingo G. Pichay.

The Facts

In its complaint for unlawful detainer, petitioner alleged that it was the registered owner of a parcel of land located at San Dionisio, Sucat, Parañaque City (subject property) consisting of an area of 873 square meters,[6] as affirmed by the Court in a Decision dated December 8, 1988 entitled *Baltazar v. Court of Appeals* (*Baltazar)*.[7] After such case had attained finality and pending execution proceedings, petitioner discovered that Classic Realty and Management Corporation (CRMC), a lessee of one of the losing parties in *Baltazar*, had sub-leased certain portions of the subject-property to respondents. From then on, CRMC and respondents engaged in legal battles with petitioner, during which petitioner "tolerated" respondents' stay in the subject property. When petitioner finally won said legal battles, it individually sent letters to respondents sometime in May and July of 2011[8] demanding them to vacate the subject property, all of which were left unheeded. Hence, petitioner was constrained to file an **Amended Complaint for ejectment** against them on September 29, 2011.[9]

For their part, respondents prayed for the dismissal of the Amended Complaint arguing, *inter alia*, that the MeTC lacked jurisdiction over the action for the following reasons: (*a*) petitioner failed to attach a Secretary's Certificate evincing the authority of Mr. Stephen Hontiveros (Hontiveros) to sign the Verification and Certificate of Non-Forum Shopping (CNFS) on its behalf; and (*b*) the complaint was defective for failure to allege that petitioner had prior physical possession over the subject property.[10]

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[6] See Transfer Certificate of Title No. 50962; *id.* at 54-55.

[7] See *Baltazar v. Court of Appeals*, 250 Phil. 349 (1988).

[8] See Demands to Vacate; records, pp. 11-43.

[9] See Amended Complaint dated September 29, 2011; *rollo*, pp. 42-53.

[10] See Answer; records (Vol. II), pp. 806-810.

The MeTC Ruling

In a Decision[11] dated March 22, 2013, the MeTC ruled in petitioner's favor, and accordingly, ordered respondents: (*a*) to voluntarily, peacefully, and immediately vacate the subject property and turn-over possession thereof to petitioner; (*b*) to each pay petitioner reasonable compensation for the use and occupation of the subject property at the monthly rate of ₱15,000.00 from September 1, 2011 up to March 1, 2013, or a total of ₱270,000.00; (*c*) to each pay petitioner the monthly rent of ₱15,000.00 from March 1, 2013 until they turn-over possession of the subject property to petitioner; and (*d*) to jointly pay petitioner attorney's fees in the amount of ₱10,000.00.[12]

In ruling for petitioner, the MeTC found that petitioner had sufficiently established a case for unlawful detainer against respondents as the former merely allowed the latter to use and possess the subject property without any prior contract or agreement between them.[13]

Aggrieved, respondents moved for reconsideration, which was denied in an Order[14] dated April 24, 2013 for being a prohibited pleading. Dismayed, they appealed[15] to the RTC.

The RTC Ruling

In a Decision[16] dated July 27, 2016, the RTC affirmed the MeTC ruling.[17] It found that the allegations of the Amended Complaint indeed made out a case for unlawful detainer, noting that petitioner's failure to file an action for quite some time

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[11] *Rollo*, pp. 162-186.

[12] *Id.* at 183-186.

[13] *Id.* at 174-183.

[14] Records (Vol. III), p. 1374.

[15] See Notice of Appeal dated April 18, 2013; *id.* at 1370-1371.

[16] *Rollo*, pp. 187-200.

[17] *Id.* at 200.

shows that it merely tolerated respondents' possession of the subject property.[18]

Undaunted, respondents filed a petition for review before the CA.[19]

The CA Ruling

In a Decision[20] dated May 18, 2017, the CA reversed and set aside the rulings of the trial courts on a purely procedural ground. Particularly, it pointed out that Hontiveros was not empowered to sign the verification and CNFS on petitioner's behalf, as no Secretary's Certificate proving such authority was appended thereto. Further, it observed that the rule on substantial compliance cannot be applied in petitioner's favor considering that petitioner did not attempt to comply at all, even belatedly.[21]

Petitioner moved for reconsideration[22] but the same was denied in a Resolution[23] dated April 17, 2018; hence, this petition.[24]

The Issue Before the Court

The issue before the Court is whether or not the CA correctly dismissed petitioner's complaint for unlawful detainer on a purely procedural ground, *i.e.*, non-compliance with the rules on verification and certification against forum shopping.

The Court's Ruling

The petition is meritorious.

To recapitulate, the CA dismissed the complaint for unlawful detainer on the ground that Hontiveros was not duly authorized

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[18] See *id.* at 196-200.

[19] *Id.* at 201-215.

[20] *Id.* at 26-39.

[21] *Id.* at 35-38.

[22] See Motion for Reconsideration dated June 7, 2017; *id.* at 216-218.

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

[24] *Id.* at 10-22.

by petitioner to sign the verification and CNFS attached thereto in its behalf.

However, a more circumspect scrutiny of the records would show that — contrary to the CA's finding — petitioner had, in fact, belatedly submitted a Secretary's Certificate confirming Hontiveros' authority to *"file any complaint, action, or claim against all unlawful occupants of the property covered by T.C.T. No. 50962"* and to *"verify, certify and sign under oath any document, verification or certification"* on its behalf.[25] Records further reveal that on January 5, 2012, petitioner filed a Manifestation[26] dated January 2, 2012 with the MeTC praying for the admission of the foregoing certificate, with an explanation that the failure to attach the same was due to mere inadvertence and oversight. Indeed, the certificate was later marked and made part of the records of the case.[27] Fittingly, case law provides that a party's belated submission of a Secretary's Certificate constitutes substantial compliance with the rules, as it operates to ratify and affirm the authority of the delegate to represent such party before the courts.[28]

Clearly, Hontiveros was duly authorized to sign the verification and CNFS attached to petitioner's complaint. As such, the CA erroneously ordered the dismissal of the complaint solely on the aforementioned ground.

Considering that the CA dismissed this case on a purely procedural ground, the Court deems it prudent to remand the case to the CA for a resolution on the merits.

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[25] See Secretary's Certificate dated August 12, 2011; records (Vol. II), pp. 922-923.

[26] *Id.* at 679-680.

[27] See Secretary's Certificate dated August 12, 2011 (*id.* at 1100-1101); attached to Petitioner's Position Paper dated January 16, 2013 (*id.* at 983-997); Preliminary Conference Brief (*id.* at 911-920); Report dated October 15, 2012 (*id.* at 945-948); and Minutes of Marking dated October 12, 2012 (*id.* at 949-951).

[28] See *Yap, Sr. v. Siao*, 786 Phil. 257, 269 (2016). See also *Swedish Match Philippines, Inc. v. Treasurer of the City of Manila*, 713 Phil. 240, 249-250 (2013).

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated May 18, 2017 and the Resolution dated April 17, 2018 of the Court of Appeals in CA-G.R. SP No. 148265 are hereby **REVERSED** and **SET ASIDE**. The instant case is **REMANDED** to the Court of Appeals for a resolution on the merits.

SO ORDERED.

Inting and *Delos Santos, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 240012. January 22, 2020]

MERIAM M. URMAZA, *petitioner, vs.* **HON. REGIONAL PROSECUTOR NONNATUS CAESAR R. ROJAS/ HON. ASSISTANT PROVINCIAL PROSECUTOR JUDYLITO V. ULANDAY, and RAMON TORRES DOMINGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; 2000 NATIONAL PROSECUTION SERVICE (NPS) RULE ON APPEAL; APPEALS PROCESS IN THE NPS WITH REGARD TO COMPLAINTS SUBJECT OF PRELIMINARY INVESTIGATION, REITERATED AND SUMMARIZED. — Based on the [DOJ's Department Circular No. 70-A and Department Circular No. 018-14], it can be deduced that the prevailing appeals process in the NPS with regard to complaints subject of preliminary investigation would depend on two (2) factors, namely: (1) *where* the complaint was filed, *i.e.*, whether in the NCR or in the

provinces; and (2) *which court has original jurisdiction* over the case, *i.e.*, whether or not it is cognizable by the MTCs/MeTCs/MCTCs. Hence, in *Cariaga v. Sapigao*, the Court summarized the rule as follows: (a) If the complaint is filed outside the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before the ORP, which ruling shall be with finality; (b) If the complaint is filed outside the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before the SOJ, which ruling shall be with finality; (c) If the complaint is filed within the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the Office of the City Prosecutor (OCP) may be appealable by way of petition for review before the Prosecutor General, whose ruling shall be with finality; (d) If the complaint is filed within the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the SOJ, whose ruling shall be with finality; (e) Provided, that in instances covered by (a) and (c), the SOJ may, pursuant to his power of control and supervision over the entire NPS, review, modify, or reverse the ruling of the ORP or the Prosecutor General, as the case may be.

2. ID.; ID.; ID.; WHILE THE COURT OF APPEALS (CA) COULD HAVE TAKEN COGNIZANCE OF THE CASE SINCE THE RULING OF THE OFFICE OF REGIONAL PROSECUTOR (ORP) WITH REGARD TO HEREIN PETITIONER'S APPEAL SHOULD BE DEEMED FINAL, THE CA CANNOT BE FAULTED FOR DISMISSING HER PETITION OUTRIGHT AS THERE WAS NO WAY FOR THE CA TO DETERMINE WHETHER OR NOT SAID PETITION WAS FILED ON TIME. — In the present case, Urmaza lodged the criminal complaint for Intriguing Against Honor and/or Oral Defamation against Domingo before the OPP in Tayug, Pangasinan - hence, *outside* the NCR. Both crimes are cognizable by the MTCs/MeTCs/MCTCs. Pursuant to the guidelines set forth above, the ruling of the ORP with regard to Urmaza's appeal should be deemed *final* and thus, may already be elevated to the courts. Hence, based solely on this ground, the CA could take cognizance of the *certiorari* petition and resolve the case on the merits. However, records reveal that

Urmaza failed to state the material dates showing when she filed the motions for reconsideration both from the February 13, 2017 and April 26, 2017 Resolutions of the ORP. x x x In light of the foregoing procedural infirmity, there was no way for the CA to determine whether the petition for *certiorari* was filed within the 60-day reglementary period prescribed under the Rules of Court or if the same was filed out of time. As such, the CA cannot be faulted for dismissing her petition outright.

3. CRIMINAL LAW; ORAL DEFAMATION OR SLANDER, DEFINED; ELEMENTS, ENUMERATED AND EXPLAINED; DISTINGUISHED FROM INTRIGUING AGAINST HONOR. — Oral Defamation or Slander is libel committed by oral means, instead of in writing. It is defined as "the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood." The elements of Oral Defamation are: (1) there must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, status or circumstances; (2) made orally; (3) publicly; (4) and maliciously; (5) directed to a natural or juridical person, or one who is dead; (6) which tends to cause dishonor, discredit or contempt of the person defamed. Oral defamation may either be simple or grave. It becomes grave when it is of a serious and insulting nature. An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead. Meanwhile, Intriguing Against Honor penalizes any person who shall create intrigue which has for its principal purpose to blemish the honor or reputation of a person.

4. ID.; ID.; ID.; THE ORP CORRECTLY RULED THAT THERE WAS NO SUFFICIENT EVIDENCE TO INDICT PRIVATE RESPONDENT FOR ORAL DEFAMATION OR INTRIGUING AGAINST HONOR. — In this case, the OPP, as affirmed by the ORP, found that no sufficient evidence had been adduced to indict Domingo for either of the crimes charged. As pointed out by the ORP, a prosecution for oral defamation does not only require that the utterance be defamatory, but also that it was made publicly. If it were true that Domingo had

been publicly calling Urmaza a "thief" or that every time he passed her house he would shout, *"MAGNANAKAW, MAGNANAKAW SI MERIAM NG BARIL AT BALASUBAS KAYO,"* then there should be no dearth of witnesses to prove it. On this score, the ORP correctly pointed out that there was no corroborative statement from any other witness to substantiate Urmaza's allegations, and the account of Maneclang, Urmaza's aunt, that Domingo's son Gian Carlo mentioned to her during a casual conversation that they suspected Urmaza of taking the gun was nothing but hearsay. As it is, the only time that Domingo accused Urmaza of stealing the missing gun was during the confrontation before the barangay, where the complaint for theft was filed by Domingo. Under the circumstances, Domingo's accusation cannot be said to have been made *maliciously*; therefore, he cannot be said to have committed the crimes imputed to him.

APPEARANCES OF COUNSEL

Roger G. Peralta IV for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated September 29, 2017[2] and May 25, 2018[3] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 152509 dismissing the petition for *certiorari*[4] filed by petitioner Meriam M. Urmaza (Urmaza) before it for being the wrong remedy to assail the Resolutions dated April 26, 2017[5] and June

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[1] *Rollo*, pp. 12-26.

[2] *Id.* at 31-32. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Fernanda Lampas Peralta and Carmelita Salandanan Manahan, concurring.

[3] *Id.* at 33-35.

[4] CA *rollo*, pp. 3-15.

[5] *Rollo*, pp. 38-41.

27, 2017[6] issued by respondent Regional Prosecutor Nonnatus Caesar R. Rojas.

The Facts

Records reveal that Urmaza filed a criminal complaint[7] before the Office of the Provincial Prosecutor of Tayug, Pangasinan (OPP) for Intriguing Against Honor[8] and/or Oral Defamation[9] against respondent Ramon Torres Domingo (Domingo) for allegedly spreading rumors in their neighborhood that she is a thief. In the morning of January 22, 2012, she was invited by the barangay chairman for a confrontation with Domingo regarding a missing handgun entrusted to him by its owner. During the confrontation, Domingo allegedly accused her of stealing the gun, which she denied. Susan Maneclang (Maneclang), Urmaza's aunt, claimed that during a casual conversation, Domingo's son, Gian Carlo, told her that they suspected that it was Urmaza who took the gun. Hence, every time Domingo passed in front of Urmaza's house, he would shout, "*MAGNANAKAW, MAGNANAKAW SI MERIAM NG BARIL AT BALASUBAS KAYO.*"[10]

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[6] *Id.* at 36-37.

[7] Not attached to the *rollo*. Docketed as NPS No. I-01H-INV-12K-00312.

[8] See Article 364 of the Revised Penal Code (RPC), as amended, which provides:

> Article 364. *Intriguing against honor*. — The penalty of *arresto menor* or fine not exceeding Twenty thousand pesos (₱20,000) shall be imposed for any intrigue which has for its principal purpose to blemish the honor or reputation of a person.

[9] See Article 358 of the RPC, as amended, which provides:

> Article 358. *Slander*. — Oral defamation shall be punished by *arresto mayor* in its maximum period to *prision correccional* in its minimum period if it is of a serious and insulting nature; otherwise the penalty shall be *arresto menor* or a fine not exceeding Twenty thousand pesos (₱20,000).

[10] See *rollo*, pp. 38, 46-47, and 69-72.

In defense, Domingo denied having ever publicly accused Urmaza of stealing the gun, stressing that he merely voiced his suspicion during the confrontation before the barangay chairman. When Urmaza denied having taken it, he reported the incident to the police authorities.[11]

The OPP Ruling

In a Resolution[12] dated January 24, 2013, the OPP dismissed the complaint for insufficiency of evidence.[13]

Urmaza filed a motion for reconsideration[14] on January 7, 2015,[15] or nearly two (2) years thereafter, claiming, *inter alia*, that she did not receive a copy of the January 24, 2013 Resolution.[16] However, the motion was denied in a Resolution[17] dated January 12, 2015. Aggrieved, she appealed[18] to the Office of the Regional Prosecution of San Fernando City, La Union (ORP).

The ORP Ruling

Initially, the ORP dismissed Urmaza's petition on procedural grounds through its Resolution[19] dated February 13, 2017. However, in a subsequent Resolution[20] dated April 26, 2017, it gave due course to the petition and resolved the issues on the

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[11] See *id.* at 38-39 and 46-47.

[12] *Id.* at 46-48. Approved by Acting Provincial Prosecutor Noel C. Bince.

[13] *Id.* at 48.

[14] See Urgent Motion for Reconsideration dated December 23, 2014; *id.* at 93-98.

[15] *Id.* at 44.

[16] See *id.* at 44 and 96.

[17] *Id.* at 44-45. Approved by Provincial Prosecutor Abraham L. Ramos II.

[18] See Petition for Review dated November 23, 2015; *id.* at 77-84.

[19] *Id.* at 42-43. Issued by Regional Prosecutor Nonnatus Caesar R. Rojas.

[20] *Id.* at 38-41.

merits. Nonetheless, it affirmed the OPP's dismissal of Urmaza's complaint for insufficiency of evidence, pointing out the dearth of any credible corroboration to support the allegations in her complaint.[21]

Urmaza's motion for reconsideration[22] was denied in a Resolution[23] dated June 27, 2017; hence, she elevated the matter directly to the CA via petition for *certiorari*.[24]

The CA Ruling

In a Resolution[25] dated September 29, 2017, the CA dismissed Urmaza's *certiorari* petition for being the wrong remedy from the adverse resolution of the ORP. The CA explained that under Department of Justice (DOJ) Department Circular No. 70,[26] Urmaza should have filed a petition for review before the DOJ, not a petition for *certiorari* before the CA. Moreover, the petition failed to state the material date showing when the motion for reconsideration from the February 13, 2017 Resolution of the ORP was filed, in violation of paragraph 2,[27] Section 3, Rule 46 of the Rules of Court.[28]

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[21] See *id.* at 39-40.

[22] Dated June 2, 2017. *Id.* at 49-55.

[23] *Id.* at 36-37.

[24] CA *rollo*, pp. 3-15.

[25] *Rollo*, pp. 31-32.

[26] Entitled "2000 NPS RULE ON APPEAL" (July 3, 2000).

[27] Section 3. *Contents and filing of petition; effect of non-compliance with requirements*. — x x x

> In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received. x x x x

[28] *Rollo*, pp. 31-32.

Undeterred, Urmaza filed a motion for reconsideration,[29] but it was denied in a Resolution[30] dated May 25, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly dismissed the *certiorari* petition outright on the ground of improper remedy.

The Court's Ruling

The petition must be denied.

I

The appeals process in the National Prosecution Service (NPS) is governed by the DOJ's Department Circular No. 70 dated July 3, 2000, otherwise known as the "2000 NPS Rule on Appeal." Among others, it provides that resolutions of the ORP, in cases subject of preliminary investigation/reinvestigation, shall be appealed by filing a verified petition for review before the Secretary of Justice (SOJ).[31] This procedure, however, was modified by Department Circular No. 70- A[32] dated July 10, 2000, the pertinent portions of which read:

> In order to expedite the disposition of appealed cases governed by Department Circular No. 70 dated July 3, 2000 ("2000 NPS RULE ON APPEAL"), **all petitions for review of resolutions of Provincial/ City Prosecutors in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts,** except in the National Capital Region,**shall be filed with the Regional State Prosecutor concerned who shall resolve such petitions with finality** in accordance with the pertinent rules prescribed in the said Department Circular.
>
> The foregoing delegation of authority notwithstanding, the Secretary of Justice may, pursuant to his power of supervision and control

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[29] Dated November 3, 2017. CA *rollo*, pp. 87-96.

[30] *Rollo*, pp. 33-35.

[31] See Sections I and 4 of Department Circular No. 70.

[32] Entitled "DELEGATION OF AUTHORITY TO REGIONAL STATE PROSECUTORS TO RESOLVE APPEALS IN CERTAIN CASES."

over the entire National Prosecution Service and in the interest of justice, review the resolutions of the Regional State Prosecutors in appealed cases. (Emphases and underscoring supplied)

Evidently, Department Circular No. 70-A delegated to the ORPs the authority to rule *with finality* cases subject of preliminary investigation/reinvestigation appealed before it, provided that: (*a*) the case is not filed in the National Capital Region (NCR); and (*b*) the case, should it proceed to the courts, is cognizable by the Metropolitan Trial Courts (MeTCs), Municipal Trial Courts (MTCs), and Municipal Circuit Trial Courts (MCTCs) — which includes not only violations of city or municipal ordinances, but also all offenses punishable with imprisonment *not exceeding six (6) years*, irrespective of the amount of fine, and regardless of other imposable accessory or other penalties attached thereto.[33] This is, however, without prejudice on the part of the SOJ to review the ORP's ruling should the former deem it appropriate to do so in the interest of justice.

This delegation of authority on appealed cases set forth in Department Circular No. 70-A is further strengthened by Department Circular No. 018-14[34] dated June 18, 2014, relevant portions of which read:

In the interest of service and pursuant to the provisions of existing laws with the objective of institutionalizing the Department's Zero Backlog Program on appealed cases, the following guidelines shall be observed and implemented in the resolution of appealed cases on Petition for Review and Motions for Reconsideration:

1. Consistent with Department Circular No. 70-A, all appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in cases cognizable

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[33] See Section 32 of *Batas Pambansa Blg.* (BP) 129, entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (August 14, 1981). See also *Cariaga v. Sapigao*, 811 Phil. 819, 827-828 (2017).

[34] Entitled "REVISED DELEGATION OF AUTHORITY ON APPEALED CASES" (July 1, 2014).

by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, shall be by way of a petition for review to the concerned province or city. ***The Regional Prosecutor shall resolve the petition for review with finality***, in accordance with the rules prescribed in pertinent rules and circulars of this Department. Provided, however, that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution Service, review, modify or reverse, the resolutions of the Regional Prosecutor in these appealed cases.

2. Appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in all other cases shall be by way of a petition for review to the Office of Secretary of Justice.

3. Appeals from resolutions of the City Prosecutors in the National Capital Region in cases cognizable by Metropolitan Trial Courts shall be by way of a petition for review to the Prosecutor General who shall decide the same with finality. Provided, however that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution Service, review, modify or reverse, the resolutions of the Prosecutor General in these appealed cases.

4. Appeals from resolutions of the City Prosecutors in the National Capital Region in all other cases shall be by way of a petition for review to the Office of the Secretary.

x x x x x x x x x

This Circular supersedes all inconsistent issuances, takes effect on 01 July 2014 and shall remain in force until further orders.

For guidance and compliance. (Emphasis and italics supplied)

Based on the foregoing issuances, it can be deduced that the prevailing appeals process in the NPS with regard to complaints subject of preliminary investigation would depend on two (2) factors, namely: (1) *where* the complaint was filed, *i.e.*, whether in the NCR or in the provinces; and (2) *which court has original jurisdiction* over the case, *i.e.*, whether or not it

is cognizable by the MTCs/MeTCs/MCTCs. Hence, in *Cariaga v. Sapigao*,[35] the Court summarized the rule as follows:

(a) If the complaint is filed outside the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before the ORP, which ruling shall be with finality;

(b) If the complaint is filed outside the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before the SOJ, which ruling shall be with finality;

(c) If the complaint is filed within the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the Office of the City Prosecutor (OCP) may be appealable by way of petition for review before the Prosecutor General, whose ruling shall be with finality;

(d) If the complaint is filed within the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the SOJ, whose ruling shall be with finality;

(e) Provided, that in instances covered by (a) and (c), the SOJ may, pursuant to his power of control and supervision over the entire NPS, review, modify, or reverse the ruling of the ORP or the Prosecutor General, as the case may be.[36]

In the present case, Urmaza lodged the criminal complaint for Intriguing Against Honor and/or Oral Defamation against Domingo before the OPP in Tayug, Pangasinan — hence, *outside* the NCR. Both crimes are cognizable by the MTCs/MeTCs/MCTCs.[37] Pursuant to the guidelines set forth above, the ruling of the ORP with regard to Urmaza's appeal should be deemed *final* and thus, may already be elevated to the courts. Hence,

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[35] *Supra* note 33.

[36] See *id.* at 829-830.

[37] See Section 32 of BP 129.

based solely on this ground, the CA could take cognizance of the *certiorari* petition and resolve the case on the merits.

However, records reveal that Urmaza failed to state the material dates showing when she filed the motions for reconsideration both from the February 13, 2017 and April 26, 2017 Resolutions of the ORP. Relative to this, Section 3, Rule 46 of the Rules of Court states:

> Section 3. *Contents and filing of petition; effect of non-compliance with requirements*. — x x x
>
> In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.
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> x x x x x x x x x
>
> The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Underscoring supplied)

In light of the foregoing procedural infirmity, there was no way for the CA to determine whether the petition for *certiorari* was filed within the 60-day reglementary period[38] prescribed under the Rules of Court or if the same was filed out of time. As such, the CA cannot be faulted for dismissing her petition outright.

In any event, assuming that the petition for *certiorari* had been filed on time and in view of Urmaza's prayer for a resolution of the case on the merits, the Court shall endeavor to resolve the substantive issues to prevent further delays in the disposition of the case and to better serve the ends of justice.[39]

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[38] See Section 4, Rule 65 of the Rules of Court.

[39] *Cariaga v. Sapigao*, *supra* note 33, at 831.

II

In *Hilbero v. Morales, Jr.*,[40] the Court reiterated the guiding principles in determining whether or not the courts may overturn the findings of the public prosecutor in preliminary investigation proceedings on the ground of grave abuse of discretion in the exercise of his/her functions, *viz.*:

A public prosecutor's determination of probable cause — that is, one made for the purpose of filing an information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise [definition], grave abuse of discretion generally refers to a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." Corollary [thereto], the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.x x x

x x x x x x x x x

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does

[40] 803 Phil. 220 (2017).

not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged. x x x A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[41]

Oral Defamation or Slander is libel committed by oral means, instead of in writing. It is defined as "the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood." The elements of Oral Defamation are: (1) there must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, status or circumstances; (2) made orally; (3) publicly; (4) and maliciously; (5) directed to a natural or juridical person, or one who is dead; (6) which tends to cause dishonor, discredit or contempt of the person defamed. Oral defamation may either be simple or grave. It becomes grave when it is of a serious and insulting nature. An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead.[42] Meanwhile, Intriguing Against Honor penalizes any person who shall create intrigue which

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[41] *Id.* at 250-252, as cited in *Cariaga v. Sapigao*, *supra* note 33, at 831-833.

[42] *De Leon v. People*, 776 Phil. 701, 717 (2016).

has for its principal purpose to blemish the honor or reputation of a person.[43]

In this case, the OPP, as affirmed by the ORP, found that no sufficient evidence had been adduced to indict Domingo for either of the crimes charged.[44] As pointed out by the ORP, a prosecution for oral defamation does not only require that the utterance be defamatory, but also that it was made publicly. If it were true that Domingo had been publicly calling Urmaza a "thief' or that every time he passed her house he would shout, *"MAGNANAKAW, MAGNANAKAW SI MERIAM NG BARIL AT BALASUBAS KAYO,"* then there should be no dearth of witnesses to prove it. On this score, the ORP correctly pointed out that there was no corroborative statement from any other witness to substantiate Urmaza's allegations, and the account of Maneclang, Urmaza's aunt, that Domingo's son Gian Carlo mentioned to her during a casual conversation that they suspected Urmaza of taking the gun was nothing but hearsay. As it is, the only time that Domingo accused Urmaza of stealing the missing gun was during the confrontation before the barangay, where the complaint for theft was filed by Domingo.[45] Under the circumstances, Domingo's accusation cannot be said to have been made *maliciously*; therefore, he cannot be said to have committed the crimes imputed to him.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Inting and *Delos Santos, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

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[43] See Article 364 of the RPC.

[44] See *rollo,* pp. 40 and 48.

[45] See *id.* at 40.

FIRST DIVISION

[G.R. No. 241353. January 22, 2020]

DANILO ROMERO, VICTORIO ROMERO and EL ROMERO, representing their deceased father LUTERO ROMERO, *petitioners, vs.* **CRISPINA SOMBRINO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT ARE NOT PROPER SUBJECTS OF APPEAL; EXCEPTIONS. — [T]he Court is aware that the determination of whether a person is an agricultural tenant is basically a question of fact. As a general rule, questions of fact are not proper subjects of appeal by *certiorari* under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law. Nevertheless, the foregoing general rule admits of several exceptions such as when the conclusion is a finding grounded entirely on speculations, surmises and conjectures; when the inference made is manifestly mistaken; and when the judgment is based on a misapprehension of facts. The Court finds that the aforesaid exceptions to the general rule apply in the instant case. Therefore, the Court shall proceed to rule on the main issue.

2. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY ACT OF THE PHILIPPINES (RA 1199, AS AMENDED); AGRICULTURAL LEASEHOLD TENANCY; ELEMENTS. — According to RA 1199, as amended, otherwise known as the Agricultural Tenancy Act of the Philippines, an agricultural leasehold tenancy exists "when a person who, either personally or with the aid of labor available [from] members of his immediate farm household, undertakes to cultivate a piece of agricultural land susceptible of cultivation by a single person together with members of his immediate farm household, belonging to or legally possessed by, another in consideration of a fixed amount in money or in produce or in both." The existence of a tenancy relation is not presumed. According to established jurisprudence, the following indispensable elements

must be proven in order for a tenancy agreement to arise: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between the landowner and the tenant or agricultural lessee. The absence of any of the requisites does not make an occupant, cultivator, or a planter a *de jure* tenant which entitles him to security of tenure under existing tenancy laws. However, if all the aforesaid requisites are present and an agricultural leasehold relation is established, the same shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided. In case of death or permanent incapacity of the agricultural lessor, the leasehold shall bind the legal heirs.

3. **ID.; ID.; ID.; TENANCY RELATIONSHIP; SUBSTANTIAL EVIDENCE IS NEEDED TO ESTABLISH THAT THE LANDOWNER AND TENANT CAME TO AN AGREEMENT IN ENTERING INTO A TENANCY RELATIONSHIP. —** Tenancy relationship cannot be presumed. An assertion that one is a tenant does not automatically give rise to security of tenure. Nor does the sheer fact of working on another's landholding raise a presumption of the existence of agricultural tenancy. One who claims to be a tenant has the *onus* to prove the affirmative allegation of tenancy. Hence, substantial evidence is needed to establish that the landowner and tenant came to an agreement in entering into a tenancy relationship. Considering the foregoing, jurisprudence has held that self-serving statements regarding supposed tenancy relations are not enough to establish the existence of a tenancy agreement. Moreover, certifications issued by administrative agencies or officers that a certain person is a tenant are merely provisional, not conclusive on the courts, and have little evidentiary value without any corroborating evidence. There should be independent evidence establishing the consent of the landowner to the relationship.

4. ID.; ID.; ID.; ID.; IT CAN ONLY BE CREATED WITH THE CONSENT OF THE TRUE AND LAWFUL LANDOWNER. — Tenancy relationship can only be created with the consent of the true and lawful landowner who is the owner, lessee, usufructuary or legal possessor of the land. It cannot be created by the act of a supposed landowner, who has no right to the land subject of the tenancy, much less by one who has been dispossessed of the same by final judgment.

APPEARANCES OF COUNSEL

Peter Elfred Lasmarias for petitioners.

Mejorada Plando Barredo Prospero & Macapado Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Security of tenure may be invoked only by tenants *de jure* and not by those who are not true and lawful tenants but became so only through the acts of a supposed landholder who had no right to the landholdings. Tenancy relation can only be created with the consent of the landholder who is either the owner, lessee, usufructuary or legal possessor of the land.[1]

Before the Court is a Petition for Review on *Certiorari*[2] (Petition) under Rule 45 of the Rules of Court filed by the heirs of Lutero Romero (Lutero), *i.e.*, petitioners Danilo Romero, Victorio Romero, and El Romero (petitioners Heirs of Lutero), against respondent Crispina Sombrino (respondent Sombrino), assailing the Decision[3] dated January 22, 2018 (assailed Decision) and the Resolution[4] dated June 8, 2018 (assailed Resolution)

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[1] *Cunanan v. Judge Aguilar*, 174 Phil. 299, 313 (1978); citation omitted.

[2] *Rollo*, pp. 15-48.

[3] *Id.* at 50-57. Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon, concurring.

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

rendered by the Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. SP No. 07367-MIN.

The Essential Facts and Antecedent Proceedings

As culled from the records of the instant case, the essential facts and antecedent proceedings are as follows:

The instant Petition centers on a two-hectare portion of Lot No. 23, Pls-35 located at Maranding Annex, Kapatagan, Lanao del Norte (subject property), with an aggregate area of 12.0717 hectares, covered by Original Certificate of Title No. P-2261, which is registered in the name of Lutero after the latter's homestead application was approved in 1967.[5]

The final and executory Decision of the Court, Third Division in Teodora Saltiga de Romero, et al. v. CA, et al., G.R. No. 109307[6]

Prior to the present controversy, the subject property was subject of a legal dispute involving Lutero and his siblings, the heirs of the late spouses Eugenio Romero (Eugenio) and Teodora Saltiga (Teodora) (collectively referred to as the Sps. Romero). The Sps. Romero begot nine children, *i.e.*, Lutero, Eutiquio, Ricardo, Generosa, Diosdada, Mindalina, Lucita, Presentacion and Gloriosa. The issue regarding the ownership and possession of the subject property was dealt with in two civil cases tried jointly before the Regional Trial Court of Lanao Del Norte, Branch 7 (RTC):

1. Civil Case No. 591, entitled *Teodora Saltiga de Romero, et al. v. Lutero Romero, et al.* — for Reconveyance with Damages and Cancellation of Registration of Mortgage

2. Civil Case No. 1056, entitled *Lutero Romero, et al. v. Spouses Meliton Pacas, et al.* — for Annulment of three Affidavits of Sales, Recovery of Possession with Damages

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[5] *Id.* at 51.

[6] 377 Phil. 189 (1999).

In sum, it was alleged by the petitioners in Civil Case No. 591, *i.e.*, Teodora, Presentacion, Lucita, Gloriosa, and Mindalina, that Lutero merely held the subject property in trust for the benefit of the heirs of his father Eugenio since the latter was actually the one who first applied for the homestead, but such application was denied because Eugenio was already disqualified to apply for a homestead, having previously applied for a homestead over another parcel of land with the maximum limit of 24 hectares. Moreover, it was alleged that Lutero employed fraud in procuring the homestead patent covering the subject property.[7]

In addition, the petitioners in Civil Case No. 591 also claimed that Lutero subsequently sold the subject property by allegedly executing three affidavits of sale in favor of the respondents in Civil Case No. 1056, *i.e.*, spouses Lucita and Meliton Pacas, spouses Presentacion and Sabdullah Mama, and spouses Gloriosa and Dionisio Rasonable. Hence, it was alleged that Lutero no longer has any claim over the subject property pursuant to these affidavits of sale.[8]

The RTC rendered a Decision dated March 11, 1991 in favor of Lutero, declaring the three affidavits of sale null and void and ordering the respondents in Civil Case No. 1056 to surrender possession of the subject property to Lutero. On appeal, the CA affirmed the ruling of the RTC.[9]

The consolidated cases were then resolved with finality by the Court in ***Teodora Saltiga de Romero, et al. v. Court of Appeals, et al***.[10] (*De Romero v. CA*). In the said case, the Court held that Lutero is the true and lawful landowner of the subject property, having exclusively acquired the subject property after successfully applying for a homestead patent over the land in 1967. Lutero's exclusive ownership over the subject property

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[7] *Id.* at 197.

[8] *Id.* at 201-202.

[9] *Id.* at 196-199.

[10] *Supra* note 6.

was even recognized by some of Lutero's sisters, *i.e.*, Gloriosa, Presentacion, and Lucita.[11]

The Decision in *De Romero v. CA* likewise found that the family patriarch, Eugenio, never owned the subject property. Eugenio himself tried to apply for a homestead patent over the subject property, but this was denied "because he was disqualified by virtue of the fact that he already had applied for the maximum limit of 24 hectares to which he was entitled [pertaining to land located on the adjacent lot; and the] land in question could not therefore have passed on from him to his children."[12]

Furthermore, the said Decision held that the supposed sale of the subject property by Lutero in favor of the respondents in Civil Case No. 1056 was null and void for being violative of Section 118 of Commonwealth Act No. 141,[13] which prohibited the alienation of a homestead within five years from the issuance of the patent.[14]

After the Court's Decision in *De Romero v. CA* became final and executory, the petitioners Heirs of Lutero filed a Motion for the Issuance of a Writ of Execution before the RTC on March 10, 2003. On June 16, 2003, the RTC issued a Writ of Execution.[15]

However, the implementation of the Writ of Execution was held in abeyance because respondent Sombrino filed a Motion for Intervention, alleging that she was a tenant of the subject

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[11] *Id.* at 198.

[12] *Id.*

[13] THE PUBLIC LAND ACT; Section 118 of Commonwealth Act No. 141 was repealed by Republic Act No. 11231 entitled "An Act Removing the Restrictions Imposed on the Registration, Acquisition, Encumbrance, Alienation, Transfer and Conveyance of Land Covered by Free Patents Under Sections 118, 119 and 121 of Commonwealth Act No. 141, otherwise Known as 'The Public Land Act,' as amended," (February 22, 2019).

[14] *De Romero v. CA*, *supra* note 6 at 200-201.

[15] *Rollo*, p. 65.

property. The RTC allowed the intervention and granted respondent Sombrino the opportunity to present evidence to show good cause why the Writ of Execution should not be implemented against her.[16]

After due hearing and deliberation, the RTC ordered the implementation of the Writ of Execution, as shown by the Sheriff's Report. Subsequently, a Writ of Demolition was issued by the RTC on March 29, 2005. On April 5, 2005, respondent Sombrino was ousted from the subject property.[17]

Complaint for Illegal Ejectment and Recovery of Possession before the Office of the Provincial Agrarian Reform Adjudication Board

Because respondent Sombrino failed to successfully assert her right to possess the subject property before the RTC, she sought recourse before the Office of the Provincial Agrarian Reform Adjudication Board (PARAD) of Iligan City by filing a Complaint for Illegal Ejectment and Recovery of Possession (PARAD Complaint) against the petitioners Heirs of Lutero. The case was docketed as DARAB Case No. X-543-LN-2005.

In the PARAD Complaint, respondent Sombrino alleged that she was the actual tenant-cultivator of the subject property as she and her late husband Valeriano were installed as tenants over the subject property in 1952 by the alleged original owners of the subject property, the Sps. Romero, until the said spouses were succeeded by Lucita and her heirs as landowners.[18] Hence, respondent Sombrino asked that her security of tenure as tenant of the subject property be upheld and that she be allowed to peacefully possess and cultivate the subject property.

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[16] *Id.*

[17] *Id.* at 52, 65.

[18] *Id.* at 102.

The Ruling of the PARAD

In the Decision[19] dated October 28, 2005, the PARAD ruled in favor of respondent Sombrino and declared her to be a *de jure* tenant of the subject property. The dispositive portion of the said Decision reads:

> **WHEREFORE**, foregoing premises considered, decision is hereby rendered as follows[:]
>
> 1. **Declaring** complainant Crispina Sombrino to be a **de jure tenant** and ordering her **reinstatement** to the subject landholding[;]
> 2. **Ordering** herein respondents and/or any person in occupation/ possession of the subject landholding **to vacate** and **turn-over** its possession to the complainant;
> 3. **Directing** the MARO, DAR of Kapatagan, Lanao del Norte to **execute an agricultural leasehold contract** between the herein parties pursuant to DAR A.O. No. 5, Series of 1993[;]
> 4. All other claims are **denied for lack of basis**.
>
> **SO ORDERED**.[20]

The PARAD held that respondent Sombrino was able to establish that she was installed as tenant by the Sps. Romero in 1952. According to the PARAD, "[w]hile indeed, there [was] no tenancy relations that [existed] between [respondent Sombrino] and [the petitioners Heirs of Lutero] as there were no shares received by [the latter,] x x x it is as if [Lutero] succeeded the ownership of the subject land from Spouses Eugenio and Teodora Romero[; thus, the petitioners Heirs of Lutero] who inherited the property [were] bound to [assume] and respect the tenancy rights of [respondent Sombrino]."[21] Hence, the PARAD held that "[o]nce such relationship is established, the tenant shall be entitled to security of tenure."[22]

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[19] *Id.* at 102-108. Penned by Provincial Adjudicator Noel P. Carreon.

[20] *Id.* at 108; emphasis in the original.

[21] *Id.* at 106-107.

[22] *Id.* at 107.

The petitioners Heirs of Lutero filed a Motion for Reconsideration, which was denied by the PARAD in the Order dated January 12, 2006. Feeling aggrieved, the petitioners Heirs of Lutero appealed before the Department of Agrarian Reform Adjudication Board (DARAB). The appeal was docketed as DARAB Case No. 14261.

The Ruling of the DARAB

In the Decision[23] dated June 28, 2010, the DARAB denied the appeal for lack of merit. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant Appeal is **DISMISSED** and the assailed Decision dated 28 October 2005 is hereby **AFFIRMED**.

SO ORDERED.[24]

The DARAB held that through the final and executory judgment in Civil Case Nos. 591 and 1056, the petitioners Heirs of Lutero were vested ownership over the subject property.[25] However, since Section 10 of Republic Act No. (RA) 3844[26] states that the agricultural leasehold relation shall not be extinguished by mere sale, alienation, or transfer of the leaseholding and that the transferee shall be subrogated to the rights and substituted to the obligations of the agricultural lessor; the agricultural leasehold relation instituted between the Sps. Romero and respondent Sombrino "is preserved even in case of transfer of the legal possession of the subject property."[27]

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[23] *Id.* at 89-97. Penned by DARAB Member Arnold C. Arrieta, with DARAB Chairman Nasser C. Pangandaman and DARAB Members Ma. Patricia Rualo-Bello, Ambrosio B. De Luna, Gerundio C. Madueno, Jim G. Coleto, and Isabel E. Florin, concurring.

[24] *Id.* at 96.

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

[26] AGRICULTURAL LAND REFORM CODE.

[27] *Rollo*, p. 94.

The petitioners Heirs of Lutero filed a Motion for Reconsideration on September 1, 2010,[28] which was denied by the DARAB in the Resolution[29] dated February 26, 2016.

Hence, the petitioners Heirs of Lutero filed a Petition for Review[30] under Rule 43 of the Rules of Court before the CA. The appeal was docketed as CA-G.R. SP No. 07367-MIN.

The Ruling of the CA

In the assailed Decision, the CA denied the appeal for lack of merit. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the foregoing premises considered, Petition for Review is **DISMISSED** for lack of merit. Accordingly, the Decision dated June 28, 2010 and Resolution dated February 26, 2016 of the Department of Agrarian Reform Adjudication Board are **AFFIRMED**.
>
> **SO ORDERED**.[31]

According to the CA, respondent Sombrino sufficiently established by substantial evidence the essential elements of tenancy:

> Indeed, respondent sufficiently established by substantial evidence the essential elements of tenancy. The late Spouses Eugenio and Teodora Romero are the landowners; respondent, together with her late husband, is their tenant. The subject matter of their relationship is agricultural land, a farm land. They mutually agreed to the cultivation of the land by respondent and share in the harvest. The purpose of their relationship is clearly to bring about agricultural production. After the harvest, respondent pays rental as well as the irrigation fees. Lastly, respondent's personal cultivation of the land was conceded by Lucita Romero Pacas, [who] succeeded her parents the Spouses Eugenio and Teodora Romero, thru a leasehold agreement which became the contract between the parties.[32]

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[28] *Id.* at 22.

[29] *Id.* at 99-101.

[30] *Id.* at 62-86.

[31] *Id.* at 57.

[32] *Id.* at 55.

Thus, the CA held that the petitioners Heirs of Lutero are bound to respect the leasehold relationship between the Sps. Romero and respondent Sombrino:

> Given the foregoing, the petitioners are bound to respect the leasehold relationship between the late Spouses Eugenio and Teodora Romero and respondent notwithstanding the transfer of legal possession of the subject agricultural land. Accordingly, respondent cannot be dispossessed of her possession and cultivation of the subject agricultural land without any valid and just cause. Security of tenure is a legal concession to agricultural lessees which they value as life itself and deprivation of their land holdings is tantamount to deprivation of their only means of livelihood. Perforce, the termination of the leasehold relationship can take place only for causes provided by law x x x as specified in Sections 8, 28 and 36 of R.A. No. 3844. A perusal of these provisions will show that no such valid cause exists in the present case warranting the termination of the leasehold relationship. Hence, the rights of respondent as tenant should be respected.[33]

Feeling aggrieved, the petitioners Heirs of Lutero filed a Motion for Reconsideration[34] dated February 7, 2018, which was denied by the CA in the assailed Resolution.

Hence, the instant Petition before the Court.

On January 14, 2019, respondent Sombrino filed her Comment[35] dated December 14, 2018 to the instant Petition wherein she asserted that she was able to duly establish her tenancy with respect to the subject property.[36] Despite the Court's Resolution[37] dated March 13, 2019 requiring the petitioners Heirs of Lutero to file their Reply, the latter failed to do so.

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[33] *Id.* at 56; citation omitted.

[34] *Id.* at 109-121.

[35] *Id.* at 141-149.

[36] *Id.* at 146.

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

Issue

Stripped to its core, the critical issue is whether there exists an agricultural leasehold tenancy relationship between the petitioners Heirs of Lutero and respondent Sombrino. Otherwise stated, is respondent Sombrino a tenant *de jure* that enjoys security of tenure as guaranteed by tenancy laws?

The Court's Ruling

The instant Petition is *meritorious*. Respondent Sombrino is not a tenant *de jure* and does not enjoy the security of tenure accorded to agricultural tenants. There is no tenancy relationship between the petitioners Heirs of Lutero and respondent Sombrino.

Propriety of a Factual Review

Preliminarily, the Court is aware that the determination of whether a person is an agricultural tenant is basically a question of fact.[38] As a general rule, questions of fact are not proper subjects of appeal by *certiorari* under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law.[39]

Nevertheless, the foregoing general rule admits of several exceptions such as when the conclusion is a finding grounded entirely on speculations, surmises and conjectures; when the inference made is manifestly mistaken; and when the judgment is based on a misapprehension of facts.[40]

The Court finds that the aforesaid exceptions to the general rule apply in the instant case. Therefore, the Court shall proceed to rule on the main issue.

Agricultural Leasehold Tenancy

According to RA 1199, as amended, otherwise known as the Agricultural Tenancy Act of the Philippines, an agricultural

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[38] *Heirs of Florentino Quilo v. Development Bank of the Philippines-Dagupan Branch, et al.*, 720 Phil. 414, 422 (2013); citation omitted.

[39] *Goyena v. Ledesma-Gustilo*, 443 Phil. 150, 158 (2003).

[40] See *Almelor v. The Hon. RTC of Las Piñas City, Br. 254, et al*., 585 Phil. 439 (2008).

leasehold tenancy exists "when a person who, either personally or with the aid of labor available [from] members of his immediate farm household, undertakes to cultivate a piece of agricultural land susceptible of cultivation by a single person together with members of his immediate farm household, belonging to or legally possessed by, another in consideration of a fixed amount in money or in produce or in both."[41]

The existence of a tenancy relation is not presumed. According to established jurisprudence, the following indispensable elements must be proven in order for a tenancy agreement to arise:

1) the parties are the landowner and the tenant or agricultural lessee;

2) the subject matter of the relationship is an agricultural land;

3) there is consent between the parties to the relationship;

4) the purpose of the relationship is to bring about agricultural production;

5) there is personal cultivation on the part of the tenant or agricultural lessee; and

6) the harvest is shared between the landowner and the tenant or agricultural lessee.

The absence of any of the requisites does not make an occupant, cultivator, or a planter a *de jure* tenant which entitles him to security of tenure under existing tenancy laws.[42]

However, if all the aforesaid requisites are present and an agricultural leasehold relation is established, the same shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished.

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[41] RA 1199, Sec. 4, as amended by RA 2263.

[42] *Heirs of Teodoro Cadeliña v. Cadiz, et al.*, 800 Phil. 668, 677 (2016); citation omitted.

The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided.[43] In case of death or permanent incapacity of the agricultural lessor, the leasehold shall bind the legal heirs.[44]

To recall, in the instant case, the PARAD, as concurred by the DARAB and the CA, found that an agricultural leasehold tenancy relation exists between respondent Sombrino and the petitioners Heirs of Lutero because the supposed original landowners of the subject property, *i.e.*, the Sps. Romero, allegedly entered into a tenancy agreement with respondent Sombrino in 1952. And because the leasehold relation subsists and binds the legal heirs of the agricultural lessors even upon the latter's death, Lutero and, subsequently, his heirs are bound by this leasehold relation.

Respondent Sombrino failed to provide substantial evidence on the existence of an agricultural leasehold tenancy relationship between herself and the Sps. Romero

The Court finds that respondent Sombrino failed to provide sufficient evidence that there was, in the first place, an agricultural leasehold tenancy agreement entered into by herself and the alleged landowners, the Sps. Romero.

Tenancy relationship cannot be presumed. An assertion that one is a tenant does not automatically give rise to security of tenure. Nor does the sheer fact of working on another's landholding raise a presumption of the existence of agricultural tenancy. One who claims to be a tenant has the *onus* to prove the affirmative allegation of tenancy.[45] Hence, substantial

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[43] RA 3844, Sec. 7.

[44] RA 3844, Sec. 9.

[45] *Soliman, et al. v. Pampanga Sugar Development Co., Inc., et al.*, 607 Phil. 209, 224 (2009).

evidence is needed to establish that the landowner and tenant came to an agreement in entering into a tenancy relationship.

Considering the foregoing, jurisprudence has held that self-serving statements regarding supposed tenancy relations are not enough to establish the existence of a tenancy agreement.[46] Moreover, certifications issued by administrative agencies or officers that a certain person is a tenant are merely provisional, not conclusive on the courts, and have little evidentiary value without any corroborating evidence.[47] There should be independent evidence establishing the consent of the landowner to the relationship.[48]

In the instant case, the pieces of documentary evidence presented by respondent Sombrino do not provide proof that the latter and the Sps. Romero came into an agreement as to the establishment of an agricultural leasehold tenancy relationship.

As explained by the DARAB, "[t]o prove her claim, [respondent Sombrino submitted] the Joint Affidavit of Sarillo Bacalso and Neil Ocopio, whom she allegedly hired in several occasions as planters, mud boat operators and thresher operators[.]"[49]

Such evidence severely fails to establish the existence of a tenancy agreement. At most, the aforementioned Joint Affidavit merely establishes that respondent Sombrino occupied and cultivated the subject property at some point in time.

In *Heirs of Florentino Quilo v. Development Bank of the Philippines-Dagupan Branch, et al.*,[50] the Court held that an affidavit of the same nature as the said Joint Affidavit fails to

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[46] See *id.* at 226.

[47] *Reyes v. Heirs of Pablo Floro*, 723 Phil. 755, 769 (2013).

[48] *Caluzor v. Llanillo, et al.*, 762 Phil. 353, 367 (2015).

[49] *Rollo*, p. 90; citation omitted.

[50] *Supra* note 38.

prove consent of the landowner. In the said case, the Court explained that such document in no way confirms that the alleged tenant's presence on the land was based on a tenancy relationship that the landowners had agreed to as "[m]ere occupation or cultivation of an agricultural land does not automatically convert the tiller into an agricultural tenant recognized under agrarian laws."[51]

In believing that respondent Sombrino was able to establish the existence of a tenancy agreement with the Sps. Romero, the DARAB also gave credence to "the Affidavit of the Barangay Agrarian Reform Committee (BARC) Chairman."[52]

In *Soliman, et al. v. Pampanga Sugar Development Co., Inc., et al.*,[53] the Court held that the certifications issued by a BARC Chairman to the effect that the alleged tenants were actually cultivating the agricultural land deserve scant consideration in determining the existence of a tenancy relationship. Citing the findings of the court *a quo*, the Court held therein that "[o]bviously, the *barangay* captain x x x whose attestation appears on the document — was not the proper authority to make such determination [because even] certifications issued by administrative agencies and/or officials concerning the presence or the absence of a tenancy relationship are merely preliminary or provisional and are not binding on the courts."[54]

With respect to acknowledgment receipts presented by respondent Sombrino showing the payment of irrigation fees and rentals to Lucita,[55] such pieces of documentary evidence fail to show that the Sps. Romero installed respondent Sombrino as a tenant of the subject property. The said receipts merely establish that, at most, respondent Sombrino entered into an arrangement with Lucita and not with the Sps. Romero.

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[51] *Id.* at 425; citation omitted.

[52] *Rollo*, p. 90.

[53] *Supra* note 45.

[54] *Id.* at 226; italics in the original, citation omitted.

[55] *Rollo*, pp. 103-104.

More doubt is engendered in the mind of the Court as to the existence of the alleged agricultural tenancy agreement because of the undisputed fact that "Eugenio Romero died sometime in 1948."[56] To recall, at the heart of respondent Sombrino's claim of tenancy is her allegation that Eugenio, together with Teodora, installed her as tenant in 1952. Needless to say, with the death of Eugenio in 1948, contrary to the contention of respondent Sombrino, it was *impossible* for Eugenio to have instituted respondent Sombrino as tenant of the subject property.

All in all, the Court finds that respondent Sombrino failed to discharge her burden of proving that a tenancy relationship existed between her and the Sps. Romero.

Assuming that it even existed, the supposed tenancy agreement was invalid as it was not entered into with the true and lawful landowner of the subject property

Even assuming *arguendo* that the Sps. Romero indeed entered into a tenancy agreement with respondent Sombrino in 1952, such agreement would not have created a valid tenancy relationship.

Tenancy relationship can only be created with the consent of the true and lawful landowner who is the owner, lessee, usufructuary or legal possessor of the land. It cannot be created by the act of a supposed landowner, who has no right to the land subject of the tenancy, much less by one who has been dispossessed of the same by final judgment.[57]

The Court's ruling in *Heirs of Teodoro Cadeliña v. Cadiz, et al.*[58] is on all fours. In the said case, the respondents-farmers

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[56] *De Romero v. CA, supra* note 6 at 194; underscoring supplied.

[57] *Cunanan v. Judge Aguilar, supra* note 1 at 311; citation omitted, underscoring supplied.

[58] *Supra* note 42.

therein claimed that the alleged landowner, Nicanor Ibuna, Sr. (Ibuna), validly installed them as tenants. Analogous to the instant case, by virtue of a final and executory judgment recognizing the ownership of the petitioners' predecessor-in-interest, Teodoro Cadeliña (Teodoro), over the subject property therein as the latter was a holder of a homestead patent, the respondents-farmers were ousted from the land. As in the instant case, the respondents-farmers filed complaints for reinstatement of possession of the land before the DARAB.

In dismissing the respondents-farmers' claim of tenancy relationship, the Court explained that a tenancy relationship could only be created with the true and lawful landowner who was the owner, lessee, usufructuary or legal possessor of the land. Since Ibuna was not the true and lawful landowner, he could not have validly installed the respondents-farmers as tenants of the land. Further, the Court held therein that upholding Ibuna as the legal possessor of the land was inconsistent with Teodoro's homestead, which was already deemed valid in a final and executory judgment, since a homestead applicant was required to occupy and cultivate the land for his own and his family's benefit, and not for the benefit of someone else, *viz*.:

> In this case, Ibuna's institution of respondents as tenants did not give rise to a tenure relationship because Ibuna is not the lawful landowner, either in the concept of an owner or a legal possessor, of the properties. It is undisputed that prior to the filing of the complaint with the DARAB, the transfers of the properties to Ibuna and his predecessor, Andres Castillo, were declared void in separate and previous proceedings. Since the transfers were void, it vested no rights whatsoever in favor of Ibuna, either of ownership and possession.
> x x x
>
> Notably, upholding Ibuna as the legal possessor of the properties is inconsistent with petitioners' homestead since a homestead applicant is required to occupy and cultivate the land for his own and his family's benefit, and not for the benefit of someone else. x x x[59]

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[59] *Id.* at 678-679; citations omitted.

In the instant case, to reiterate, it has already been decided in the Court's final and executory Decision in *De Romero v. CA* that:

> x x x Eugenio Romero was never the owner of the land in question because all he bought from the Jaug spouses were the alleged rights and interests, if there was any, to the said land which was then part of the public domain. The Jaugs could not have sold said land to Eugenio as they did not own it. Eugenio Romero was not granted, and could not have been granted, a patent for said land because he was disqualified by virtue of the fact that he already had applied for the maximum limit of 24 hectares to which he was entitled. The land in question could not therefore have passed on from him to his children.[60]

Moreover, *De Romero v. CA* definitely held that Lutero's homestead patent over the subject property was validly acquired and he was the true and lawful landholder of the subject property, *viz.*:

> On the other hand, Lutero Romero applied for a homestead patent over the land in question and his application was duly approved. The appellants have not established that there was any fraud committed in this application. In fact it appears that there was even a hearing conducted by the Bureau of Lands on the application because a certain Potenciano Jaug had been contesting the application. Under the presumption of law, that official duty has been regularly performed, there appears to be no ground to question the grant of the patent to Lutero Romero in 1967.
>
> His sisters Gloriosa, Presentacion, and Lucita apparently recognized Lutero's ownership of the property when in 1969 they sought the help of the mayor of Kapatagan to convince Lutero to execute affidavits of sale in their favor.[61]

In sum, with the finality of *De Romero v. CA*, it can no longer be disputed that the Sps. Romero never became the owners of the subject property. Neither did they become the lessee,

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[60] *De Romero v. CA*, *supra* note 6 at 198.

[61] *Id.*; underscoring supplied.

usufructuary or legal possessor of the subject property. Hence, the Sps. Romero had no capacity whatsoever to install respondent Sombrino as a leasehold tenant on the subject property. Consequently, neither could the heirs of the Sps. Romero (aside from Lutero) validly enter into any tenancy agreement over the subject property.

Given the foregoing, with the absence of the first essential requisite of an agricultural tenancy relationship, *i.e.*, that the parties to the agreement are the true and lawful landholders and tenants, respondent Sombrino cannot be considered a *de jure* tenant who is entitled to security of tenure under existing tenancy laws. And corollarily, there being no agricultural tenancy relationship existing in the instant case, the PARAD and DARAB acted beyond their jurisdiction when they ordered the petitioners Heirs of Lutero, among other things, to restore possession of the subject property to respondent Sombrino.

WHEREFORE, the instant Petition is **GRANTED**. The assailed Decision dated January 22, 2018 and Resolution dated June 8, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 07367-MIN are **REVERSED AND SET ASIDE**. The Decision dated October 28, 2005 rendered by the Provincial Agrarian Reform Adjudication Board and the Decision dated June 28, 2010 rendered by the Department of Agrarian Reform Adjudication Board are **REVERSED AND SET ASIDE**. The Complaint for Illegal Ejectment and Recovery of Possession in DARAB Case No. X-543-LN-2005 is **DISMISSED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 242880. January 22, 2020]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **QUISAR ARANCES DADANG *a.k.a.* "MANOY,"** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; IN A PROSECUTION FOR ILLEGAL SALE OF DRUGS, WHAT IS MATERIAL IS THE PROOF THAT THE TRANSACTION OR SALE ACTUALLY TOOK PLACE, COUPLED WITH THE PRESENTATION IN COURT OF THE *CORPUS DELICTI* AS EVIDENCE. —** In a prosecution for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be established: (1) proof that the transaction or sale took place; (2) presentation in court of the *corpus delicti* or the illicit drug as evidence; and (3) identification of the buyer and seller. What is material in a prosecution for illegal sale of drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** [I]n prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (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 possessed the drug.

3. **ID.; ID.; ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; IT IS PRIMORDIAL TO SHOW THAT THE ACCUSED WAS IN POSSESSION OR CONTROL OF ANY PARAPHERNALIA WHICH WAS INTENDED FOR SMOKING, CONSUMING, AND ADMINISTERING DANGEROUS DRUGS INTO THE BODY AND SUCH POSSESSION WAS NOT AUTHORIZED BY LAW. —** For

a conviction for illegal possession of drug paraphernalia to prosper, it is primordial to show that the accused was in possession or control of any equipment, paraphernalia, and the like, which was fit or intended for smoking, consuming, and administering, among other acts, dangerous drugs into the body; and, such possession was not authorized by law.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS ARE GIVEN HIGH RESPECT, IF NOT CONCLUSIVE EFFECT, WHEN AFFIRMED BY THE COURT OF APPEALS. — [P]ursuant to the rule that the findings of fact of the trial court and its conclusions are given high respect, if not conclusive effect, when affirmed by the Court of Appeals, we see no reason to disregard x x x [the] findings and conclusion, there being no showing that the lower courts overlooked or misinterpreted any relevant matters that would influence the outcome of the case. At any rate, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; WHEN THERE IS SUFFICIENT COMPLIANCE WITH THE CHAIN OF CUSTODY RULE, THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAVE BEEN PRESERVED AND CONVICTION MUST STAND. — The Court also notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640. x x x Section 21(1) of R.A. No. 9165 outlined the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia x x x. Supplementing this provision is Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 x x x. On July 23, 2014, Section 21(1) of R.A. No. 9165 was amended by R.A. No. 10640 which modifies the number of witnesses during the conduct of the inventory, but, it adopted the saving clause under Section 21 of the IRR of R.A. No. 9165. x x x As what happened in this case, after the arrest and subsequent search on Dadang during the buy-bust operation, PO3 Baillo, who took custody of the seized

items, immediately marked the two sachets of *shabu*, as well as the drug paraphernalia and the gun (which is the subject of another case), at the place of arrest in the presence of Dadang. Thereafter, an inventory and photograph of the seized items were made in the presence of Dadang and witnessed by *Barangay Kagawad* Rommell Monte Pimentel of *Barangay* Nazareth and a media representative in the name of Ronde D. Alicaya of RMN, DXCC. The seized items were secured under the custody of PO3 Baillo. The team then proceeded to the police station, requested for the drug test of Dadang and the laboratory examination of the seized items. PO3 Baillo and SPO1 Destura, together with Dadang, brought the said request, the 2 heat-sealed transparent plastic sachets of drugs and drug paraphernalia to the crime laboratory. SPO2 Aldao and Forensic Chemist PSI Caceres received the said request with the seized items and as per PSI Caceres' report, the two heat-sealed transparent plastic sachets were positive for the presence of methamphetamine hydrochloride or *shabu*, while the drug paraphernalia have traces of *shabu*. After the examination, the seized items were deposited to PO2 Gamaya, the crime laboratory custodian, who deposited the same in their evidence room for safekeeping until such time that the forensic chemist testified in court. Finally, the same specimens were identified in court by PSI Caceres. In view of the foregoing, we hold that there is sufficient compliance with the chain of custody rule, thus, the integrity and evidentiary value of the *corpus delicti* have been preserved. Hence, Dadang's conviction must stand.

6. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS PART OF THE *CORPUS DELICTI* OF THE CRIME. — In cases of Illegal Sale and Illegal Possession of Dangerous Drugs under R.A. No. 9165, as amended, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

7. ID.; REPUBLIC ACT NO. 4103 (THE INDETERMINATE SENTENCE LAW); IN IMPOSING A PRISON SENTENCE FOR AN OFFENSE PUNISHABLE BY A LAW OTHER THAN THE REVISED PENAL CODE, THE COURT SHALL SENTENCE THE ACCUSED TO AN INDETERMINATE SENTENCE, THE MINIMUM TERM OF WHICH SHALL NOT BE LESS THAN THE MINIMUM FIXED BY LAW AND THE MAXIMUM OF WHICH SHALL NOT EXCEED THE MAXIMUM TERM PRESCRIBED BY THE SAME. — Section 11, Article II of R.A. No. 9165, illegal possession of less than 5 grams of *shabu*, is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00, while Section 12, Article II of R.A. No. 9165 provides that the penalty for illegal possession of drug paraphernalia shall be imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from ₱10,000.00 to ₱50,000.00. The Indeterminate Sentence Law should be applied in these two cases. It provides that in imposing a prison sentence for an offense punishable by a law other than the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence, the minimum term of which shall not be less than the minimum fixed by law and the maximum of which shall not exceed the maximum term prescribed by the same. Here, Dadang was found to have been in illegal possession of 0.5449 gram of *shabu*. We opted to modify the penalty imposed by the RTC, as affirmed by the Court of Appeals-Cagayan de Oro, to conform to recent jurisprudence. The same is true in the case of illegal possession of drug paraphernalia.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

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

On appeal is the August 30, 2018 Decision[1] of the Court of Appeals-Cagayan de Oro City in CA-G.R. CR HC No. 01670-MIN which affirmed the March 28, 2017 Decision[2] of the Regional Trial Court (RTC), 10th Judicial Region, Branch 23, Cagayan de Oro City, in CR-DRG-2015-416, CR-DRG-2015-417 and CR-DRG-2015-418 finding accused-appellant Quisar Arances Dadang (Dadang) guilty beyond reasonable doubt of Illegal Sale, Illegal Possession of Dangerous Drugs and Drug Paraphernalia, defined and penalized under Sections 5, 11 and 12, respectively, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The case stemmed from three Informations charging Dadang of violating, *inter alia*, Sections 5, 11 and 12, Article II of R.A. No. 9165.

The evidence of the prosecution shows that on August 7, 2015, the Chief of Police, Senior Inspector Gilbert Rollen, and the Deputy Chief of Police, Inspector Mario Mantala, of Cagayan de Oro's City Anti-Illegal Drug Task Force (CAIDTF), in coordination with the Philippine Drug Enforcement Agency (PDEA), as evidenced by the Certificate of Coordination,[3] planned a buy-bust operation based on an information supplied by the confidential informant (CI) that a certain "Manoy," later identified as appellant Dadang, was engaged in selling illegal drugs. Police Officer (PO) 3 Cyrus Baillo (Baillo) was tasked as poseur-buyer with Senior Police Officer (SPO) 1 Rene Destura (Destura) as back-up officer, together with the other members

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[1] Penned by Associate Justice Tita Marilyn Payoyo-Villordon, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *rollo*, pp. 3-15.

[2] CA *rollo*, pp. 52-75.

[3] Exhibit "G"; records, p. 62.

of the CAIDTF as security. A ₱1,000.00 bill marked money, with the initials of PO3 Baillo, was also prepared.[4]

At around 4:30 p.m., the team, comprising six police officers and the CI proceeded to the target area, Jerggy's Inn, located at 31st Street, Nazareth, Cagayan de Oro City. The team arrived thereat at 5:30 p.m. and a final briefing was conducted before they positioned themselves strategically while PO3 Baillo, together with the CI, went to the second floor of Jerggy's Inn. When the CI knocked on the door of the room where Dadang was lodging, the latter immediately opened it, without asking their names, and invited the two of them to enter the room. Once inside, PO3 Baillo saw drug paraphernalia consisting of one piece of improvised aluminum foil used as gutter, one piece of improvised glass pipe as totter, one piece disposable lighter with needle attached, and one digital weighing scale placed on top of the bed. The CI told Dadang, "*pakuha ko Noy*" (meaning they want to buy illegal drugs), while simultaneously handing over the ₱1,000.00 bill marked money. Dadang received the money with his left hand and, in return, gave the sachet with white crystalline substance to the CI using his right hand. The CI, in turn, gave the same to PO3 Baillo and missed called SPO1 Destura in his mobile phone as the pre-arranged signal. SPO1 Destura and the rest of the team went upstairs, entered the unlocked room and introduced themselves as police officers. They apprehended Dadang and apprised him of his constitutional rights. A body search was forthwith conducted by PO3 Baillo on Dadang from whom one plastic sachet containing white crystalline substance was recovered from his left pocket. He also found the ₱1,000.00 marked money in appellant's left pocket.[5]

At the crime scene and in the presence of Dadang, PO3 Baillo made an inventory of the seized items and marked the plastic sachet containing white crystalline substance which is the subject of the sale as A-1 (A-1 08-07-2015 QUISAR "BB" CAIDTF

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[4] TSN, September 30, 2015, pp. 5-7.

[5] *Id.* at 10-12.

CDB) and the recovered plastic sachet as A-2 (A-2 08-07-2015 QUISAR "POSSN" CAIDTF CDB). The recovered weighing scale,[6] disposable lighter,[7] improvised aluminum foil and the improvised glass pipe, as well as the gun (which is now the subject of another case), were likewise marked. After the inventory, a photograph of the seized items was taken.[8] The inventory and photographs were witnessed by *Barangay Kagawad* Rommell Monte Pimentel of *Barangay* Nazareth and a media representative in the name of Ronde D. Alicaya of RMN, DXCC. PO3 Baillo made two inventory receipts, the inventory for drug evidence and the other one is the inventory for non-drug evidence. Although the inventory was witnessed by Dadang, however, he refused to sign the two 2 inventory receipts.[9]

After the marking, inventory and photography of the seized items, the buy-bust team returned to the police station where PO3 Baillo made a Request for Drug Test of Suspected Accused[10] and a Request for Laboratory Examination of Seized Items.[11] At around 8:55 in the evening, PO3 Baillo and SPO1 Destura brought Dadang, for urine drug test, and the seized items to the crime laboratory. The seized items consist of two (2) heat-sealed transparent plastic sachets, each containing white crystalline substance, one (1) improvised glass pipe and one (1) aluminum foil strip, all placed in a self-sealing plastic bag.[12] SPO2 Adlao and the Forensic Chemist, Police Senior Inspector (PSI) Charite Peralta Caceres, received the seized pieces of evidence and submitted them for laboratory examination.[13] As

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[6] Exhibit "K"; records, p. 38.

[7] Exhibit "K-1"; *id.*

[8] Exhibit "J" and "J-1"; *id.* at 66.

[9] *Supra* note 4, at 13-14.

[10] Exhibit "B"; records, p. 59.

[11] Exhibit "A"; *id.* at 57.

[12] *Supra* note 4, at 17-18, 28.

[13] TSN, September 16, 2015, pp. 7-8. TSN, September 30, 2015, p. 83.

per Chemistry Report No. D-584-2015[14] dated August 7, 2015, the two heat-sealed transparent plastic sachets, each containing white crystalline substance and weighing 0.1982 gram (subject of the sale) and 0.5449 gram (recovered from the possession of Dadang), as well as the folded aluminum foil and the improvised glass pipe, gave positive result for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug. After the examination of the seized items, they were deposited to PO2 Gamaya, the crime laboratory evidence custodian, who deposited the same in their evidence room for safekeeping until such time that the forensic chemist testified in court.[15]

The evidence for the defense, on the other hand, shows that on August 7, 2015, Dadang was at Jerggy's Inn where he was renting a room for almost a month already. That at around 5:30 p.m., he was inside the bathroom ready to take a bath when someone in civilian clothes opened the door and poked a firearm at him. He was made to lie on the bathroom floor and was asked where he placed the *shabu*. He denied knowledge of the *shabu*, but then he was kicked. When he was asked the same question for the second time and he answered in the negative, he was pulled up and immediately handcuffed. At first, only three persons were inside his room, but, later on, their other companions arrived and took his cell phone, gadget and money. After the incident, he was brought to Maharlika Police Station. He denied the alleged buy-bust operation, and the confiscation of *shabu* and drug paraphernalia. Dadang also testified that on October 5, 2015, while he was detained at the Lumbia City Jail, PO3 Baillo and SPO1 Destura came and asked him to go out of his cell. Once outside his cell, PO3 Baillo told him that SPO1 Destura would testify the following day and asked him what his plan was. He told PO3 Baillo that he had nothing to give them, thereafter, the former called SPO1 Destura. SPO1 Destura approached him and told him the same story that he would testify the following

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[14] Exhibit "C"; records, p. 60.

[15] *Supra* note 11, at 15.

day and asked him what his plan was. Just the same, he answered what he had told PO3 Baillo.[16]

On March 28, 2017, the RTC promulgated its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. CR-DRG-2015-416, the court finds the accused, **QUISAR DADANG y ARANCES, GUILTY beyond reasonable doubt** of the charge of violation of Section 5, Article II, R.A. No. 9165 and sentences them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos [(]₱500,000.00)[;]

2. In Criminal Case No. CR-DRG-2015-417, the court finds the accused **QUISAR DADANG y ARANCES, GUILTY beyond reasonable doubt** for violation of Section 11, Article II, R.A. No. 9165 and sentences him to imprisonment of 12 years [and] 1 day to 20 years and to pay a fine of Three hundred thousand pesos (₱300,000.00);

3. In Criminal Case No. CR-DRG-2015-418, the court finds the accused, **QUISAR DADANG y ARANCES, GUILTY beyond reasonable doubt** of the charge of violation of Section 12, Article II, R.A. No. 9165 and sentences him to suffer the penalty of x x x imprisonment of six (6) months and one (1) day to four (4) years and a fine of Ten thousand pesos (₱10,000.00).

The two (2) heat-sealed transparent plastic sachets containing white crystalline substance locally known as *Shabu* with a total weight of 0.7431 [gram] marked as Exhibits "E" to "E-1" for the prosecution are hereby ordered confiscated and destroyed pursuant to R.A. 9165.

SO ORDERED.[17] (Emphases in the original)

Dadang appealed his conviction to the Court of Appeals-Cagayan de Oro City.

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[16] TSN, April 27, 2016, pp. 4-7.

[17] CA *rollo*, pp. 74-75.

The Court of Appeals-Cagayan de Oro in its Decision[18] dated August 30, 2018 affirmed *in toto* the RTC ruling. It held that all the elements for illegal sale and illegal possession of dangerous drugs, as well as illegal possession of drug paraphernalia, were convincingly established by the prosecution. Likewise, the Court of Appeals Cagayan de Oro also ruled that there was an unbroken chain of custody over the seized *shabu* as the prosecution witnesses were able to testify about every link in the chain, from the moment the sachets of *shabu* were confiscated from Dadang up to the time the same were offered in the RTC. Thus, the admissibility, integrity and evidentiary value of the confiscated items are beyond question.

Accordingly, the Court of Appeals-Cagayan de Oro disposed as follows:

> WHEREFORE, the appeal is DENIED. The Decision dated 28 March 2017 of the Regional Trial Court, 10th Judicial Region, Branch 23, Cagayan de Oro City, in Criminal Cases Nos. CR-DRG-2015-416, CR-DRG-2015-417 and CR-DRG-2015-418, is hereby AFFIRMED in toto.[19]

Hence, this appeal seeking that Dadang's conviction be overturned.

The appeal is without merit. The RTC, as affirmed by the Court of Appeals-Cagayan de Oro, correctly found Dadang guilty beyond reasonable doubt of violations of Sections 5, 11 and 12, Article II of R.A. No. 9165.

In a prosecution for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be established: (1) proof that the transaction or sale took place; (2) presentation in court of the *corpus delicti* or the illicit drug as evidence; and (3) identification of the buyer and seller. What is material in a prosecution for illegal sale of drugs is the

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[18] *Supra* note 1.

[19] *Id.* at 15.

proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[20]

On the other hand, in prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (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 possessed the drug.[21] For a conviction for illegal possession of drug paraphernalia to prosper, it is primordial to show that the accused was in possession or control of any equipment, paraphernalia, and the like, which was fit or intended for smoking, consuming, and administering, among other acts, dangerous drugs into the body; and, such possession was not authorized by law.[22]

All these elements of the crimes charged were present in these cases, as the records clearly showed that: ***first***, a buy-bust team was formed after an information was received from a CI regarding Dadang's illegal drug trade activity. The operation was conducted by the CAIDTF in coordination with the PDEA. Upon arrival at the target area, a final briefing was conducted by the buy-bust team. PO3 Baillo, together with the CI, went to the second floor of Jerggy's Inn and knocked on the door of the room where Dadang was staying. Dadang opened the door and invited them to come inside. Once inside, the CI told Dadang that they wanted to buy *shabu*, while simultaneously handing over the ₱1,000.00 marked money. Dadang received the said money with his left hand and, in return, gave one sachet with white crystalline substance to the CI using his right hand. The sachet of *shabu*, which was the subject of sale, weighed 0.1982 gram. Upon consummation of the sale, the CI miscalled SPO1 Destura in his phone as the pre-arranged signal; ***second***, another sachet of *shabu* with a net weight of 0.5449 gram was recovered

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[20] *People v. Mendoza*, G.R. No. 225064, January 19, 2018.

[21] *Id.*

[22] *People v. Frances Taboy*, G.R. No. 223515, June 25, 2018.

from Dadang during the search incidental to the arrest and it was not shown that he was authorized by law, and he freely and consciously possessed such illegal drugs; and ***third***, drug paraphernalia, such as folded aluminum foil and an improvised glass pipe, were also found in his possession without the necessary authority or license.

Given these, and pursuant to the rule that the findings of fact of the trial court and its conclusions are given high respect, if not conclusive effect, when affirmed by the Court of Appeals, we see no reason to disregard these findings and conclusion, there being no showing that the lower courts overlooked or misinterpreted any relevant matters that would influence the outcome of the case.[23] At any rate, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.[24]

The Court also notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.[25]

In cases of Illegal Sale and Illegal Possession of Dangerous Drugs under R.A. No. 9165, as amended, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[26] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[27]

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[23] *People v. Joy Angeles*, G.R. No. 229099, February 27, 2019.

[24] *People v. Abelardo Soria*, G.R. No. 229049, June 6, 2019.

[25] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

[26] *People v. Federico Cuevas*, G.R. No. 238906, November 5, 2018.

[27] *Id.*

Section 21(1) of R.A. No. 9165 outlined the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia, 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[.]

Supplementing this provision is Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which mandates that:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

On July 23, 2014,[28] Section 21(1) of R.A. No. 9165 was amended by R.A. No. 10640 which modifies the number of witnesses during the conduct of the inventory, but, it adopted the saving clause under Section 21 of the IRR of R.A. No. 9165.

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[28] See OCA Circular No. 77-2015 dated April 23, 2015.

Section 21, Article II of R.A. No. 10640 provides:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same **in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

As what happened in this case, after the arrest and subsequent search on Dadang during the buy-bust operation, PO3 Baillo, who took custody of the seized items, immediately marked the two sachets of *shabu*, as well as the drug paraphernalia and the gun (which is the subject of another case), at the place of arrest in the presence of Dadang. Thereafter, an inventory and photograph of the seized items were made in the presence of Dadang and witnessed by *Barangay Kagawad* Rommell Monte Pimentel of *Barangay* Nazareth and a media representative in the name of Ronde D. Alicaya of RMN, DXCC. The seized items were secured under the custody of PO3 Baillo. The team

then proceeded to the police station, requested for the drug test of Dadang and the laboratory examination of the seized items. PO3 Baillo and SPO1 Destura, together with Dadang, brought the said request, the 2 heat-sealed transparent plastic sachets of drugs and drug paraphernalia to the crime laboratory. SPO2 Aldao and Forensic Chemist PSI Caceres received the said request with the seized items and as per PSI Caceres' report, the two heat-sealed transparent plastic sachets were positive for the presence of methamphetamine hydrochloride or *shabu*, while the drug paraphernalia have traces of *shabu*. After the examination, the seized items were deposited to PO2 Gamaya, the crime laboratory custodian, who deposited the same in their evidence room for safekeeping until such time that the forensic chemist testified in court. Finally, the same specimens were identified in court by PSI Caceres.

In view of the foregoing, we hold that there is sufficient compliance with the chain of custody rule, thus, the integrity and evidentiary value of the *corpus delicti* have been preserved. Hence, Dadang's conviction must stand.

As to the penalty, Section 5, Article II of R.A. No. 9165 clearly provides that the penalty for illegal sale of dangerous drugs, like *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. However, with the enactment of R.A. No. 9346, the imposition of the supreme penalty of death has been proscribed, hence, only life imprisonment and a fine shall be imposed. Thus, the penalty imposed by the RTC, and affirmed by the Court of Appeals-Cagayan De Oro, for the offense of illegal sale of *shabu* is proper.

On the other hand, Section 11, Article II of R.A. No. 9165, illegal possession of less than 5 grams of *shabu*, is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00, while Section 12, Article II of R.A. No. 9165 provides that the penalty for illegal possession of drug paraphernalia shall be imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from ₱10,000.00 to ₱50,000.00.

The Indeterminate Sentence Law[29] should be applied in these two cases. It provides that in imposing a prison sentence for an offense punishable by a law other than the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence, the minimum term of which shall not be less than the minimum fixed by law and the maximum of which shall not exceed the maximum term prescribed by the same. Here, Dadang was found to have been in illegal possession of 0.5449 gram of *shabu*. We opted to modify the penalty imposed by the RTC, as affirmed by the Court of Appeals-Cagayan de Oro, to conform to recent jurisprudence.[30] The same is true in the case of illegal possession of drug paraphernalia.[31]

WHEREFORE, the appeal is **DISMISSED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated August 30, 2018 of the Court of Appeals-Cagayan de Oro in CA-G.R. CR HC No. 01670-MIN and **AFFIRMS with MODIFICATIONS** said Decision finding accused-appellant Quisar Arances Dadang **GUILTY** beyond reasonable doubt of the crime of Illegal Sale and Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia, defined and penalized under Sections 5, 11 and 12, Article II of R.A. No. 9165. Accordingly, he is hereby sentenced as follows:

(a) In Criminal Case No. CR-DRG-2015-416 for Illegal Sale of Dangerous Drugs, he is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00;

(b) In Criminal Case No. CR-DRG-2015-417 for Illegal Possession of Dangerous Drugs, he is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00); and

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[29] R.A. No. 4103, as amended.

[30] *People v. Federico Cuevas*, G.R. No. 238906, November 5, 2018.

[31] *People v. Siegfredo Obias, Jr.*, G.R. No. 222187, March 25, 2019.

(c) In Criminal Case No. CR-DRG-2015-418 for Illegal Possession of Drug Paraphernalia, he is sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and to pay a fine of Ten Thousand Pesos (₱10,000.00).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 243664. January 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOCEL BAÑARES DE DIOS @ "TATA,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS OF BOTH CRIMES, ENUMERATED. — The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED TO PROVE THE IDENTITY OF THE SEIZED DRUGS WITH MORAL CERTAINTY; THERE IS SUFFICIENT COMPLIANCE WITH THE CHAIN OF CUSTODY RULE IN THE PRESENT CASE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SAID DRUGS HAVE BEEN PROPERLY PRESERVED. — To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *and* the DOJ, and any elected public official; or *(b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *or* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." In this case, it is glaring from the records that after accused-appellant was arrested, the buy-bust team immediately took custody of the seized plastic sachets, and conducted the marking, inventory, and photography of the seized items in the presence of Media Representative Brotamonte, DOJ Representative Barbacena, Barangay Official Gascon, and accused-appellant at the place of arrest, in conformity with the witness requirement under RA 9165. PO3 Codia then personally delivered all the evidence seized to Forensic Chemist Police. Senior Inspector Wilfredo I. Pabustan, Jr., who performed the necessary tests thereon. In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* have been properly preserved. Perforce, accused-appellant's conviction must stand.

3. ID.; ID.; ID.; PENALTY OF LIFE IMPRISONMENT AND FINE, IMPOSED. — Accused-appellant Jocel Bañares De Dios @ "Tata" is found **GUILTY** beyond reasonable doubt of the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, as defined and penalized under Sections 5 and 11, Article II of Republic Act No. 9165, respectively, and accordingly, sentenced as follows: (*a*) in Criminal Case No. T-5869 for Illegal Sale of Dangerous Drugs, accused-appellant is sentenced to suffer the penalty of life imprisonment and a fine of ₱500,000.00; and (*b*) in Criminal Case No. T-5870 for Illegal Possession of Dangerous Drugs, accused-appellant is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of ₱300,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated May 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09073 which affirmed the Decision[3] dated August 1, 2016 of the Regional Trial Court of Tabaco City, Branch 18 (RTC) in Criminal Case Nos. T-5869 and T-5870, finding accused-appellant Jocel Bañares De Dios @ "Tata" (accused-appellant) guilty beyond reasonable doubt of violating Sections 5 and 11,

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[1] See Notice of Appeal dated June 14, 2018; *rollo*, pp. 13-14. See also CA *rollo*, pp. 138-139.

[2] *Rollo*, pp. 2-12. Penned by Associate Justice (now member of this Court) Rodil V. Zalameda with Associate Justices Magdangal M. De Leon and Renato C. Francisco, concurring.

[3] CA *rollo*, pp. 60-71. Penned by Judge Mamerto M. Buban, Jr.

Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging accused-appellant of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively. The prosecution alleged that on June 5, 2014, members of the Tabaco City Police Station, together with the confidential informant, successfully implemented a buy-bust operation against accused-appellant, during which one (1) heat-sealed plastic sachet containing 0.024 gram of white crystalline substance was recovered from him. Upon further search, the police officer was able to seize a pouch containing two (2) more heat-sealed plastic sachets of suspected *shabu* from accused-appellant's possession.[6] Immediately thereafter, the police officer conducted the marking, inventory, and photography of the seized items in the presence of media representative Rodel B. Brotamonte (Brotamonte), Department of Justice (DOJ) representative Romulo B. Barbacena (Barbacena), Barangay Official Elmer U. Gascon (Gascon), and accused-appellant at the place of apprehension.[7] The seized items were then brought to the crime laboratory,[8] where after

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

[5] Records (Criminal Case No. T-5869), pp. 1-2; and records (Criminal Case No. T-5870), pp. 1-2.

[6] See *rollo*, pp. 3-5.

[7] See Receipt/Certificate of Inventory; records (Criminal Case No. T-5869), p. 19; and records (Criminal Case No. T-5870), p. 19. To note, accused-appellant refused to sign the said inventory certificate. See also TSN dated December 17, 2014, p. 5.

[8] See Request for Dangerous Drugs Examination dated June 5, 2014; records (Criminal Case No. T-5869), p. 22; and records (Criminal Case No. T-5870), p. 22.

examination, tested positive for *methamphetamine hydrochloride*, a dangerous drug.[9]

In his defense, accused-appellant denied the charges against him, claiming, instead, that during that time, he was at Riosa St., Tabaco City waiting for a pedicab, when Police Officer (PO) 3 Benedict Codia (PO3 Codia) suddenly placed his arms around accused-appellant's shoulders and handcuffed him. Thereafter, accused-appellant was brought to the police station, where PO1 Chona Cea allegedly handed to PO3 Codia a paper wrapped in a ₱500.00-bill with three (3) sachets of *shabu* inside. He claimed that the said items were planted and that his arrest was ill-motivated, having been arrested by PO3 Codia for theft only to be released later for lack of evidence.[10]

In a Decision[11] dated August 1, 2016, the RTC found accused-appellant guilty beyond reasonable doubt for violations of Sections 5 and 11, Article II of RA 9165, and accordingly, sentenced him as follows: (*a*) in Criminal Case No. T-5869, he was sentenced to suffer the penalty of life imprisonment, and a fine in the amount of ₱500,000.00; and (*b*) in Criminal Case No. T-5870, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine in the amount of ₱300,000.00.[12] It ruled that the prosecution was able to establish by clear and convincing evidence all the elements of the crimes charged. It gave credence to the clear and convincing testimonies of the prosecution witnesses, and hence, should prevail over accused-appellant's uncorroborated and self-serving defenses of denial and frame-up.[13] Aggrieved, accused-appellant appealed to the CA.[14]

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[9] See Chemistry Report No. D-112-2014; records (Criminal Case No. T-5869), p. 23; and records (Criminal Case No. T-5870), p. 23. See also *rollo*, pp. 5-6.

[10] See *rollo*, p. 6.

[11] CA *rollo*, pp. 60-71.

[12] *Id.* at 70.

[13] See *id.* at 68-70.

[14] *Id.* at 18-19.

In a Decision[15] dated May 23, 2018, the CA affirmed *in toto* the RTC ruling. It found that the prosecution was able to successfully establish all the elements necessary to convict accused-appellant of the crimes charged.[16]

Hence, this appeal seeking that accused-appellant's conviction be overturned.

The Court's Ruling

The appeal is without merit.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[17] Here, the courts *a quo* correctly found that accused-appellant committed the crime of Illegal Sale of Dangerous Drugs, as the records clearly show that he was caught *in flagrante delicto* selling *shabu* to the poseur-buyer, PO3 Codia, during a legitimate buy-bust operation conducted by the members of the Tabaco City Police Station. Similarly, the courts *a quo* also correctly ruled that accused-appellant committed the crime of Illegal Possession of Dangerous Drugs as he freely and consciously possessed plastic sachets containing *shabu* when he was arrested. Since there is no indication that the said courts

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[15] *Rollo*, pp. 2-12.

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

[17] See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018, *People v. Manansala*, G.R. No. 229092, February 21, 2018, *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 (2015) and *People v. Bio*, 753 Phil. 730, 736 (2015).

overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court is in the best position to assess and determine the credibility of the witnesses presented by both parties.[18]

Further, the Court notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165.

As a general rule, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[19] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.[20]

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[21] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of

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[18] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, G.R. No. 221991, August 30, 2017, further citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[19] See *People v. Crispo*, *supra* note 17; *People v. Sanchez*, *supra* note 17; *People v. Magsano*, *supra* note 17, *People v. Manansala*, *supra* note 17, *People v. Miranda*, *supra* note 17; *People v. Mamangon*, *supra* note 17. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

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

[21] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 17; *People v. Sanchez*, *supra* note 17; *People v. Magsano*, *supra* note 17; *People v. Manansala*, *id.*; *People v. Miranda*, *supra* note 17; and *People v. Mamangon*, *supra* note 17. See also *People v. Viterbo*, *supra* note 19.

the seized items be conducted immediately after seizure and confiscation of the same.[22] The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[23] a representative from the media *and* the DOJ, and any elected public official;[24] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service[25] *or* the media.[26] The law

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[22] In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009]) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumulak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015]).

[23] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

[24] Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

[25] The NPS falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071,

requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[27]

In this case, it is glaring from the records that after accused-appellant was arrested, the buy-bust team immediately took custody of the seized plastic sachets, and conducted the marking, inventory, and photography of the seized items in the presence of Media Representative Brotamonte, DOJ Representative Barbacena, Barangay Official Gascon, and accused-appellant at the place of arrest,[28] in conformity with the witness requirement under RA 9165. PO3 Codia then personally delivered all the evidence seized to Forensic Chemist Police Senior Inspector Wilfredo I. Pabustan, Jr., who performed the necessary tests thereon.[29] In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* have been properly preserved. Perforce, accused-appellant's conviction must stand.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated May 23, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09073 is hereby **AFFIRMED**. Accused-appellant Jocel

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entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010]).

[26] Section 21, Article II of RA 9165, as amended by RA 10640.

[27] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[28] See Receipt/Certificate of Inventory; records (Criminal Case No. T-5869), p. 19; and records (Criminal Case No. T-5870), p. 19. To note, while present during the inventory, accused-appellant refused to sign the said inventory certificate (see testimony of PO3 Codia; TSN, September 26, 2014, p. 12).

[29] See Request for Dangerous Drugs Examination dated June 5, 2014; records (Criminal Case No. T-5869), p. 22; and records (Criminal Case No. T-5870), p. 22. See also Chemistry Report No. D-112-2014; records (Criminal Case No. T-5869), p. 23; and records (Criminal Case No. T-5870), p. 23.

Bañares De Dios @ "Tata" is found **GUILTY** beyond reasonable doubt of the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, as defined and penalized under Sections 5 and 11, Article II of Republic Act No. 9165, respectively, and accordingly, sentenced as follows: (*a*) in Criminal Case No. T-5869 for Illegal Sale of Dangerous Drugs, accused-appellant is sentenced to suffer the penalty of life imprisonment and a fine of ₱500,000.00; and (*b*) in Criminal Case No. T-5870 for Illegal Possession of Dangerous Drugs, accused-appellant is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen, (14) years, as maximum, and a fine of ₱300,000.00.

SO ORDERED.

Inting and *Delos Santos, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

FIRST DIVISION

[G.R. No. 243722. January 22, 2020]
(Formerly UDK-16060)

CYNTHIA A. GALAPON, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; RULING IN *REPUBLIC VS. MANALO* EXPANDING THE SCOPE OF ARTICLE 26 (2) OF THE FAMILY CODE, REITERATED AND APPLIED; ARTICLE 26(2) APPLIES ALSO TO MIXED MARRIAGES WHERE THE DIVORCE DECREE IS OBTAINED JOINTLY BY THE FILIPINO AND FOREIGN SPOUSE.

— In the recent case of *Manalo*, the Court *en banc* extended the scope of Article 26(2) to even cover instances where the divorce decree is obtained *solely* by the Filipino spouse. The Court's ruling states, in part: x x x To reiterate, the purpose of paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. **A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law.** Pursuant to the majority ruling in *Manalo*, Article 26(2) applies to mixed marriages where the divorce decree is: (i) obtained by the foreign spouse; (ii) **obtained jointly by the Filipino and foreign spouse**; and (iii) obtained solely by the Filipino spouse.

2. ID.; ID.; ID.; PETITIONER SUFFICIENTLY ESTABLISHED THE AUTHENTICITY AND VALIDITY OF THE DIVORCE DECREE OBTAINED ABROAD; THE DIVORCE DECREE OBTAINED BY FOREIGN SPOUSE, WITH OR WITHOUT PETITIONER'S CONFORMITY FALLS WITHIN THE SCOPE OF ARTICLE 26(2) AND MERITS RECOGNITION IN THIS JURISDICTION. — Based on the records, Cynthia and Park obtained a divorce decree by mutual agreement under the laws of South Korea. The sufficiency of the evidence presented by Cynthia to prove the issuance of said divorce decree and the governing national law of her husband Park was not put in issue. In fact, the CA considered said evidence sufficient to establish the authenticity

> and validity of the divorce in question: x x x [T]he records show that [Cynthia] submitted, *inter alia*, the original and translated foreign divorce decree, as well as the required certificates proving its authenticity. She also offered into evidence a copy of the Korean Civil Code, duly authenticated through a Letter of Confirmation with Registry No. 2013-020871, issued by the Embassy of the Republic of Korea in the Philippines. **These pieces of evidence may have been sufficient to establish the authenticity and validity of the divorce obtained by the estranged couple abroad** but [the CA agrees] with the OSG that the divorce cannot be recognized in this jurisdiction insofar as [Cynthia] is concerned since it was obtained by mutual agreement of a foreign spouse and a Filipino spouse. In this light, it becomes unnecessary to delve into the admissibility and probative value of Abigail's testimony claiming that Cynthia had been constrained to consent to the divorce. As confirmed by *Manalo*, the divorce decree obtained by Park, with or without Cynthia's conformity, falls within the scope of Article 26(2) and merits recognition in this jurisdiction.

APPEARANCES OF COUNSEL

J.V. Bautista Law Offices for petitioner.
The Solicitor General 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 February 27, 2017 (assailed Decision) and Resolution[3] dated

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[1] *Rollo*, pp. 8-19.

[2] *Id.* at 20-29. Penned by Associate Justice Rodil V. Zalameda (now a Member of the Court), with the concurrence of Associate Justices Sesinando E. Villon and Pedro B. Corales.

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

September 29, 2017 (assailed Resolution) in CA-G.R. CV No. 106950, rendered by the Court of Appeals (CA), Eleventh Division and Former Eleventh Division, respectively.

The assailed Decision and Resolution reversed the Decision[4] dated July 3, 2015 issued by the Regional Trial Court (RTC) of Sto. Domingo, Nueva Ecija, Branch 88 in Special Proceedings No. SD(14)-417, which recognized the foreign divorce decree obtained by Cynthia A. Galapon (Cynthia) and her spouse Noh Shik Park (Park), a Korean national.

The Facts

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

> [Cynthia], a Filipina, and [Park], a South Korean national, got married in the City of Manila, Philippines on [February 27, 2012]. Unfortunately, their relationship turned sour and ended with a divorce by mutual agreement in South Korea. After the divorce was confirmed on [July 16, 2012] by the Cheongju Local Court, [Cynthia] filed before the [RTC] a Petition for the Judicial Recognition of a Foreign Divorce [(Recognition Petition)].
>
> The [RTC], finding the [Recognition] Petition sufficient in form and substance, issued an Order dated [November 11, 2014] setting the case for hearing. The said Order was then published once a week for three (3) consecutive weeks in The Daily Tribune. Meanwhile, the Office of [the] Solicitor General [(OSG)] filed a Notice of Appearance as counsel for the Republic of the Philippines. The Office of the Provincial Prosecutor of Baloc, Sto. Domingo, Nueva Ecija was also deputized to assist the OSG.
>
> During the presentation of evidence, Abigail Galapon [(Abigail)], [Cynthia's] sister and attorney-in-fact, testified in court. Abigail identified and affirmed her Judicial Affidavit, including the contents thereof and her signature thereon. Furthermore, Abigail averred that [Cynthia] could not personally testify because the latter's Korean visa expired upon her divorce with Park. Nevertheless, Abigail [alleged that she] has personal knowledge of the facts alleged in the [Recognition] Petition and claimed, among other things, that Park

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[4] *Id.* at 58-62. Penned by Presiding Judge Anarica J. Castillo-Reyes.

intended to many his former girlfriend [and that Cynthia] was forced to agree to the divorce because Park made a threat to her life x x x.[5]

RTC Ruling

On July 3, 2015, the RTC issued a Decision[6] granting the Recognition Petition. The dispositive portion of said Decision reads:

> **IN VIEW OF THE FOREGOING**, the [Recognition Petition] is hereby **GRANTED** and the Divorce Decree obtained in Seoul, Korea between [Cynthia] and [Park] on [July 16, 2012] is hereby **RECOGNIZED**. The Civil Registrar General and [the] Office of the Manila Civil Registrar are hereby DIRECTED to RECORD the said divorce decrees (*sic*) upon presentation of a duly authenticated copy thereof and payment of appropriate fees, if any. [Cynthia] is now legally capacitated to remarry under Philippine Laws pursuant to [Article] 26, [Paragraph] 2 of the Family Code of the Philippines.
>
> Let a copy of this Decision be furnished the Office of the Solicitor General, the Provincial Prosecutor of Nueva Ecija, the Office of the Civil Registrar General-National Statistics Office, the Office of the Civil Registrar of the City of Manila and the Embassy of the Philippines in Seoul, Korea through the Department of Foreign Affairs.
>
> **SO ORDERED**.[7]

The OSG filed a Motion for Reconsideration. The arguments therein, as summarized by the RTC, are as follows:

> 1. The [Recognition Petition] should [have been] filed in the RTC of Manila because the marriage was celebrated and was recorded in the City Civil Registry of Manila. Citing the case of *Fujiki vs. Marinay*[8] x x x, the (OSG] argued that [the recognition] of foreign divorce judgments may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court.

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

[6] *Id.* at 58-62.

[7] *Id.* at 62.

[8] 712 Phil. 524 (2013).

Thus, the venue of such proceedings is laid on the appropriate RTC where the civil registry is located;

2. Absolute divorce is not allowed in this jurisdiction. Considering that the divorce x x x was obtained not by the alien spouse alone but by both spouses, x x x [Cynthia] is not qualified to avail of the benefits provided by [Article] 26 of the Family Code.[9] (Italics supplied)

The Motion for Reconsideration was denied by the RTC through its Resolution[10] dated March 17, 2016.

Foremost, the RTC held that while the Court, in *Fujiki v. Marinay*,[11] ruled that the recognition of a foreign divorce decree *may* be made in a special proceeding, the use of the permissive word "may" was intentional so as not to foreclose the option of seeking such recognition through a special civil action for declaratory relief under Rule 63 of the Rules of Court, as in the case of *Republic v. Orbecido III*[12] (*Orbecido*).[13] Expounding further, the RTC held that since there are no specific rules governing petitions for recognition of foreign divorce, it applied by analogy Section 2, Rule 4 of the Rules of Court (Rules) which requires personal actions to be filed at the place where either the plaintiff or defendant resides.[14]

In addition, the RTC found that the requisites for the application of Article 26, paragraph 2 of the Family Code [Article 26(2)] concur.

First, there was a valid marriage celebrated between Cynthia and Park, as shown by the Certificate of Marriage issued by the National Statistics Office.[15]

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[9] *Rollo*, p. 63.

[10] *Id.* at 63-70.

[11] *Supra* note 8.

[12] 509 Phil. 108 (2005).

[13] *Rollo*, pp. 64-65.

[14] See *id.* at 65-66.

[15] *Id.* at 66.

Second, a valid divorce was obtained abroad by Park capacitating him to remarry, as shown by the Certification[16] issued by the Cheongju Local Court stating that he and Cynthia were divorced on July 16, 2012. While the RTC recognized that the divorce decree in question was obtained by mutual agreement, it ruled that such fact does not preclude its recognition in this jurisdiction since the testimony of Abigail Galapon (Abigail) confirms that Park merely coerced Cynthia to agree to the divorce.[17]

Not satisfied, the OSG appealed to the CA *via* Rule 41.

CA Ruling

On February 27, 2017, the CA issued the assailed Decision[18] granting the OSG's appeal, thus:

> **WHEREFORE**, premises considered, the instant [a]ppeal is **GRANTED**. The Decision dated [July 3, 2015] and Resolution dated [March 17, 2016] issued by Branch 88, [RTC] of Sto. Domingo, Nueva Ecija, [are] **REVERSED AND SET ASIDE**.
>
> Accordingly, the Petition filed by [Cynthia] is hereby **DISMISSED**, for lack of merit.
>
> **SO ORDERED**.[19]

The CA found no merit in the OSG's contention that the RTC erred when it acted on the Recognition Petition since venue was improperly laid. While Section 1, Rule 108 requires petitions for judicial recognition of foreign divorce decrees to be filed with the RTC where the civil entry of the marriage in question is registered, the CA held that courts cannot *motu proprio* dismiss an action on the ground of improper venue.[20] Hence, the CA

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[16] *Id.* at 35.

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

[18] *Id.* at 20-29.

[19] *Id.* at 28.

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

found that the RTC did not err in taking cognizance of the Recognition Petition since the OSG failed to move for its dismissal on the ground of improper venue at the first instance.[21]

Nonetheless, the CA held that the divorce decree in question cannot be recognized in this jurisdiction insofar as Cynthia is concerned since it was obtained by mutual agreement.[22] Said the CA:

> To be sure, it is crystal clear from pertinent law and jurisprudence that the foreign divorce contemplated under the second (2nd) paragraph of Article 26 of the Family Code must have been initiated and obtained by the foreigner spouse. Thus, the Supreme Court had made it also clear that in determining whether or not a divorce secured abroad would come within the pale of the country's policy against absolute divorce, the reckoning point is the citizenship of the parties at the time a valid divorce is obtained.
>
> There can be no dispute that [Cynthia] was a Filipino citizen when she obtained the divorce decree with her foreign spouse and, in fact, remains to be so up to the present. Clearly, since the divorce under consideration was jointly applied for and obtained by a Filipino and a foreigner spouse, it was incorrect for the [RTC] to apply the provision of the second (2nd) paragraph, Article 26 of the Family Code. Owing to the nationality principle embodied in Article 15 of the Civil Code, Philippine nationals, like [Cynthia], are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality.
>
> Notably, the [RTC] took as gospel truth the assertion of Abigail that [Cynthia] was merely acting under duress when she agreed to the demand of Park to sever their marriage, lest something bad would happen to her. Said allegation was used by the [RTC] as basis to conclude that the divorce was initiated by Park alone and that there was actually no divorce by mutual agreement that took place.
>
> This was obviously a serious error on the part of the [RTC].
>
> For one, the very evidence relied upon by [Cynthia] clearly show that the divorce between [Cynthia] and Park was obtained by mutual

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[21] *Id.* at 24.

[22] *Id.* at 26.

agreement, in accordance with Section 5, Article 834 of the Korean Civil Code. If [the CA follows] the [RTC's] conclusion, then it is with more reason that the [Recognition] Petition should be denied since it becomes evident that the divorce obtained by Park is contrary to, nay in violation of, [the Korean Civil Code], which clearly requires a divorce by mutual agreement. It is not amiss to point out x x x that the divorce obtained by an alien abroad may be recognized in the Philippines only when the divorce is valid according to his or her national law.

For another, [Cynthia] herself was not presented in court while her sister, Abigail, testified on matters not derived from her own perception but from what [Cynthia] allegedly told her. x x x Verily, the personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. x x x[23]

On September 29, 2017, the CA denied Cynthia's subsequent Motion for Reconsideration through the assailed Resolution.[24]

Cynthia received the assailed Resolution through counsel on October 10, 2017.[25]

On October 24, 2017, Cynthia filed a Motion for Extension of Time to File Petition for Review with Application for Authorization to Litigate as Indigent Party.[26] Therein, Cynthia moved for an additional period of thirty (30) days, or until November 24, 2017 to file her petition for review. In addition, Cynthia alleged that she remains in Korea "under questionable alien status," and is suffering from an illness which requires immediate medical attention. Because of these circumstances, Cynthia prayed that she be granted authorization to litigate as an indigent party, for while her counsel on record has agreed to continue handling her case *pro bono*, she has no sufficient means to pay the required filing fees.[27]

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

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

[25] *Id.* at 2.

[26] *Id.* at 2-5.

[27] *Id.* at 2.

Cynthia filed the present Petition on November 20, 2017.

On January 31, 2018, the Court issued a Resolution[28] granting Cynthia's prayer for extension, and requiring Cynthia to submit proof of her indigency within five (5) days from notice. The Court also directed the OSG to file its comment on the Petition.

Upon submission of the required proof, the Court granted Cynthia's application to litigate as an indigent party.[29]

Meanwhile, the OSG filed its Comment[30] on the Petition on April 26, 2018. In turn, Cynthia filed her Reply[31] on September 25, 2018.

In this Petition, Cynthia avers that this case calls for the exercise of the Philippine courts' power of "limited review" over a foreign judgment. Cynthia argues that by reversing the RTC Decision, the CA erroneously delved into the merits of the divorce decree in question, and substituted its judgment for the judgment of the Korean courts with respect to matters relating to the status, condition and legal capacity of Park who is a Korean national.[32] Further, Cynthia claims that the assailed Decision and Resolution would result in the unjust situation Article 26(2) is meant to prevent.[33]

In her Reply, Cynthia further argues that all doubts as to the application of Article 26(2) to foreign divorce decrees obtained by mutual consent of the Filipino citizen and the alien spouse have been laid to rest in the recent case of *Republic v. Manalo*[34] (*Manalo*).[35]

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[28] *Id.* at 84-85.

[29] *Id.* at 120.

[30] *Id.* at 96-113.

[31] *Id.* at 127-131.

[32] *Id.* at 10-12.

[33] *Id.* at 13.

[34] G.R. No. 221029, April 24, 2018, 862 SCRA 580.

[35] *Rollo*, p. 127.

The Issue

The sole issue for the Court's resolution is whether the CA erred in denying the recognition of the divorce decree obtained by Cynthia and her foreign spouse, Park.

The Court's Ruling

The Petition is granted.

The controversy is centered on the interpretation of Article 26(2) as applied to divorce decrees obtained *jointly* by the foreign spouse and Filipino citizen.

Article 26 of the Family Code states:

> All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.
>
> **Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.** (Emphasis supplied)

In *Orbecido*, the Court laid down the elements for the application of Article 26(2), bearing in mind the spirit and intent behind the provision as reflected in the Committee deliberations. The Court held:

> x x x [The Court states] the twin elements for the application of Paragraph 2 of Article 26 as follows:
>
> 1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
>
> 2. **A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.**
>
> The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but **their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.**

In this case, when [the Filipino spouse's] wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between [them]. As fate would have it, **the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry**. Clearly, the twin requisites for the application of Paragraph 2 of Article 26 are both present in this case. Thus x x x the "divorced" Filipino spouse, should be allowed to remarry.[36] (Emphasis and underscoring supplied; italics in the original)

Here, the CA anchored the assailed Decision on the absence of the second element set forth in *Orbecido*. According to the CA, the fact that the divorce decree had been obtained by mutual agreement of Cynthia and Park precludes the application of Article 26(2), since the language of the provision requires that the divorce decree be obtained *solely* by the foreign spouse.

Adopting the same view, the OSG argues that the divorce decree in question is not one "obtained x x x by the alien spouse alone[,] but [one obtained] at the instance of both [spouses]."[37] Hence, the OSG insists that Article 26(2) simply cannot apply to Cynthia.[38] In this connection, the OSG claims that Abigail's testimony to the effect that Cynthia had been merely forced to agree to the divorce should not be given credence for being hearsay.[39]

The CA and OSG are mistaken.

In the recent case of *Manalo*, the Court *en banc* extended the scope of Article 26(2) to even cover instances where the divorce decree is obtained *solely* by the Filipino spouse. The Court's ruling states, in part:

Paragraph 2 of Article 26 speaks of "*a divorce* x x x *validly obtained abroad by the alien spouse capacitating him or her to remarry.*" Based on a clear and plain reading of the provision, it only requires

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[36] *Republic v. Orbecido III*, *supra* note 12, at 115-116.

[37] *Rollo*, p. 99.

[38] *Id.* at 100.

[39] *Id.* at 101-102.

that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding. The Court is bound by the words of the statute; neither can We put words in the mouths of the lawmakers. "The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."

Assuming, for the sake of argument, that the word "*obtained*" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. Laws have ends to achieve, and statutes should be so construed as not to defeat but to carry out such ends and purposes. As held in *League of Cities of the Phils., et al. v. COMELEC, et al.*:

> The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter.

To reiterate, the purpose of paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. **A Filipino**

who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law.[40] (Emphasis supplied; italics in the original)

Pursuant to the majority ruling in *Manalo*, Article 26(2) applies to mixed marriages where the divorce decree is: (i) obtained by the foreign spouse; (ii) **obtained jointly by the Filipino and foreign spouse**; and (iii) obtained solely by the Filipino spouse.

Based on the records, Cynthia and Park obtained a divorce decree by mutual agreement under the laws of South Korea. The sufficiency of the evidence presented by Cynthia to prove the issuance of said divorce decree and the governing national law of her husband Park was not put in issue. In fact, the CA considered said evidence sufficient to establish the authenticity and validity of the divorce in question:

> x x x [T]he records show that [Cynthia] submitted, inter alia, the original and translated foreign divorce decree, as well as the required certificates proving its authenticity. She also offered into evidence a copy of the Korean Civil Code, duly authenticated through a Letter of Confirmation with Registry No. 2013-020871, issued by the Embassy of the Republic of Korea in the Philippines. **These pieces of evidence may have been <u>sufficient</u> to establish the authenticity and validity of the divorce obtained by the estranged couple abroad** but [the CA agrees] with the OSG that the divorce cannot be recognized in this jurisdiction insofar as [Cynthia] is concerned since it was obtained by mutual agreement of a foreign spouse and a Filipino spouse.[41] (Emphasis and underscoring supplied)

In this light, it becomes unnecessary to delve into the admissibility and probative value of Abigail's testimony claiming

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[40] *Republic v. Manalo, supra* note 34, at 606-608.

[41] *Rollo*, pp. 25-26.

that Cynthia had been constrained to consent to the divorce. As confirmed by *Manalo*, the divorce decree obtained by Park, with or without Cynthia's conformity, falls within the scope of Article 26(2) and merits recognition in this jurisdiction.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated February 27, 2017 and Resolution dated September 29, 2017 rendered by the Court of Appeals, Eleventh Division and Former Eleventh Division, respectively, in CA-G.R. CV No. 106950 are **REVERSED and SET ASIDE**.

Accordingly, the Decision dated July 3, 2015 issued by the Regional Trial Court of Sto. Domingo, Nueva Ecija, Branch 88 in Special Proceedings No. SD(14)-417 is **REINSTATED**. By virtue of Article 26, paragraph 2 of the Family Code and the Certification of the Cheongju Local Court dated July 16, 2012, petitioner Cynthia A. Galapon is declared capacitated to remarry under Philippine law.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 243986. January 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **R. LORENZ ESGUERRA *y* BALIBER *a.k.a.* "RR",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, PROVEN IN THIS CASE; THE COURT FINDS NO REASON TO DEVIATE FROM THE COURTS *A QUO'S* FACTUAL FINDINGS. — In every prosecution for the crime of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. Here, the courts *a quo* correctly found that accused-appellant committed the crime of Illegal Sale of Dangerous Drugs, as records clearly show that he was caught *in flagrante delicto* selling *shabu* to the poseur-buyer, IO1 Balbada, during a legitimate buy-bust operation conducted by the PDEA. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED TO PROVE THE IDENTITY OF THE DANGEROUS DRUGS WITH MORAL CERTAINTY. — In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, as amended by RA 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal. To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia,* that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory

and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or *(b)* if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. **ID.; ID.; ID.; ID.; WHERE THE CHAIN OF CUSTODY OVER THE SEIZED DRUGS REMAINED UNBROKEN, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SAME HAVE BEEN PROPERLY PRESERVED, APPELLANT'S CONVICTION MUST STAND. —** In this case, records show that after accused-appellant was arrested, IO1 Balbada immediately took custody of the seized drug and personally conducted the requisite marking, inventory, and photography right at the place of arrest in the presence of accused-appellant himself, as well as an elected public official, *i.e.*, Brgy. Captain Abucejo, media representatives, *i.e.*, Licup and Brangan, and a DOJ representative, *i.e.*, Bedrijo. Subsequently, the illegal drug was delivered by IO1 Balbada to the crime laboratory for examination, and later brought to court for safekeeping, where it was duly presented, identified, and admitted as evidence. Accordingly, the chain of custody over the seized drug remained unbroken, and the integrity and evidentiary value of the *corpus delicti* had been properly preserved; hence, accused-appellant's conviction must stand.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated July 31, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01646-MIN which affirmed the Omnibus Decision[3] dated November 17, 2016 of the Regional Trial Court of Butuan City, Branch 4 (RTC) in Criminal Case No. 14026, finding accused-appellant R. Lorenz Esguerra *y* Baliber @ "RR" (accused-appellant) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Amended Information[5] dated March 30, 2010 filed before the RTC charging accused-appellant and his companions, Jessica Lozada *y* Digal (Jessica) and Jefferson Ray Lozada (Jefferson), with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. The prosecution alleged that at around 11:20 in the morning of March 18, 2010, a team of operatives from the Philippine Drug Enforcement Agency (PDEA), led by Intelligence Officer (IO) 1 Myrian Aceron Balbada (IO1 Balbada), successfully conducted a buy-bust operation against

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[1] See Notice of Appeal dated September 10, 2018; *rollo*, pp. 34-35.

[2] *Rollo*, pp. 4-33. See also CA *rollo*, pp. 142-171. Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Walter S. Ong, concurring.

[3] *CA rollo*, pp. 61-77. See also records, pp. 228-244. Penned by Judge Godofredo B. Abul, Jr.

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

[5] Not attached to the records. See *rollo*, p. 5. See also records, p. 229.

accused-appellant at his residence in Barangay Limaha, Butuan City, during which one (1) plastic sachet containing white crystalline substance was recovered from his possession.[6] The PDEA officers also arrested Jessica and Jefferson, who purportedly conspired with accused-appellant in committing the alleged crime. IO1 Balbada then marked, inventoried,[7] and took photographs of the seized item in the presence of accused-appellant, Barangay Captain Victor L. Abucejo (Brgy. Captain Abucejo), Department of Justice (DOJ) representative Ronaldo T. Bedrijo (Bedrijo), and media representatives Tootsie Licup (Licup) of radio station DXBN and Rey M. Brangan (Brangan) of radio station Bombo Radyo. Subsequently, the seized item was brought to the crime laboratory[8] where, after examination,[9] its contents tested positive for 0.0440 gram of *methamphetamine hydrochloride* or *shabu*, a dangerous drug.[10]

In defense, accused-appellant denied the charge against him, claiming that at the time of the incident, he was asleep at home when several men suddenly barged in, conducted a search, and arrested him without just cause.[11]

In an Omnibus Decision[12] dated November 17, 2016, the RTC found accused-appellant guilty beyond reasonable doubt of the crime charged and accordingly, sentenced him to suffer the penalty of life imprisonment and a fine in the amount of ₱500,000.00, without subsidiary imprisonment in case of insolvency"[13] The trial court did not give credence to accused-appellant's defense of denial,[14] and ruled that the prosecution

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[6] See *rollo*, pp. 5-7.

[7] See Certificate of Inventory; records, p. 21.

[8] See Request for Laboratory Examination; *id*. at 16-17.

[9] See Chemistry Report No. D-031-2010 dated March 19, 2010; *id*. at 18.

[10] See *rollo*, pp. 7-9.

[11] See *rollo*, p. 10 and records, p. 236.

[12] CA *rollo*, pp. 61-77.

[13] See *id*. at 76.

[14] See *id*. at 75-76.

was able to establish all the elements of the crime of Illegal Sale of Dangerous Drugs, and that there was substantial compliance with the chain of custody rule.[15]

Aggrieved, accused-appellant moved for reconsideration,[16] which was denied by the RTC in a Resolution[17] dated January 18, 2017.

Undaunted, accused-appellant appealed[18] to the CA, arguing that he should be acquitted because the identity and integrity of the seized drug were not properly preserved.[19]

In a Decision[20] dated July 31, 2018, the CA affirmed the RTC Decision *in toto*.[21] It held that the seized drug was properly marked, inventoried, and photographed in the presence of the required witnesses, as well as accused-appellant himself, and that a specimen of the same had been duly presented and identified in open court.[22]

Hence, this appeal seeking that accused-appellant's conviction be overturned.

The Court's Ruling

The appeal is without merit.

In every prosecution for the crime of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the

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[15] See *id.* at 69-72.

[16] See motion for reconsideration dated December 19, 2016; records, pp. 250-259.

[17] CA *rollo,* pp. 78-79.

[18] See Notice of Appeal dated January 23, 2017; CA *rollo,* pp. 12-13. See also records, pp. 267-268.

[19] See Appellant's Brief dated July 28, 2017; CA *rollo,* pp. 37-60.

[20] *Rollo,* pp. 4-33.

[21] *Id.* at 32.

[22] See *id.* at 13-28.

consideration; and (*b*) the delivery of the thing sold and the payment.[23]

Here, the courts *a quo* correctly found that accused-appellant committed the crime of Illegal Sale of Dangerous Drugs, as records clearly show that he was caught *in flagrante delicto* selling *shabu* to the poseur-buyer, IO1 Balbada, during a legitimate buy-bust operation conducted by the PDEA. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings.

Further, the Court observes that the integrity and evidentiary value of the seized drug had been properly preserved since the PDEA team sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, as amended by RA 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[24] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.[25]

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[23] See *People v. Crispo,* G.R. No. 230065, March 14, 2018; *People v. Sanchez,* G.R. No. 231383, March 7, 2018; *People v. Magsano,* G.R. No. 231050, February 28, 2018; *People v. Manansala,* G.R. No. 229092, February 21, 2018; *People v. Miranda,* G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon,* G.R. No. 229102, January 29, 2018, 853 SCRA, 303, 312-313; all cases citing *People v. Sumili,* 753 Phil. 342, 348 (2015) and *People v. Bio,* 753 Phil. 730, 736 (2015).

[24] See *People v. Crispo, supra* note 23; *People v. Sanchez, supra* note 23; *People v. Magsano, supra* note 23; *People v. Manansala, supra* note 23; *People v. Miranda, supra* note 23; and *People v. Mamangon, supra* note 23. See also *People v. Viterbo,* 739 Phil. 593, 601 (2014).

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

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[26] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[27] The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640,[28] a representative from the media *AND* the DOJ, and any

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[26] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 23; *People v. Sanchez, supra* note 23; *People v. Magsano, supra* note 23; *People v. Manansala, supra* note 23; *People v. Miranda, supra* note 23; and *People v. Mamangon, supra* note 23. See also *People v. Viterbo, supra* note 24.

[27] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009].) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumulak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015].)

[28] Entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2002 .'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

elected public official;[29] or *(b)* if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service[30] ***OR*** the media.[31] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[32]

In this case, records[33] show that after accused-appellant was arrested, IO1 Balbada immediately took custody of the seized drug and personally conducted the requisite marking, inventory,[34] and photography right at the place of arrest in the presence of accused-appellant himself,[35] as well as an elected public official, *i.e.*, Brgy. Captain Abucejo, media representatives, *i.e.*, Licup and Brangan, and a DOJ representative, *i.e.*, Bedrijo.[36] Subsequently, the illegal drug was delivered by IO1 Balbada

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[29] Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

[30] The NPS falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 1, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010]).

[31] Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[32] See *People v. Miranda*, *supra* note 23. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[33] See *rollo*, pp. 23-27.

[34] See Certificate of Inventory; records, p. 21.

[35] Based on the testimony of IO1 Balbada (TSN, January 31, 2011, p. 22), which was corroborated by the testimonies of IOl Reginald Constantino Saguiguit (TSN, February 22, 2016, p. 8) and IO2 Marjorie Muñez Veso (TSN, November 25, 2014, pp. 7-9).

[36] In conformity with the witness requirement under Section 21 (1), Article II of RA 9165, prior to the amendment of RA 10640.

to the crime laboratory [37] for examination,[38] and later brought to court for safekeeping,[39] where it was duly presented, identified; and admitted as evidence.[40] Accordingly, the chain of custody over the seized drug remained unbroken, and the integrity and evidentiary value of the *corpus delicti* had been properly preserved; hence, accused-appellant's conviction must stand.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated July 31, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01646-MIN is hereby **AFFIRMED**. Accused-appellant R. Lorenz Esguerra *y* Baliber @ "RR" is found **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165, and accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.

SO ORDERED.

Inting and *Delos Santos, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

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[37] See Request for Laboratory Examination; records, pp. 16-17.

[38] See Chemistry Report No. D-031-2010 dated March 19, 2010; records, p. 18.

[39] *Rollo,* p. 28.

[40] See *rollo,* pp. 16-28. See also CA *rollo,* pp. 154-166.

FIRST DIVISION

[G.R. No. 245887. January 22, 2020]

CITY OF DAVAO and MR. ERWIN ALPARAQUE, in his Official Capacity as Acting City Treasurer of the City of Davao, *petitioners, vs.* **AP HOLDINGS, INC.,** *respondent.*

SYLLABUS

POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991 (RA 7160); BUSINESS TAX; RESPONDENT, BEING ONE OF THE COCONUT INDUSTRY INVESTMENT FUND (CIIF) HOLDING COMPANIES WHOSE PUBLIC ASSETS ARE OWNED BY THE REPUBLIC OF THE PHILIPPINES, IS NOT LIABLE TO PAY LOCAL BUSINESS TAX ON THE DIVIDENDS EARNED FROM ITS SAN MIGUEL CORPORATION (SMC) PREFERRED SHARES. — In the recent case of ***City of Davao, et al. v. Randy Allied Ventures, Inc. (RAVI),*** the Court ordained that RAVI, a CIIF holding company like APHI, was exclusively established to own and hold SMC shares of stock. As such, it is not liable to pay local business taxes on the dividends earned from its SMC preferred shares as the same shares are government assets owned by the national government for the benefit of the coconut industry[.] x x x Verily, therefore, CIIF holding companies, including APHI itself and the entire CIIF block of SMC shares, are public assets owned by the Republic of the Philippines. Consequently, dividends and any income from these shares are also owned by the Republic. On this score, APHI cannot be considered as a non-bank financial intermediary since its investment and placement of funds are not done in a regular or recurring manner for the purpose of earning profit. Rather, its management of dividends from the SMC shares is only in furtherance of its purpose as a CIIF holding company for the benefit of the Republic. All told, the City of Davao acted beyond its taxing authority when it imposed the questioned business tax on APHI.

APPEARANCES OF COUNSEL

Office of the City Legal Office for petitioners.
Eduardo V. De Mesa for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* assails the Decision[1] dated August 20, 2018 and the Resolution[2] dated January 23, 2019 of the Court of Tax Appeals *En Banc* in CTA EB No. 1640 finding respondent AP Holdings, Inc. (APHI) entitled to a refund or credit of the 0.55% local business taxes it paid to petitioner City of Davao for the dividends it earned from its San Miguel Corporation (SMC) preferred shares and interests from its money market placements for the taxable year 2010.

Antecedents

The Coconut Industry Investment Fund (CIIF) under Presidential Decree 582 (PD 582) is a fund from part of the levy imposed on the initial sale by coconut farmers of copra and other coconut products. Pursuant to PD 582's mandate, the CIIF was invested in six (6) oil mills, the CIIF Oil Mills Group (CIIF OMG).[3]

Sometime in 1983, CIIF OMG bought shares of stock from SMC. It also established fourteen (14) holding companies, one

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[1] Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario, Associate Justices Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan but Associate Justice Juanito C. Castañeda, Jr. wrote his Dissenting Opinion; *Rollo*, pp. 35-54.

[2] *Id.* at 71-74.

[3] Record, CTA *En Banc*, p. 11.

of which is APHI, for the sole purpose of owning and holding such shares, *viz*:

PRIMARY PURPOSE

The primary purpose for which such Corporation is formed is:

To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness,and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination "holding corporation," and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."[4] (Underscore supplied)

Over time, APHI received cash and stock dividends from its SMC preferred shares. These dividends were deposited in a trust account which earned interest from money market placements.[5]

In 1986, APHI's SMC shares were sequestered by the Presidential Commission on Good Government. Subsequently, cases were filed before this Court questioning the ownership of the CIIF, CIIF OMG, the fourteen (14) holding companies and the SMC shares held by them. One of these cases was G.R.

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[4] *Rollo*, pp. 48-49.

[5] Record, CTA *En Banc*, p. 11.

Nos. 177857-58, entitled "Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines."[6]

In 2011, petitioner City of Davao, through its City Treasurer, issued a Business Tax Order of Payment directing APHI to pay 0.55% local business tax in the amount of ₱723,531.50. Pursuant to Section 69(f) of the 2005 Revenue Code of the City of Davao, the tax was assessed on the dividends and interests APHI earned from its SMC preferred shares and money market placements, respectively. APHI paid the assessment under protest. Subsequently, it filed an administrative claim for refund or tax credit with the City Treasurer. Claiming that the City Treasurer failed to act on the protest, APHI filed a petition for review with the Regional Trial Court.[7]

Meanwhile, by Decision dated January 24, 2012, this Court in G.R. Nos. 177857-58 declared the CIIF companies, including APHI and the CIIF block of SMC shares, as public funds or property necessarily owned by the government.[8]

The Regional Trial Court's Decision

By Decision[9] dated June 22, 2015, the trial court ruled that APHI's primary purpose in its Amended Articles of Incorporation resembles the definition of a financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions, and, hence, taxable under Section 69(f) of the 2005 Revenue Code of the City of Davao, *viz*:[10]

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[6] *Id.*

[7] Penned by Presiding Judge Emmanuel C. Carpio; *rollo*, pp. 36-37.

[8] *Id.* at 50.

[9] *Id.* at 38.

[10] **Section 4101Q.1 Financial Intermediaries.** — Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.

SECTION 69. *Imposition of Tax*. — There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:

x x x x x x x x x

(f) *On Banks and Other Financial Institutions*, at a rate of fifty-five per cent (55%) of one per cent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property, and profit from exchange or sale of property, insurance premium. All other income and receipts not herein enumerated shall be excluded in the computation of the tax.

APHI moved for reconsideration but was denied under Order dated September 11, 2015.[11]

The Court of Tax Appeals (CTA) Division's Decision

By Decision[12] dated January 30, 2017, the CTA Division affirmed the trial court's decision.

Through Resolution[13] dated April 17, 2017, it denied petitioners' motion for reconsideration.

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

[11] *Rollo*, p. 38.

[12] Penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justice Juanito C. Castañeda, Jr. but Associate Justice Catherine T. Manahan wrote her Dissenting Opinion; record, CTA Division, pp. 266-278.

[13] *Id.* at 297-302.

The Court of Tax Appeals *En Banc's* Decision

By Decision[14] dated August 20, 2018, the CTA *En Banc* reversed and declared APHI entitled to a tax refund or credit. It found that APHI was not a non-bank financial intermediary for the following reasons:

First, APHI did not fall under the definition of a non-bank financial intermediary under Section 131 (e) of the Local Government Code (LGC),[15] Section 22 (W) of the National Internal Revenue Code (NIRC) of 1997[16] and Section 4101Q.1 of the Bangko Sentral ng Pilipinas' (BSP) Manual of Regulations for Non-Bank Financial Institutions.[17]

Second, although APHI's functions, based on its Amended Articles of Incorporation, included supposed functions of a non-bank financial intermediary, it was not shown that these functions were its principal purpose.[18]

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[14] *Rollo*, pp. 35-54.

[15] **Section 131.** x x x

x x x x x x x x x

(e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder[.]

[16] **Section 22.** x x x

x x x x x x x x x

(W) The term "*non-bank financial intermediary*" means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities.

x x x x x x x x x

[17] *Rollo*, pp. 44-46.

[18] *Id.* at 48-49.

Third, it was not established that the functions performed by non-bank financial intermediaries were done by APHI on a regular and recurring basis.[19]

Fourth, there was no evidence showing that APHI held itself out as a non-bank intermediary.[20]

Lastly, APHI belonged to the CIIF block of SMC shares, which were declared to be owned by the government, thus, any tax imposed upon it is a tax on the government.[21] Under Section 133 (o) of the LGC, local government units cannot tax the National Government.

By Resolution dated January 23, 2019, the CTA *En Banc* denied petitioners' motion for reconsideration.[22]

The Present Petition

Petitioners now seek to reverse the CTA *En Banc's* dispositions. They essentially assert:

a) APHI is deemed a "bank and other financial institution," specifically as a "non-bank financial intermediary or an investment company" because it owned a substantial number of shares and received millions of pesos of dividends from its investments.

b) Its business purpose as contained in the Amended Articles of Incorporation is broad enough to catch all the descriptive functions of a non-bank financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the BSP. Too, the statement in APHI's Articles of Incorporation that it shall not act as an investment company or securities broker is not conclusive proof that it is not a "bank or other financial institution." For

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[19] *Id.* at 49.

[20] *Id.*

[21] *Id.* at 50-58.

[22] *Id.* at 100.

based on the tax audit and its financial statements, APHI has no other business except its primary business of stock investment and money market placements with SMC.

c) The Bureau of Local Government Finance's (BLGF's) opinion on the exemption from local business taxes is not binding upon the courts since BLGF is not among the quasi-judicial agencies whose technical findings on questions of fact and law are binding in the courts.

On the other hand, APHI counters in the main:

a) Pursuant to Section 143 (f) of the LGC,[23] petitioners can only collect business taxes on the dividends and interest income of banks and other financial institutions. Since it is not engaged in those businesses, its dividends and interest income cannot be subject to local business taxes.

b) It is not a bank or non-bank financial intermediary considering that it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis. More, it was not required by the Securities and Exchange Commission to secure secondary license nor was it regulated by the BSP or the Insurance Commission.

c) Mere ownership of shares of stock of SMC does not *ipso facto* qualify it as a non-bank financial intermediary.

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[23] **Section 143.** *Tax on Business*. — The municipality may impose taxes on the following businesses:

x x x x x x x x x

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

d) It is a holding company. Its Articles of Incorporation[24] expressly prohibits it from acting as a financial intermediary.

e) APHI, as well as its SMC shares and income derived therefrom are national government properties which are exempt from local business taxes as declared by the BLGF.

Issue

As a CIIF holding company, is APHI liable to pay local business taxes on its dividend earnings from its SMC preferred shares?

Ruling

We rule in the negative.

In the recent case of ***City of Davao, et al. v. Randy Allied Ventures, Inc. (RAVI)***,[25] the Court ordained that RAVI, a CIIF

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[24] PRIMARY PURPOSE

The primary purpose for which such Corporation is formed is:

To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination "holding corporation," and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation **shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation**." (Underscore supplied)

[25] G.R. No. 241697, July 29, 2019; citations omitted.

holding company like APHI, was exclusively established to own and hold SMC shares of stock. As such, it is not liable to pay local business taxes on the dividends earned from its SMC preferred shares as the same shares are government assets owned by the national government for the benefit of the coconut industry, thus:

> In this case, it is clear that RAVI is neither a bank nor other financial institution, *i.e.*, an NBFI. In order to be considered as an NBFI under the National Internal Revenue Code, banking laws, and pertinent regulations, the following must concur:
>
> a. The person or entity is authorized by the BSP to perform quasi-banking functions;
>
> b. The principal functions of said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and
>
> c. The person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit:
>
> 1. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
>
> 2. Use principally the funds received for acquiring various types of debt or equity securities;
>
> 3. Borrow against, or lend on, or buy or sell debt or equity securities.

As observed in the COCOFED case, RAVI is a CIIF holding company. The SMC preferred shares held by it are considered government assets owned by the National Government for the coconut industry. As held in the same case, these SMC shares as well as any resulting dividends or increments from said shares are owned by the National Government and shall be used only for the benefit of the coconut farmers and for the development of the coconut industry.

Thus, RAVI's management of the dividends from the SMC preferred shares, including placing the same in a trust account yielding interest, is not tantamount to doing business whether as a bank or other financial institution, *i.e.*, an NBFI, but rather an activity that is essential to its nature as a CIIF holding company.

Verily, therefore, CIIF holding companies, including APHI itself and the entire CIIF block of SMC shares, are public assets owned by the Republic of the Philippines. Consequently, dividends and any income from these shares are also owned by the Republic.[26] On this score, APHI cannot be considered as a non-bank financial intermediary since its investment and placement of funds are not done in a regular or recurring manner for the purpose of earning profit. Rather, its management of dividends from the SMC shares is only in furtherance of its purpose as a CIIF holding company for the benefit of the Republic.

All told, the City of Davao acted beyond its taxing authority when it imposed the questioned business tax on APHI.

ACCORDINGLY, the petition is **DENIED**. The Decision dated August 20, 2018 and Resolution dated January 23, 2019 of the Court of Tax Appeals *En Banc* in CTA EB No. 1640 are **AFFIRMED**.

SO ORDERED.

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

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[26] Section 133 (o) of the LGC.

FIRST DIVISION

[G.R. No. 246995. January 22, 2020]

BLAS C. BRITANIA, *petitioner, vs.* **HON. LILIA MERCEDES ENCARNACION A. GEPTY in her capacity as Presiding Judge, Regional Trial Court, Branch 75, Valenzuela City, and MELBA C. PANGANIBAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION SALE; A JUDGMENT CREDITOR OR PURCHASER AT AN EXECUTION SALE ACQUIRES ONLY WHATEVER RIGHTS THE JUDGMENT OBLIGOR MAY HAVE OVER THE PROPERTY AT THE TIME OF LEVY. — [Section 36, Rule 39 of the Rules of Court] applies to cases where the judgment remains unsatisfied and there is a need for the judgment obligor to appear and be examined concerning his or her property and income to determine whether the same may be properly held to satisfy the full judgment amount. The provision speaks of the judgment obligor's property and income only; not those belonging to third persons. For a judgment creditor or purchaser at an execution sale acquires only whatever rights the judgment obligor may have over the property at the time of levy. Thus, if the judgment obligor has no right, title or interest over the levied property, there is nothing for him or her to transfer. Here, in the trial court's final and executory Decision dated June 30, 2015, it categorically held that Panganiban did not validly mortgage the 120-square-meter property to Britania because she did not own in the first place x x x.

2. ID.; ID.; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; WHEN A JUDGMENT LAPSES INTO FINALITY, IT BECOMES IMMUTABLE AND UNALTERABLE AND IT MAY NO LONGER BE MODIFIED OR AMENDED BY ANY COURT IN ANY MANNER. — It is a fundamental principle that a judgment that lapses into finality becomes immutable and unalterable.

The primary consequence of this principle is that the judgment may no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact. This principle known as the doctrine of immutability of judgment is a matter of sound public policy, which rests upon the practical consideration that every litigation must come to an end. Here, Britania cannot revive his claim on the 120-square-meter property by subjecting Panganiban to examination under Section 36, Rule 39 of the Rules of Court which x x x is not even applicable here.

3. ID.; ID.; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; TYPES; THE CONTEMPT POWER MUST BE EXERCISED JUDICIOUSLY AND SPARINGLY WITH UTMOST SELF-RESTRAINT WITH THE END IN VIEW OF UTILIZING THE SAME FOR CORRECTION AND PRESERVATION OF THE DIGNITY OF THE COURT, NOT FOR RETALIATION OR VINDICATION. — As for Britania's motion to cite Panganiban for indirect contempt of court, we reckon with the rule that the power to declare a person in contempt of court and in dealing with him or her accordingly is an inherent power lodged in courts of justice, to be used as a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein, and the administration of justice from callous misbehavior, offensive personalities, and contumacious refusal to comply with court orders. This contempt power, however plenary it may seem, must be exercised judiciously and sparingly with utmost self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication. It should not be availed of unless necessary in the interest of justice. There are two (2) types of contempt of court: (i) direct contempt and (ii) indirect contempt. Direct contempt consists of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before it. It includes: (i) disrespect to the court, (ii) offensive behavior against others, (iii) refusal, despite being lawfully required, to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition. It can be punished summarily without a hearing.

4. ID.; ID.; ID.; ID.; INDIRECT CONTEMPT; A PERSON MAY ONLY BE PUNISHED FOR INDIRECT CONTEMPT AFTER A WRITTEN PETITION IS FILED AND AN

OPPORTUNITY TO BE HEARD IS GIVEN TO THE PARTY CHARGED. — Indirect contempt is committed through any of the acts enumerated under Section 3, Rule 71 of the Rules of Court x x x. [I]ndirect contempt is only punished after a written petition is filed and an opportunity to be heard is given to the party charged. Verily, the trial court here should have outrightly dismissed petitioner's oral charge of indirect contempt for not being compliant with Section 3, Rule 71 of the Rules of Court. Contempt proceedings are penal in nature, thus, their procedure and rules of evidence adopted are similar to those used in criminal prosecutions. Consequently, in case of doubt, the contempt proceedings should be liberally construed in favor of the accused.

APPEARANCES OF COUNSEL

Punzalan and Associates Law Office for petitioner.
Valeriano D. Reloj for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review assails the Decision[1] dated May 8, 2019 of the Court of Appeals in CA-G.R. SP No. 150820 entitled *"Blas C. Britania V. Hon. Lilia Mercedes Encarnacion A. Gepty, et al.,"* which affirmed the following issuances of the trial court:

1) Order[2] dated November 18, 2016, denying Blas Britania's written motion to examine judgment debtor Melba Panganiban and his oral motion to cite Melba Panganiban for indirect contempt of court; and

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[1] Penned by Associate Justice Sesinando E. Villon with the concurrence of Associate Justices Edwin D. Sorongon and Germano Francisco D. Legaspi, all members of the Seventh Division, *rollo,* pp. 17-31.

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

2) Order[3] dated March 30, 2017, denying Britania's motion for reconsideration.

Antecedents

Under Complaint[4] dated November 16, 2012, petitioner Blas Britania (Britania) initiated an action for judicial foreclosure of mortgage against respondent Melba Panganiban (Panganiban).

Britania basically alleged:

On July 13, 2011, he and Panganiban executed an agreement captioned *"Magkasanib na Kasunduan"* where he agreed to loan Panganiban the sum of ₱1,500,000.00 with interest of ₱100,000.00, payable in monthly installments of ₱40,000.00 starting August 2011 until fully paid. The loan was secured by a 120-square meter property, which Panganiban was paying on installment to a certain Florencia Francisco.[5]

Panganiban failed to comply with the first agreement so they executed a second *"Magkasanib na Kasunduan"* on February 14, 2012 wherein a new payment scheme was laid out for the unpaid sum of ₱1,500,000.00. The same property secured the loan. Panganiban possessed the property situated at No.1469 Anneth II, Tañada Subdivision, General T. De Leon, Valenzuela City. Despite repeated demands, Panganiban continuously refused to pay her obligation.[6]

The case was docketed as Civil Case No. 216-V-12 and raffled to the Regional Trial Court, Branch 75, Valenzuela City, presided by respondent judge Hon. Lilia Mercedes Encarnacion Gepty.

In her Verified Answer[7] dated December 17, 2012, Panganiban essentially averred:

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

[4] *Id.* at 32-37.

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

[6] *Id.* at 33-35.

[7] *Id.* at 38-41.

She was engaged in the business of buy-and-sell. Because of the nature of her business, she needed a large amount of capital. She repeatedly borrowed from Britania at six percent (6%) monthly interest until her loans ballooned to ₱1,000,000.00. She regularly paid her loans, including the stipulated interest. In fact, she already paid a total of ₱309,000.00.[8]

Her son Rommel Panganiban got sick and eventually died on January 18, 2011. The money intended to pay Britania was used for her son's hospital expenses. She was constrained to issue a Banco de Oro check for ₱1,500,000.00 to Britania who promised he would not encash the check so long as she would continue paying her loans.[9]

But Britania reneged on his promise and encashed the check which consequently got dishonored. On July 13, 2011, she and Britania went to a notary public and executed a *"Magkasanib na Kasunduan."* She then continued to pay her loans to Britania. On February 14, 2012, they again went to a notary public and executed yet another *"Magkasanib na Kasunduan,"* which she signed despite her reservations.[10]

The contract to sell which she and Florencia Francisco entered into on the 120-square meter lot did not prosper because of her financial difficulties. Britania cannot foreclose on Francisco's property because the latter was not privy to the loan agreement between her and Britania.[11]

After due proceedings, the trial court rendered its Decision[12] dated June 30, 2015 denying the complaint for judicial foreclosure, albeit granting Britania's monetary claims, thus:

WHEREFORE, premises considered, the instant complaint for judicial foreclosure is hereby DENIED, for lack of merit. However,

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[8] *Id.* at 39.

[9] *Id.*

[10] *Id.* at 40.

[11] *Id.*

[12] *Id.* at 43-49.

the defendant is hereby ordered to pay the plaintiff the· amount of Php1,193,000.00 plus interest at 6% per annum, reckoned from November 16, 2012 until the finality of this Decision. Thereafter, the principal amount due as adjusted by interest shall likewise earn interest at 6% per annum until fully paid, and attorney's fees in the amount of Php 30,000.00 plus costs of suit.

SO ORDERED.[13]

Upon finality of the aforesaid decision, a corresponding Writ of Execution[14] dated January 29, 2016 was issued.

Per Notice of Sheriff's Sale on Execution (Personal Property/ies)[15] dated April 6, 2016, the following personal properties of Panganiban were levied on:

2pcs Marmol Bench, 1pc Wood Sofa, 1lpc Center Table, 1pc Corner table, 1pc Dining Table and 6pcs Chairs, 1pc Wood Cabinet, 1pc Stand Fan, 1pc corner Cabinet, 2pcs Flower Vase, 2pcs Oven Toaster, 1pc Rice Cooker, 1pc Bread Toaster, 1pc Mirror, 1pc Glass Cabinet, 1pc Refrigerator, 2pcs Washing Machine, 1pc Turbo Broiler and 2pcs Wall Painting.

The Sheriff's Return[16] dated April 20, 2016 reported that an execution sale was held on April 14, 2016 and Britania offered the highest bid of ₱15,000.00 for the entire bulk of the levied personal properties.

After the sale, Britania filed his Motion to Examine Judgment Debtor Melba C. Panganiban[17] dated April 15, 2016. According to Britania, the 120-square-meter property was fraudulently transferred to Panganiban's sister and then to another person a few days before the trial court's decision was issued.

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[13] *Id.* at 48.

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

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

[16] *Id.* at 59-60.

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

The motion was set for hearing on June 7, 2016, during which, Panganiban did not appear. For this reason, Britania moved to cite Panganiban in indirect contempt of court. By Order[18] dated June 7, 2016, the trial court ordered Panganiban to comment thereon within ten (10) days from notice.

In her Comment[19] dated June 28, 2016, Panganiban stated in the main: the 120-square-meter parcel of land was not included in the trial court's decision denying the complaint for judicial foreclosure. She had always observed the rules and never meddled in or interrupted its enforcement. She opted not to oppose or comment on Britania's motion to examine her. The trial court may make a ruling purely on the basis of Britania's motion. Because of the tragedy that struck her and her family, they could not get themselves to confront the case head on.

By Reply[20] dated August 23, 2016, Britania reiterated the statements in his motion to examine Panganiban.

Under Order[21] dated November 18, 2016, the trial court denied Britania's oral motion for indirect contempt and motion to examine Panganiban, thus:

> Finding the arguments raised by the plaintiff to be without merit, the Motion to Examine Judgment Debtor Melba C. Panganiban is hereby DENIED.
>
> Herein plaintiff anchored its motion on the ground that defendant, fraudulently transferred her house and lot to her sister and thereafter, the latter to another person after the Court's Decision was rendered on June 30, 2015. Granting arguendo that the same is true, said allegation is subject of another cause of action, cancellation of title in the name of the new owner and/or cancellation of sale, which this Court cannot take cognizance thereof for lack of jurisdiction.

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[18] *Id.* at 63.

[19] *Id.* at 64-66.

[20] *Id.* at 67-70.

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

While it is true that a judgment debtor may be questioned pursuant to the cited provisions of the Rules of Court by the plaintiff, the circumstances attendant in the instant case does not fall within said provisions as a cause of action allegedly arose after the Court's rendition of judgment in this case.

In view of the foregoing, the subject motion to cite defendant Melba C. Panganiban in indirect contempt of court as well as the motion to examine said judgment debtor are both DENIED for lack of merit.

SO ORDERED.[22]

Britania moved for reconsideration,[23] which the trial court denied per second Order[24] dated March 30, 2017.

Proceedings before the Court of Appeals

Aggrieved, Britania moved up to the Court of Appeals via an action for *certiorari* and *mandamus*.[25] He faulted the trial court with grave abuse of discretion amounting to lack or excess of jurisdiction for denying his motion to examine and motion to cite Panganiban in indirect contempt. In so doing, the trial court's action allegedly violated his right to examine Panganiban as judgment debtor and ignored the latter's disobedience to the lawful order of the trial court to appear during the hearing.

By its assailed Decision[26] dated May 8, 2019, the Court of Appeals affirmed. According to the Court of Appeals, Panganiban's non-appearance during the scheduled hearing on June 7, 2016 did not amount to a contumacious act which may be punished by contempt of court. The trial court properly deemed Panganiban to have waived her right to be heard on Britania's motion to examine her. Further, in denying Britania's motion

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[22] *Id.* at 72.

[23] *Id.* at 74-78.

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

[25] *Id.* at 82-91.

[26] *Id.* at 17-31.

to examine Panganiban under Section 36, Rule 39 of the Rules of Court, the trial court correctly held that it had no jurisdiction to compel Panganiban to answer for a 120-square-meter property that did not even belong to her and was registered in the name of a third person.

The Present Petition

Britania now invokes this Court's discretionary appellate jurisdiction for affirmative relief via Rule 45 of the Revised Rules of Court. He asserts that Panganiban's non-appearance during the June 7, 2016 hearing was an utter disregard of the trial court's authority, thus, a ground to cite Panganiban for indirect contempt. Further, under Section 36, Rule 39 of the Rules of Court, he had the right to examine Panganiban because the judgment in his favor was not fully satisfied.[27]

Panganiban did not file her comment despite the directive under Resolution[28] dated July 15, 2019. By Resolution dated January 8, 2020, the Court dispensed with the filing of the comment.

Ruling

Britania mainly argues that Panganiban should be held in indirect contempt for violating Section 36, Rule 39 of the Rules of Court, which reads:

> Sec. 36. Examination of judgment obligor when judgment unsatisfied.
>
> When the return of a writ of execution issued against property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, the judgment obligee, at any time after such return is made, shall be entitled to an order from the court which rendered the said judgment, requiring such judgment obligor to appear and be examined concerning his property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may

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[27] *Id.* at 3-13.

[28] *Id.* at 110.

thereupon be had for the application of the property and income of the judgment obligor towards the satisfaction of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor resides or is found.

The provision applies to cases where the judgment remains unsatisfied and there is a need for the judgment obligor to appear and be examined concerning his or her property and income to determine whether the same may be properly held to satisfy the full judgment amount.[29]

The provision speaks of the judgment obligor's property and income only; not those belonging to third persons. For a judgment creditor or purchaser at an execution sale acquires only whatever rights the judgment obligor may have over the property at the time of levy. Thus, if the judgment obligor has no right, title or interest over the levied property, there is nothing for him or her to transfer.[30]

Here, in the trial court's final and executory Decision dated June 30, 2015, it categorically held that Panganiban did not validly mortgage the 120-quare-meter property to Britania because she did not own in the first place, thus:

> Be that as it may, the prayer for the Foreclosure of Mortgage is hereby denied for lack of merit as the property subject matter thereof was not owned by the mortgagor-debtor at the time of the execution of the agreements in this case, whether the first or the second agreement.
>
> x x x x x x x x x
>
> At the time of the execution thereof, the owner of the aforesaid property was one Florencia Francisco. Moreover, even at the time of default and at the time of the filing of this case, the mortgagor-debtor did not own the subject property as evidence was presented (Exhibit "32" Kasunduan dated April 3, 2012) showing that Agreement to Sell has been cancelled on account of the failure of the mortgagor-

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[29] *Esguerra, et al. v. Holcim Philippines, Inc.*, 717 Phil. 77, 96-97 (2013).

[30] *Miranda v. Mallari,* G.R. No. 218343, November 28, 2018.

debtor to pay the monthly amortizations thereon since 2010. Thus, not being the absolute owner of the mortgaged property, the same cannot be subject of a valid mortgage.[31]

It is a fundamental principle that a judgment that lapses into finality becomes immutable and unalterable. The primary consequence of this principle is that the judgment may no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact. This principle known as the doctrine of immutability of judgment is a matter of sound public policy, which rests upon the practical consideration that every litigation must come to an end.[32] Here, Britania cannot revive his claim on the 120-square-meter property by subjecting Panganiban to examination under Section 36, Rule 39 of the Rules of Court which, as stated, is not even applicable here.

As for Britania's motion to cite Panganiban for indirect contempt of court, we reckon with the rule that the power to declare a person in contempt of court and in dealing with him or her accordingly is an inherent power lodged in courts of justice, to be used as a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein, and the administration of justice from callous misbehavior, offensive personalities, and contumacious refusal to comply with court orders. This contempt power, however plenary it may seem, must be exercised judiciously and sparingly with utmost self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication. It should not be availed of unless necessary in the interest of justice.[33]

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[31] *Rollo,* p. 47.

[32] *Mercury Drug Corporation, et al. v. Sps. Huang, et al.*, 817 Phil. 434, 445 (2017).

[33] *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong in the latter's capacity as Secretary of the DPWH*, 529 Phil. 619, 625 (2006).

There are two (2) types of contempt of court: (i) direct contempt and (ii) indirect contempt. Direct contempt consists of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before it. It includes: (i) disrespect to the court, (ii) offensive behavior against others, (iii) refusal, despite being lawfully required, to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition. It can be punished summarily without a hearing.[34]

Indirect contempt is committed through any of the acts enumerated under Section 3, Rule 71 of the Rules of Court, thus:

Section 3. Indirect contempt to be punished after charge and hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

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[34] *Bro. Oca, et al. v. Custodio,* 814 Phil. 641, 666 (2017).

(f) Failure to obey a subpoena duly served; and

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings. (3a)

As stated, indirect contempt is only punished after a written petition is filed and an opportunity to be heard is given to the party charged.[35] Verily, the trial court here should have outrightly dismissed petitioner's oral charge of indirect contempt for not being compliant with Section 3, Rule 71 of the Rules of Court. Contempt proceedings are penal in nature, thus, their procedure and rules of evidence adopted are similar to those used in criminal prosecutions. Consequently, in case of doubt, the contempt proceedings should be liberally construed in favor of the accused.[36]

Here, the trial court itself whose authority and dignity the contempt rules seek to protect, did not consider as contemptuous Panganiban's non-appearance during the hearing on Britania's motion to examine her. So how can Britania now fault the trial court for not feeling the way he wanted it to feel? Most of all, how can Britania compel the trial court not to be compassionate or liberal in the exercise of its power of contempt? The trial court aptly held that "*whether said defendant and her counsel appears or not on said hearing, the same is their look out. Their failure to appear on said hearing will only waive their right to be present on said date and/or to oppose the motion. The same is not a ground to cite the defendant in indirect contempt of court.*"[37] Since the trial court did not find any ill intent on Panganiban's part, it cannot be compelled to hold Panganiban in indirect contempt of court.

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[35] *Id.* at 667.

[36] *Soriano v. Court of Appeals*, 474 Phil. 741, 750 (2004).

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

We also quote with concurrence the Court of Appeals' relevant disposition:

> To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the [C]ourt. A person cannot be punished for contempt for disobedience of an order of the Court, unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required. Only in cases of clear or contumacious refusal to obey should the power to punish for contempt be exercised. In this case, no order or judgment was issued by the RTC which strictly directed private respondent to attend the hearing on petitioner's motion to examine. Her absence was not contrary to any order of public respondent as would be considered contemptuous. This was treated by the trial court as a mere waiver of her "right to be present on said date and/or oppose the motion" and not a ground to cite her in indirect contempt of court. As a matter of fact, in the Order dated June 7, 2016, the court *a quo* merely reset the hearing date and directed private respondent to file a comment on petitioner's motions, which she had actually complied with. Without the finding of any contemptuous act, the lower court cannot then be faulted for not citing private respondent in indirect contempt.[38]

So must it be.

ACCORDINGLY, the petition is **DENIED**, and the assailed Decision dated May 8, 2019 of the Court of Appeals in CA-G.R. SP No. 150820, **AFFIRMED.**

SO ORDERED.

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

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[38] *Id*. at 25.

THIRD DIVISION

[G.R. No. 210488. January 27, 2020]

JOSE MIGUEL T. ARROYO, *petitioner, vs.* **THE HON. SANDIGANBAYAN FIFTH DIVISION and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED; NATURE OF THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE. — "Probable cause is defined as '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 was prosecuted.'" x x x The Ombudsman's finding of probable cause does not rule on the issue of guilt or innocence of the accused. The Ombudsman is mandated to only evaluate the evidence presented by the prosecution and the accused, and then determine if there is enough reason to believe that a crime has been committed and that the accused is probably guilty of committing the crime. "The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints."

2. ID.; ID.; ID.; ID.; DOCTRINE OF NON-INTERFERENCE TO THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE, EMPHASIZED; OMBUDSMAN'S EXECUTIVE DETERMINATION OF PROBABLE CAUSE DISTINGUISHED FROM JUDICIAL DETERMINATION OF PROBABLE CAUSE. — [T]his Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. It is an executive function, which must be respected consistent with the principle of separation of powers, thus: x x x **The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the**

crime for which he [or she] was prosecuted." The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman. x x x Jurisprudence has consistently ruled in favor of non-interference in the Ombudsman's determination of the existence of probable cause, unless there is a clear showing of grave abuse of discretion. This policy is based on respect for the Ombudsman's mandate and on practical grounds. x x x The Ombudsman's executive determination of probable cause is different from the judicial determination of probable cause. x x x The determination of probable cause for the purpose of filing an information is a function within the exclusive sphere and competence of the Ombudsman. The courts must respect the exercise of discretion when an information filed against a person is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor. Subsequently, when an information is filed with the court, the court acquires jurisdiction of the case and a judicial determination of probable cause is made by the judge for the purpose of issuing a warrant of arrest. At this stage, any motion to dismiss the case or to determine the conviction or acquittal of the accused is within the sound discretion of the court.

3. ID.; ID.; ID.; ID.; MOTIONS FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE ARE SUPERFLUITIES. — This Court has already settled that motions for judicial determination of probable cause are superfluities, because the rules already direct the judge to make a personal finding of probable cause. x x x [I]n *Leviste v. Almeda*: **To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.** Here, the Sandiganbayan has already determined, independently of any finding or recommendation by the Ombudsman, that probable cause exists in this case. In dismissing the Motion for Judicial Determination

of Probable Cause and subsequently conducting the arraignment of petitioner, the Sandiganbayan has judicially determined that there is probable cause to proceed with the trial. Hence, a petition for *certiorari* questioning the validity of the preliminary investigation has been rendered moot.

4. ID.; ID.; ID.; ID.; ID.; THERE IS NO SHOWING IN THIS CASE THAT THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE WAS TAINTED WITH GRAVE ABUSE OF DISCRETION; IN FACT, THE OMBUDSMAN'S EVALUATION IS SUPPORTED BY EVIDENCE. — Petitioner's imputation that the Sandiganbayan has misappreciated evident facts, even if such evident facts were adjudged inaccurately, does not translate to jurisdictional error. Mere disagreement with the Ombudsman's findings is not enough reason to constitute grave abuse discretion. Petitioner must show that the preliminary investigation was conducted in such a way that amounted to a virtual refusal to perform the duty enjoined by law. In this case, there was nothing capricious, whimsical, or even arbitrary in the Sandiganbayan's findings and conclusions that the Office of the Ombudsman had sufficiently established probable cause for the filing of the Information against petitioner. Conversely, the evidence gathered and relied upon by respondent evinces a reasonable belief that petitioner is involved in the transaction. x x x The Ombudsman was able to discharge its duty and it extensively discussed the bases of its finding of probable cause against petitioner. The possible involvement of petitioner in the sale surfaced during the investigations, which raised questions and doubt and must be threshed out in a full-blown trial. Petitioner's counterarguments and controverting evidence also do not completely rule out and disprove his participation in the sale. To assail the Ombudsman's determination of probable cause, an allegation of grave abuse of discretion must be substantiated. "Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law[.]" To justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave and it must be so patent as to be equivalent to having acted without jurisdiction. In this

case, there is no showing that the finding of probable cause was tainted with whim, caprice, or arbitrariness; but on the contrary, the evaluation is supported by evidence.

5. ID.; ID.; ID.; NATURE OF PRELIMINARY INVESTIGATION; LOWER QUANTUM OF EVIDENCE IS REQUIRED IN PRELIMINARY INVESTIGATION CONSIDERING THAT IT IS GEARED ONLY TO DETERMINE WHETHER OR NOT PROBABLE CAUSE EXISTS TO HOLD PETITIONER FOR TRIAL. — At the preliminary investigation, the Ombudsman determines probable cause which merely involves weighing of facts and circumstances and relying on common sense, without resorting to technical rules of evidence. A preliminary investigation is simply an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it. Being merely based on opinion and belief, a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. x x x A preliminary investigation is merely inquisitorial, and is only conducted to aid the prosecutor in preparing the information. It is preparatory to a trial. An accused's right to a preliminary investigation is purely statutory; it is not a right guaranteed by the Constitution. Even if there are alleged irregularities in an investigation's conduct, this neither renders the information void nor impairs its validity. Here, petitioner questions the evidence used during the preliminary investigation and raises the quantum of evidence required in insisting that there was a misappreciation of evidence. However, the conduct of preliminary investigation is geared only to determine whether or not probable cause exists to hold petitioner for trial. Considering the lower quantum of evidence required in preliminary investigations, this Court does not find grave abuse of discretion in the findings of the Sandiganbayan and the Ombudsman. Probable cause simply implies probability of guilt. It is based merely on opinion and reasonable belief. The preliminary investigation is not the proper venue to rule on petitioner's guilt or innocence. Probable cause is determined in a summary manner. Precisely, there is a trial to allow a full assessment of petitioner's case. In this case, petitioner's arguments are matters of evidence which are better subjected to the scrutiny of this Court after an extensive trial on the merits.

APPEARANCES OF COUNSEL

Topacio Law Office for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

Absent any clear showing of grave abuse of discretion, this Court will not interfere with the Office of the Ombudsman's finding of probable cause in its investigation of criminal complaints.

This resolves a Petition for *Certiorari*[1] assailing the Resolutions dated August 15, 2013[2] and November 6, 2013[3] issued by the Sandiganbayan in Criminal Case No. SB-12-CRM-0164, denying Jose Miguel T. Arroyo's (Arroyo) Motion for Judicial Determination of Probable Cause and subsequent Motion for Reconsideration. The assailed Resolutions[4] of the Sandiganbayan, promulgated on August 15, 2013, affirmed the Ombudsman's finding of probable cause for filing the charge against petitioner for the violation of Section 3(e) of Republic Act No. 3019,[5] otherwise known as the Anti-Graft and Corrupt Practices Act.

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[1] *Rollo*, pp. 3-45.

[2] *Id.* at 46-76. The Resolution was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Alexander G. Gesmundo and Associate Justice Amparo M. Cabotaje-Tang of the Fifth Division, Sandiganbayan.

[3] *Id.* at 362-366. The Resolution was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Alexander G. Gesmundo and Associate Justice Alex L. Quiroz of the Sandiganbayan, Fifth Division.

[4] *Id.* at 4.

[5] Republic Act No. 3019 (1960), Sec. 3(e) provides:

Section 3(e). Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

On October 13, 2011, the Office of the Ombudsman issued Office Order No. 494, designating a Panel of Investigators composed of the Ombudsman personnel who were with the Field Investigation Office. It was mandated to investigate anomalies in the purchase of Light Operational Police Helicopters by the Philippine National Police in 2009.[6]

In a Complaint, the Office of the Ombudsman, through its Field Investigation Office, charged Arroyo, his brother Ignacio "Iggy" Arroyo (Iggy), Hilario De Vera (De Vera), and other officials of the Philippine National Police with violation of several administrative and penal laws, particularly:

(1) Section 3, par. (e) and (g) of the Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practice Act;[7]

(2) Articles 171 and 172 (Falsification by Public Officers) of the Revised Penal Code;[8] and

(3) Section 52 (A) paragraph 1 (Dishonesty), paragraph 2 (Gross Neglect of Duty) and Section 20 (Conduct Prejudicial to the Best Interest of Service) of the Civil Service Commission Resolution No. 9919636, otherwise known as the "Uniform Rules on Administrative Cases in the Civil Service."[9]

It was alleged in the Complaint that sometime in 2009, the Philippine National Police purchased from Manila Aerospace Products Trading Corporation (Manila Aerospace Corporation) one (1) fully-equipped Robinson R44 Raven II Light Police Operational Helicopter for ₱42,312,913.10 and two (2) standard Robinson R44 Raven I Light Police Operational Helicopters for ₱62,672,086.90, for a total of ₱104,985,000.00.[10] However,

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This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[6] *Id.* at 6.

[7] *Id.*

[8] *Id.* at 7.

[9] *Id.* at 381.

[10] *Id.* at 445-446.

despite the requirements prescribed by the National Police Commission that the helicopters should be brand new, Manila Aerospace Corporation delivered only one (1) brand new Robinson Raven II helicopter while the two (2) standard Robinson Raven I helicopters it delivered were actually pre-owned by Arroyo, thereby causing undue injury to the government and giving unwarranted benefits to certain individuals.[11]

In response to the filing of the Complaint, the Ombudsman created a Special Investigating Panel to conduct a preliminary investigation. Subsequently, the Special Investigating Panel issued a Joint Resolution[12] recommending the filing of criminal and administrative cases against Arroyo and his co-accused.[13]

In an Information,[14] the Office of the Ombudsman charged Arroyo, among others, for alleged conspiracy with several Philippine National Police officers and personnel and other private persons in the commission of the crime, violating Section 3(e) of Republic Act No. 3019. The Information stated that the sale of the two (2) used helicopters, which were allegedly owned by Arroyo, caused undue injury to the Philippine National Police and the government in the amount of at least ₱34,632,187.50, representing the overpriced amount paid by the Philippine National Police.[15]

The Sandiganbayan Second Division, where the case was first raffled, granted the request of Arroyo to file a Motion for Reconsideration after leave of court.[16] In his Motion for Reconsideration, Arroyo alleged that he is not the owner of the two (2) helicopters and that he already divested himself of all shares in Lourdes T. Arroyo, Inc. (Arroyo, Inc.), the alleged

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[11] *Id.*

[12] *Id.* at 441-587, Joint Resolution of the Special Investigating Panel on the case *Field Investigation Office v. Ronaldo V. Puno, et al.*

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

[14] *Id.* at 588-599.

[15] *Id.* at 597.

[16] *Id.* at 10.

corporation who benefitted from the anomalous sale. However, Ombudsman denied this Motion for Reconsideration.[17]

Arroyo voluntarily surrendered before the Sandiganbayan and posted the bail bond to obtain his provisional liberty.[18] During arraignment, he pleaded not guilty as a condition precedent in obtaining authority to travel abroad. Subsequently, the criminal case was re-raffled to the Fifth Division.[19]

In an Order, the Office of the Ombudsman/Office of the Special Prosecutor resolved to deny Arroyo's motion for lack of merit.[20]

On May 27, 2013, Arroyo filed with the Sandiganbayan Fifth Division a Motion for Judicial Determination of Probable Cause,[21] praying for the dismissal of the criminal case on the ground of lack of probable cause. In this motion, he alleged that: (1) there is no evidence supporting the conclusion that he owned the two (2) helicopters; (2) the evidence on record shows that it was Archibald Po (Po) and/or his companies who owned the helicopters; (3) there is no evidence that points him as a party or participant, in any manner or degree, to the purchase of the helicopters; (4) there is absolutely no proof of conspiracy; (5) the denial of his Motion for Reconsideration has no valid basis; and (6) the lack of probable cause against him justifies the dismissal of the case.[22]

The Sandiganbayan issued a Resolution,[23] denying Arroyo's motion. It concluded that the prosecution sufficiently showed

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[17] *Id.* at 10, 612-613.

[18] *Id.* at 711.

[19] *Id.*

[20] *Id.* at 711.

[21] *Id.* at 77-105.

[22] *Id.* at 11.

[23] *Id.* at 46-76. The Resolution dated August 15, 2013 was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justice Alexander G. Gesmundo and Associate Justice Amparo M. Cabotaje-Tang of the Sandiganbayan, Fifth Division.

that, based on the evidence adduced, there is probable cause that Arroyo participated in the transaction. A part of the Resolution states:

> Based on the foregoing discussion, the existence of the elements of Section 3(e) of R.A. No. 3019 is undisputed. It is evident that: (1) all the accused are public officers, being members of the PNP, while Arroyo and De Vera are private individuals charged in conspiracy with the PNP officers; (2) the alleged acts were committed in relation to their public positions; (3) the transactions in question allegedly caused undue injury to the PNP *vis-á-vis* the accused public officers and the Government; (4) that the transaction gave unwarranted benefits, advantage and preference to Arroyo and De Vera; and, (5) the accused acted with manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence in the purchase of two (2) units standard Robinson R44 Raven I helicopter and one (1) unit fully-equipped Robinson R44 Raven II helicopter.[24]

The Sandiganbayan explained that Arroyo cannot, as a matter of right, insist on a hearing for judicial determination of probable cause.[25] Arroyo cannot determine beforehand how cursory or exhaustive the judge's examination of the records should be, since the extent of the judge's examination depends on the exercise of his sound discretion as the circumstances of the case require. The Sandiganbayan further ruled that the proper procedure was followed in determining probable cause for filing the Informations and that, absent evidence to the contrary, it cannot reverse or overturn the Ombudsman's findings.[26]

Arroyo filed a Motion for Reconsideration,[27] but this motion was denied.[28]

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[24] *Id.* at 12.

[25] *Id.* at 61.

[26] *Id.*

[27] *Id.* at 367-377.

[28] *Id.* at 362-366. The Resolution dated November 6, 2013 was penned by Associate Justice Roland B. Jurado and concurred in by Alexander G. Gesmundo and Associate Justice Alex L. Quiroz of the Sandiganbayan, Fifth Division.

On January 20, 2014, petitioner filed this Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court with prayer for temporary restraining order and/or preliminary injunction assailing the Resolutions issued by the Sandiganbayan Fifth Division.[29]

In a March 3, 2014 Resolution, this Court required the respondents to comment on Petition and on the prayer for temporary restraining order.[30]

Subsequently, respondent filed a Motion for Extension of Time to File Comment, which was granted by this Court.[31]

On June 23, 2014, respondent filed its Comment on the Petition for *Certiorari* and Prohibition.[32]

Subsequently, this Court issued a Resolution giving due course to the petition and requiring the parties to submit their respective memorandum.[33] Petitioner[34] and respondent[35] then filed their memoranda.

Petitioner argues that respondent committed grave abuse of discretion in disregarding the lack of evidence that he owned the two (2) Robinson R44 Raven helicopters with serial numbers 1372 and 1374.[36] He claims that it is erroneous for respondent to rely on the bare testimony of Po as to the helicopters' ownership.[37]

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[29] *Id.* at 5.

[30] *Id.* at 694.

[31] *Id.* at 695-703.

[32] *Id.* at 704-728.

[33] *Id.* at 743.

[34] *Id.* at 767-806.

[35] *Id.* at 745-766.

[36] *Id.* at 17.

[37] *Id.* at 18.

He claims that the helicopters were neither owned by him nor by his family corporation, Arroyo, Inc. Rather, they actually belonged to Po's companies, LIONAIR and Asian Spirit. He adds that, based on the documents and testimonies of the witnesses, the sale of the helicopters was done without his slightest participation.[38]

Further, petitioner explains that the then First Family's use of the helicopters was due to a Fleet Lease Agreement entered into by Po's Company and Arroyo Inc., through petitioner's late brother, Iggy.[39]

He adds that Arroyo, Inc. advanced the money for the purchase of five (5) helicopters by way of loan in favor of Po and LIONAIR. Po's company and Arroyo, Inc. purportedly agreed to apply the rentals for Arroyo, Inc.'s use of the helicopters and the income earned from other lessees as payment of the loan advanced to LIONAIR.[40]

Moreover, petitioner argues that the Ombudsman failed to distinguish him from Arroyo, Inc. He alleges that during the material dates of the illegal sale, he did not have any interest in Arroyo, Inc.[41] Petitioner highlights Po's testimony, wherein he clarified at the Senate hearing that it was Arroyo, Inc., and not petitioner, who made the initial deposit.[42] The records show:

7. In paragraph 8 of your first Affidavit you said that you required that an initial deposit of $95,000.00 for each helicopter or a total of $475,000.00 for the five (5) helicopters be made. Who made the deposit to Robinson?

In my first affidavit, I made mention that it was FG thru Lionair who made the deposit. I wish to stress that I made a correction on this statement in my Supplemental Affidavit. <u>It was LTA, Inc.</u>

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[38] *Id.* at 18.

[39] *Id.* at 24.

[40] *Id.* at 24.

[41] *Id.* at 26.

[42] *Id.* at 27.

who made the initial deposit of $500,000.00 to Robinsons Helicopter. The payment was made thru wire transfer; a copy of the BDO Foreign Telegraphic Transfer was faxed to our office on December 11, 2003 by LTA, Inc.[43] (Emphasis in the original)

Long before the purchase of the helicopters by LIONAIR, petitioner had divested himself of any interest in Arroyo, Inc. Petitioner presents the March 15, 2001 Deed of Assignment of Shares of Stock which he executed in favor of Benito R. Araneta. A certification of divestment of interest was also issued by Regino Q. Ferraren, Jr., Arroyo, Inc.'s Corporate Secretary, evidencing that petitioner was neither a director, an officer, nor a stockholder of Arroyo, Inc. Petitioner adds that it was only on November 24, 2010, long after the sale to the Philippine National Police transpired, when he repurchased the shares from Benito R. Araneta.[44]

Petitioner also questions the purported trust relationship which allegedly governed him and Po, wherein petitioner was the supposed beneficial owner of the helicopters. In a criminal case, the speculative assumption of trusteeship suggested by complainant cannot be given credence over the overwhelming evidence of ownership of Po, LIONAIR, and Asian Spirit.[45] Petitioner argues that the criminal case must fail because he is neither the legal nor the beneficial owner of the helicopters sold to the Philippine National Police.[46]

He claims that the allegation of conspiracy rests on mere surmises and speculative conclusions. There is certainly no substantial proof that: (1) he instructed particular persons to perform particular acts leading to the anomalous procurement; (2) he wielded enormous influence on certain Philippine National Police personnel; or (3) that he performed acts that can be characterized as part of the scheme.[47]

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[43] *Id.*

[44] *Id.* at 29.

[45] *Id.*

[46] *Id.* at 34.

[47] *Id.*

There could be no conspiracy between him and De Vera because it was not shown that he has ever met or even talked to De Vera. From De Vera's narration, he only dealt with Po when the helicopters were sold to the Philippine National Police.[48] There being no proof of conspiracy, it was an error on the Investigating Panel's part to have found probable cause against petitioner.[49]

Finally, petitioner questions the application of *Leviste v. Alameda*[50] to his case. He argues that the Sandiganbayan erred in dismissing his motion because jurisprudence dictates that an accused may assail a finding of probable cause when there is a clear grave abuse of discretion.[51]

In its Comment, respondent asserts that there was nothing capricious, whimsical, or even arbitrary in the findings and conclusions of the Office of the Ombudsman.[52] Respondent maintains that petitioner's arguments before the Sandiganbayan and this Court showed absolutely no evidence of any irregularity in the proceedings before the Ombudsman.[53]

A perusal of the records of the case will readily show that after a careful consideration of the complaint under oath, the supporting documents, and the counter-affidavits and controverting evidence submitted by petitioner, Ombudsman found probable cause to file the corresponding Information against him.[54]

Respondent argues that Ombudsman's finding of probable cause against petitioner is supported by the evidence presented

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[48] *Id.* at 36.

[49] *Id.* at 37.

[50] 640 Phil. 620 (2010) [Per *J.* Carpio Morales, Third Division].

[51] *Rollo*, pp. 37-39.

[52] *Id.* at 714.

[53] *Id.* at 716.

[54] *Id.*

during the conduct of the preliminary investigation. It was found that petitioner had control over the helicopter and it appears that he only instructed Po to purchase the helicopters. Particularly, the investigation revealed that the flight dispatcher took instructions with regard to the flight of the helicopter either from petitioner or petitioner's immediate family members. The consent of petitioner was also sought by Po with respect to the supply of helicopters for the Philippine National Police. When the helicopters were sold to the Philippine National Police, Po allegedly remitted the proceeds to petitioner.[55]

Respondent further argues that petitioner still had interest in Arroyo, Inc. at the time of the transaction. Petitioner presented a Deed of Assignment dated March 15, 2001, indicating that he had assigned his shares of stock in Arroyo, Inc. to Benito Araneta. However, respondent stresses that the Deed of Assignment is not an evidence of a valid transfer, except between him and Araneta, inasmuch as the transfer of the shares of stock was not duly registered in the books. Thus, insofar as third parties are concerned, there is no valid transfer or divestment of petitioner's interest in Arroyo, Inc. in accordance with Section 63 of the Corporation Code.[56]

Moreover, respondent points out that there is a provision in the Deed of Assignment wherein petitioner merely appointed Benito Araneta as his proxy or representative.[57]

Respondent also argues that the documents cited by petitioner do not conclusively establish that Asian Spirit or LIONAIR was the true owner of the helicopters before they were sold to the Philippine National Police. During the hearing before the Senate Blue Ribbon Committee in 2011, Po, owner of LIONAIR and Asian Spirit, categorically stated that in 2003, petitioner instructed him to register the helicopters under the name of Asian Spirit only for tax purposes. In the testimony of Domingo

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[55] *Id.* at 719-720.

[56] *Id.* at 720.

[57] *Id.* at 721.

Lazo, Flight Dispatcher of LIONAIR, he stated that it was either petitioner or his family who gave the rules or procedures in the use of the helicopters.[58]

Respondent further argues that there are ledgers covering May 2004 to May 2011 showing that LIONAIR collected and received from petitioner the total amount of ₱18,250,000.00, representing hangar fees, take-off and landing charges, expenses for maintenance, pilotage, gasoline, oil and lubricants, as well as fees for the renewal of aircraft registration and certificate of airworthiness.[59]

Moreover, respondent avers that considering the totality of evidence presented during the preliminary investigation, the Office of Ombudsman committed neither error nor grave abuse of discretion in bringing petitioner to trial. Similarly, respondent maintains that the documents in support of the indictment established the probability of petitioner's involvement in the transaction.[60]

The sole issue for this Court's resolution is whether or not the Sandiganbayan committed grave abuse of discretion in denying petitioner's motion, and affirming the finding of probable cause to indict him. Subsumed under this issue is whether or not the Ombudsman committed grave abuse of discretion in finding probable cause against petitioner.

The petition is dismissed.

I

"Probable cause is defined as '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

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[58] *Id.*

[59] *Id.* at 722.

[60] *Id.*

was prosecuted.'"[61] In *Ganaden v. Ombudsman*,[62] this Court explained the nature of a finding of probable cause, thus:

> [A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.
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> *The term does not mean "actual and positive cause" nor does it import absolute certainty*. It is merely based on opinion and reasonable belief . . . . . Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.[63] (Emphasis in the original)

The Ombudsman's finding of probable cause does not rule on the issue of guilt or innocence of the accused. The Ombudsman is mandated to only evaluate the evidence presented by the prosecution and the accused, and then determine if there is enough reason to believe that a crime has been committed and that the accused is probably guilty of committing the crime.[64]

"The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints."[65] As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. It is an executive function, which must be respected consistent with the principle of separation of powers, thus:

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[61] *Joson v. Office of the Ombudsman*, 784 Phil. 172, 185 (2017) [Per J. Leonen, Second Division].

[62] 665 Phil. 224 (2011) [Per J. Villarama, Jr., Third Division] citing *Galario v. Ombudsman*, 554 Phil. 86-111 (2007) [Per J. Chico-Nazario, Third Division].

[63] *Id.* at 230.

[64] *Id.*

[65] *Ramiscal, Jr. v. Sandiganbayan*, 645 Phil. 69, 82 (2010) [Per J. Carpio, Second Division].

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.

The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he [or she] was prosecuted."

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

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

> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complaint.[66] (Emphasis supplied, citations omitted)

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[66] *Dichaves v. Office of the Ombudsman*, 802 Phil. 564, 589-591 (2016) [Per *J.* Leonen, Second Division].

Jurisprudence has consistently ruled in favor of non-interference in the Ombudsman's determination of the existence of probable cause, unless there is a clear showing of grave abuse of discretion. This policy is based on respect for the Ombudsman's mandate and on practical grounds. In *Roxas v. Vasquez*:[67]

> . . . This observed policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously 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 with cases 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 complainant[.][68]

The Ombudsman's executive determination of probable cause is different from the judicial determination of probable cause. In *De Lima v. Reyes*:[69]

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. **Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.**

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[67] 411 Phil. 276 (2001) [Per *J.* Ynares-Santiago, First Division].

[68] *Id.* at 288.

[69] 776 Phil. 623 (2016) [Per *J.* Leonen, Second Division].

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[70] (Emphasis supplied, citations omitted)

The determination of probable cause for the purpose of filing an information is a function within the exclusive sphere and competence of the Ombudsman. The courts must respect the exercise of discretion when an information filed against a person is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.[71]

Subsequently, when an information is filed with the court, the court acquires jurisdiction of the case and a judicial determination of probable cause is made by the judge for the purpose of issuing a warrant of arrest. At this stage, any motion to dismiss the case or to determine the conviction or acquittal of the accused is within the sound discretion of the court.[72] In *Crespo v. Mogul*:[73]

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the

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[70] *Id.* at 647.

[71] *People v. Castillo*, 607 Phil. 754-768 (2009) [Per J. Quisumbing, Second Division].

[72] *De Lima v. Reyes*, 776 Phil. 623, 649 (2016) [Per J. Leonen, Second Division].

[73] *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, *En Banc*].

same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[74]

This Court has already settled that motions for judicial determination of probable cause are superfluities, because the rules already direct the judge to make a personal finding of probable cause. In *Ramiscal, Jr. v. Sandiganbayan*:[75]

> [The rules] do not require cases to be set for hearing to determine probable cause for the issuance of a warrant for the arrest of the accused before any warrant may be issued. Section 6, Rule 112 mandates the judge to personally evaluate the resolution of the Prosecutor (in this case, the Ombudsman) and its supporting evidence, and if he/she finds probable cause, a warrant of arrest or commitment order may be issued within 10 days from the filing of the complaint or Information; in case the Judge doubts the existence of probable cause, the prosecutor may be ordered to present additional evidence within five (5) days from notice.
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> . . . . . .
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> The periods provided in the Revised Rules of Criminal Procedure are mandatory, and as such, the judge must determine the presence or absence of probable cause within such periods. The Sandiganbayan's determination of probable cause is made ex parte and is summary in nature, not adversarial. The Judge should not be stymied and distracted from his determination of probable cause by needless motions for determination of probable cause filed by the accused.[76]

This has been affirmed in *Leviste v. Almeda*:[77]

> **To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the**

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[74] *Id.* at 476.

[75] 530 Phil. 773 (2006) [Per *J.* Callejo, Sr., First Division].

[76] *Id.* at 797-798.

[77] 640 Phil. 620 (2010) [Per *J.* Carpio Morales, Third Division].

resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.

> What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. But the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted [sic] by the prosecutor regarding the existence of probable cause, and on the basis thereof, he may already make a personal determination of the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.[78] (Emphasis supplied, citation omitted)

Here, the Sandiganbayan has already determined, independently of any finding or recommendation by the Ombudsman, that probable cause exists in this case. In dismissing the Motion for Judicial Determination of Probable Cause and subsequently conducting the arraignment of petitioner, the Sandiganbayan has judicially determined that there is probable cause to proceed with the trial. Hence, a petition for *certiorari* questioning the validity of the preliminary investigation has been rendered moot.

II

Nevertheless, even if this Court were to give due course to the petition, it must still fail absent any grave abuse of discretion on the part of the respondent.

In imputing grave abuse of discretion, petitioner maintains that his case is an exception to the rule on non-interference. Petitioner alleges that Sandiganbayan committed grave abuse of discretion in affirming the Ombudsman's finding of probable cause, specifically: (1) in disregarding the lack of evidence

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[78] *Id.* at 648-649.

that he owned the two (2) helicopters sold to the Philippine National Police; (2) in relying on the testimony of one (1) person as to this; (3) in sustaining the finding that he gained benefit from the sale through Arroyo, Inc; and (4) in disregarding the lack of proof that he ever participated in the sale.

This Court disagrees. Petitioner's imputation that the Sandiganbayan has misappreciated evident facts, even if such evident facts were adjudged inaccurately, does not translate to jurisdictional error. Mere disagreement with the Ombudsman's findings is not enough reason to constitute grave abuse of discretion. Petitioner must show that the preliminary investigation was conducted in such a way that amounted to a virtual refusal to perform the duty enjoined by law.

In this case, there was nothing capricious, whimsical, or even arbitrary in the Sandiganbayan's findings and conclusions that the Office of the Ombudsman had sufficiently established probable cause for the filing of the Information against petitioner. Conversely, the evidence gathered and relied upon by respondent evinces a reasonable belief that petitioner is involved in the transaction.

In its August 15, 2013 Resolution,[79] the Sandiganbayan thoroughly discussed that the documents presented before it, specifically the attachments and annexes to the Complaint of the Panel of Investigators, enabled the Special Investigating Panel to determine the existence of probable cause against petitioner.

First, based on the evidence adduced, there is basis to maintain a reasonable belief that petitioner is the owner of the helicopters.

The Sandiganbayan found that the documents cited by petitioner do not conclusively show that Asian Spirit or LIONAIR was the true owner of the helicopters before they were sold to the Philippine National Police.[80] On the contrary, the assailed

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[79] *Rollo*, pp. 46-76.

[80] *Id.* at 69.

Sandiganbayan Resolution is supported by the findings of the Special Investigation Panel. In the Panel's Joint Resolution,[81] it found that there is evidence that Po, the owner of Asian Spirit and LIONAIR, does not have complete control over the helicopters. Po alleged that petitioner instructed him to facilitate the purchase and sale of the helicopters and that he remitted the proceeds of the sale to petitioner. The Sandiganbayan also noted that petitioner and his family repeatedly used the helicopters and the LIONAIR's flight dispatcher took instructions from petitioner and his family as to the flight plan.[82] The Sandiganbayan was persuaded that these pieces of evidence are indicia of petitioner's ownership of the helicopters.[83]

The Sandiganbayan also relied on the statements of Po showing that petitioner instructed him in 2003 to register the helicopters under the name of Asian Spirit only for tax purposes. Moreover, the authenticity of the subsidiary ledger and flight log report was not disputed by petitioner.[84]

Furthermore, the Sandiganbayan relied on evidence indicating that petitioner has not totally divested himself of his interest in Arroyo, Inc.

It was found that although petitioner offered a Deed of Assignment dated March 15, 2001 showing that he had assigned his shares of stocks in Arroyo, Inc. to one Benito Araneta, the Deed of Assignment is not an evidence of a valid transfer, except between him and the named assignee in the deed.[85]

The Sandiganbayan pointed out that the certification attached to the deed never mentioned that the transfer of the shares of stock was duly registered in the books of Arroyo, Inc. Hence, insofar as third parties are concerned, there is no valid transfer

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[81] *Id.* at 719-720.

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

[83] *Id.*

[84] *Id.*

[85] *Id.* at 68.

or divestment of petitioner's interest in Arroyo, Inc. The Sandiganbayan also gave credence to the fact that petitioner became a shareholder of the corporation again on November 24, 2010.[86]

The Sandiganbayan also stressed that there is a stipulation in the Deed of Assignment wherein Benito Araneta, the supposed assignee was merely constituted as proxy of petitioner. Section 4 of the Deed of Assignment reads:

> . . . Upon the signing of this Deed, **the ASSIGNOR hereby appoints the ASSIGNEE as his duly constituted PROXY**, with full power and authority to represent and vote the Subject Shares at any and all stockholder's meetings, or at any adjournment thereof, on all matters that may be brought before said meetings, including the election of directors, **as fully to all intents and purposes as the ASSIGNOR might do it present and acting in person**[.][87] (Emphasis in the original)

The investigating panel noted that this evinces a reasonable belief that petitioner still had an interest in Arroyo, Inc.

With respect to the defense of petitioner that his use of the helicopters is consistent with a Fleet Lease Agreement, the Joint Resolution points to the findings of the Senate Blue Ribbon Committee which raised questions on the agreement's authenticity, thus:

> First, the lease agreement involved, among others, the helicopters sold to the PNP bearing serial numbers 1372 and 1374. Note that the lease agreement was notarized on March 16, 2004 and indicated the same day as the start of the lease period. However, the helicopters with serial numbers 1372 and 1374 only arrived in the Philippines on March 17, a day after the first day of the purported lease agreement.
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> Second, according to the testimony of Mr. Sia, he was simply asked to affix his signature, sometimes in the year 2005 or 2006, on the page containing his name. The entire lease document, drafted solely by the Arroyos, was not even given to him. This testimony

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[86] *Id.*

[87] *Id.* at 68.

supports this Committee's belief that the lease agreement does not reflect a true agreement.

. . . . . .

Lastly, it makes no sense for any party to enter into lease agreement which would end on May 15, 2004 and the same party would continue to pay the lessor for the maintenance and operating expenses amounting to ₱18,250,000.00 until 2011.[88]

The Ombudsman was able to discharge its duty and it extensively discussed the bases of its finding of probable cause against petitioner. The possible involvement of petitioner in the sale surfaced during the investigations, which raised questions and doubt and must be threshed out in a full-blown trial. Petitioner's counterarguments and controverting evidence also do not completely rule out and disprove his participation in the sale.

To assail the Ombudsman's determination of probable cause, an allegation of grave abuse of discretion must be substantiated. "Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law[.]"[89] To justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave and it must be so patent as to be equivalent to having acted without jurisdiction.[90]

In this case, there is no showing that the finding of probable cause was tainted with whim, caprice, or arbitrariness; but on the contrary, the evaluation is supported by evidence.

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[88] *Id.* at 552.

[89] *Joson v. Office of the Ombudsman*, 816 Phil. 288, 320 (2017) [Per *J.* Leonen, Second Division], citing *Tetangco v. Ombudsman*, 515 Phil. 230 (2006) [Per *J.* Quisumbing, Third Division].

[90] *Vergara v. Ombudsman*, 600 Phil. 26, 45 (2009) [Per *J.* Carpio, *En Banc*].

III

At the preliminary investigation, the Ombudsman determines probable cause which merely involves weighing of facts and circumstances and relying on common sense, without resorting to technical rules of evidence.[91] A preliminary investigation is simply an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it. Being merely based on opinion and belief, a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[92]

Estrada v. Office of the Ombudsman[93] is illustrative:

> The quantum of evidence now required in preliminary investigation is such evidence sufficient to "engender a well founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof. A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[94]

This Court further discussed in *Cambe v. Office of the Ombudsman*,[95] thus:

> . . . [Preliminary investigation] is not the occasion for the full and exhaustive display of the prosecution's evidence. Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level." Accordingly,

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[91] *Trinidad v. Ombudsman*, 564 Phil. 382, 388 (2007) [Per *J.* Carpio Morales, *En Banc*].

[92] *Presidential Commission on Good Government v. Navarro-Gutierrez*, 771 Phil. 91, 101 (2015) [Per *J.* Perlas-Bernabe, First Division].

[93] 751 Phil. 821 (2015) [Per *J.* Carpio, *En Banc*].

[94] *Id.* at 864.

[95] 802 Phil. 190 (2016) [Per *J.* Perlas-Bernabe, *En Banc*].

"owing to the initiatory nature of preliminary investigations, the technical rules of evidence should not be applied in the course of its proceedings." In this light, and as will be elaborated upon below, this Court has ruled that "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay," and that even an invocation of the rule on res inter alios acta at this stage of the proceedings is improper.[96] (Citations omitted)

A preliminary investigation is merely inquisitorial, and is only conducted to aid the prosecutor in preparing the information. It is preparatory to a trial. An accused's right to a preliminary investigation is purely statutory; it is not a right guaranteed by the Constitution. Even if there are alleged irregularities in an investigation's conduct, this neither renders the information void nor impairs its validity.[97]

Here, petitioner questions the evidence used during the preliminary investigation and raises the quantum of evidence required in insisting that there was a misappreciation of evidence. However, the conduct of preliminary investigation is geared only to determine whether or not probable cause exists to hold petitioner for trial. Considering the lower quantum of evidence required in preliminary investigations, this Court does not find grave abuse of discretion in the findings of the Sandiganbayan and the Ombudsman.

Probable cause simply implies probability of guilt. It is based merely on opinion and reasonable belief. The preliminary investigation is not the proper venue to rule on petitioner's guilt or innocence. Probable cause is determined in a summary manner. Precisely, there is a trial to allow a full assessment of petitioner's case. In this case, petitioner's arguments are matters of evidence which are better subjected to the scrutiny of this Court after an extensive trial on the merits.

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[96] *Id.* at 217.

[97] *De Lima v. Reyes*, 776 Phil. 623, 648 (2016) [Per *J.* Leonen, Second Division].

Failing to demonstrate that the Sandiganbayan and the Ombudsman acted with grave abuse of discretion, this Court will not interfere with their findings of probable cause. Contrary to petitioner's claim, a review of the records of the case shows that the findings of the Ombudsman, as affirmed by the Sandiganbayan, are neither tainted with malice nor are they mere speculations and surmises. Conversely, the findings are sustained by evidence. Mere disagreement with the appreciation of the evidence by the Ombudsman does not translate to jurisdictional error.

To be clear, this Court does not make a ruling on petitioner's guilt or innocence. Here, the issue is whether there is grave abuse in the Sandiganbayan and Ombudsman's exercise of their prerogatives. We find that there is none. Hence, their findings must be respected.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The Sandiganbayan's August 15, 2013 and November 6, 2013 Resolutions in relation to Criminal Case No. SB-12-CRM-0164 are **AFFIRMED**.

SO ORDERED.

Carandang, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 225115. January 27, 2020]

DEL MONTE FRESH PRODUCE (PHILIPPINES), INC., *petitioner, vs.* **DEL MONTE FRESH SUPERVISORS UNION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FIFTEEN (15)-DAY PERIOD ALLOWED UNDER SECTION 4, RULE 43 OF THE RULES OF COURT *VIS-Á-VIS* THE TEN (10)-DAY PRESCRIPTIVE PERIOD UNDER ARTICLE 262-A OF THE LABOR CODE, EXPLAINED AND RECONCILED; RESPONDENT'S PETITION FOR REVIEW WITH THE COURT OF APPEALS WAS FILED ON TIME. — According to petitioner, the CA erred in giving due course to the petition for review of respondent. Paragraph 4 of Article 262-A of the Labor Code requires that an appeal from a decision of the Voluntary Arbitrator must be filed within 10 days from notice, and that the Supreme Court, in *Philippine Electric Corporation v. Court of Appeals*, has held that this statutory period must prevail over the 15-day period allowed under Section 4, Rule 43 of the Rules of Court. Respondent's petition for review was belatedly filed on the 12th day from notice of decision of the Voluntary Arbitrator; the same should not have been entertained, much less given due course. x x x [T]o reiterate the ruling of the Supreme Court *En Banc* in *Guagua National Colleges v. Court of Appeals, et al.*, to wit: Hence, the 10-day period stated in Article 276 should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing the petition for review under Rule 43 of the Rules of Court within 15 days from notice pursuant to Section 4 of Rule 43. The foregoing ruling applies to a petition for review under Rule 43 that is not preceded by a motion for reconsideration with the Voluntary Arbitrator, for, at that time, such motion was a prohibited pleading under the procedural rules of the Department of Labor and Employment and the National Conciliation and Mediation Board. It should be emphasized that the Court *En Banc* adopted the foregoing interpretation precisely to put an end to conflicting rulings that have been adopted over the period 1984 through 2015. Accordingly, respondent's petition for review with the CA was filed on time on the 12th day from notice of the decision of the Labor Arbiter.

2. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; RULES OF STATUTORY CONSTRUCTION ARE ALSO APPLICABLE TO LABOR CONTRACTS. — Petitioner further argues that the CA erred in subjecting the term "shall" in the company's Local Policy to rules of interpretation that are appropriate only for statutory construction. It is true that the Court has applied the rules of statutory construction to labor legislations and regulations. However, there is no prohibition to the application of these rules to labor contracts, for Article 1702 of the Civil Code itself provides: Article 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer. In the case at hand, there is doubt over how the Local Policy and Global Policy affect the employment contracts of the 18 supervisors. Thus, the CA was warranted in its application of existing rules of interpretation of these policies in relation to the contracts.

3. ID.; ID.; ID.; COMPANY POLICIES MADE IN THE EXERCISE OF MANAGEMENT PREROGATIVE BECAME PART OF EMPLOYMENT CONTRACTS AFTER HAVING BEEN OFFICIALLY ISSUED AND THEIR IMPLEMENTATION CEASED TO BE A MATTER OF MANAGEMENT PREROGATIVE; INTERPRETATION OF THE SUBJECT COMPANY POLICIES SHOWS THAT REGULARIZATION OF EMPLOYMENT AUTOMATICALLY ENTITLES AN EMPLOYEE TO PAYMENT OF MINIMUM RATE SET BY SAID POLICIES. — The CA addressed this particular issue by pointing out that it was in exercise of management prerogative that petitioner issued the Local Policy and Global Policy, in the sense that the formulation and adoption of these policies involved considerations of business factors that petitioner alone can make. However, after having been officially issued, these policies became part of employment contracts and their implementation ceased to be a matter of management prerogative. Rather, implementation is governed "by law, collective bargaining and general principles of fair play and justice." The CA is correct. There is no question that employers enjoy management prerogative when it comes to the formulation of business policies, including those that affect their employees. However, company policies that are an outcome of an exercise of management prerogative can implicate the

rights and obligations of employees, and to that extent they become part of the employment contract, as when the violation of policies is considered a ground for contract termination. In previous cases, petitioner itself invoked company policy to justify termination of employment contracts. In the present case, petitioner admits to being governed by and having implemented the Local Policy and Global Policy. The text itself indicates that such policies are effective upon approval. The real question, however, is whether implementation of the terms of these policies, in particular Section 2.1.2.4 of the Local Policy relating to the minimum rates for regularized employees, is mandatory. x x x [P]etitioner seeks consideration of extrinsic factors to interpret the Local Policy. In no way does petitioner counter the specific findings of the CA on the meaning of the express provisions of the policy. In particular, the CA held, Section 2.1.2.1 and Section 2.1.2.4 of the Local Policy, as well as Section 4.4 and Section 4.6 of the Global Policy, "are clear that at the point of hiring and during the newly-hired employee's probationary period" discretion is given to the hiring manager to determine the starting rate. Meanwhile, Section 2.1.2.4 of the Local Policy gives "no discretion x x x to the hiring manager since [it] uses the word 'shall' in providing that "upon regularization or successful completion of the probationary or 'introductory' period, the regular employee shall be granted a salary increase to raise his salary before regularization to the minimum rate." These are textual interpretations by the CA that the petitioner glossed over in favor of a mere contextual approach. The CA even anticipated such contextual arguments by pointing out that the policies do not preclude petitioner from making an assessment of the individual merits of probationary employees; petitioner may decide that said employees do not meet its standards for regularization. Finally, petitioner objects to the CA's mandatory implementation of the Local Policy on the minimum rate on the ground that it impairs the employment contract which the 18 supervisors had freely signed. This is a worn-out defense in labor cases. As the Court has repeatedly stated, labor contracts are no ordinary private contracts; rather, they are imbued with public interest and a proper subject matter of police power measures. In this case, the CA sought to uphold rather than impair the contract between petitioner and its employees by requiring implementation of a policy that is adjunct to the contract.

APPEARANCES OF COUNSEL

Sagmit and Associates for petitioner.
Danilo Cullo for respondent.

D E C I S I O N

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

This resolves a question of law of whether regularization of employment automatically entitles an employee to payment of the minimum rate set by company policy. The question is before the Court through a Petition for Review on *Certiorari*[1] from the May 13, 2015 Decision[2] and May 18, 2016 Resolution[3] of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. SP No. 04980-MIN.

Antecedent Facts

As no factual issue is involved, the recital of the CA is adopted below.

Respondent Del Monte Fresh Supervisors Union (respondent) is the exclusive bargaining representative of the supervisory employees of petitioner Del Monte Fresh Produce (Philippines), Inc. (petitioner). Following unsuccessful attempts at mediation and conciliation,[4] respondent filed in behalf of 18 supervisor-members a Complaint with the Voluntary Arbitrator for " accrued differentials and salary adjustments due to underpayment of salary resulting from the non-implementation of the supervisors' salary structure" as laid out in " company policies [which] are binding between the employer and employees; [... as it is in the nature ...] of a Collective Bargaining Agreement (CBA)."[5]

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[1] *Rollo*, pp. 45-70.

[2] Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo T. Lloren and Edward B. Contreras, concurring, *id.* at 9-33.

[3] *Id.* at 35-38.

[4] CA Decision, *id.* at 17-18.

[5] *Id.* at 18.

The company policies in question consist of the Global Policy on Salary Administration (Global Policy) and the May 1, 2000 Policy on Salary Administration under Del Monte Fresh Produce (Philippines), Inc.,(Local Policy).[6] The pertinent provisions in the Local Policy state:

C . Policy Guidelines [:]

x x x x x x x x x

2.1.2.1 The minimum rate for a particular Hay Level is generally the starting rate for a newly hired [employee]. However, experience, qualifications, special skills, and other criteria maybe considered. So newly hired employee[s] may start at a salary higher than the set minimum, provided that the starting salary is not more than 20% higher than the set minimum.

x x x x x x x x x

2.1.2.4 xxx the Company at the discretion of the hiring manager may offer below these minimum salary for the Hay Level provided that it shall not be lower than 10% of these minimum. This applies to employees who undergo his/her probationary period and when[,] upon becoming regular employees, his/her salary shall be raised to the minimum level.[7]

On the other hand, the pertinent provisions in the Global Policy state:

C. Policy Guidelines:

x x x x x x x x x

3.5 As a policy, the minimum rate of the particular Job Grade(or Hay Level) is the starting rate for newly hired employees. However, a lower or higher starting salary may be warranted when authorized by Corporate Human Resources, with due consideration given to experience, qualifications, special skills, and other a criteria.

x x x x x x x x x

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[6] *Id.* at 10.

[7] *Id.* at 11-12.

D. Procedures [:]

x x x x x x x x x

4.2 The normal starting salary rate for a qualified new employee shall be the minimum rate for their approved position level, based on the current Salary Structure of the location. This may vary depending on numerous factors such as, but is not limited to, experience and qualifications of new employee; current market conditions; other pertinent matters that may have an effect on salaries.

4.3 The head of the requesting department, in coordination with the local Human Resources department, may recommend a salary up to 20% over the minimum rate for the newly hired employee subject to approval by Corporate Human Resources.

4.4 Similarly, employee may be offered below the set minimum salary for the Hay level.

x x x x x x x x x

4.6 The performance of newly hired employees, who are on introductory period and given below the minimum hiring rate, may be reviewed towards the end of introductory period, and if warranted, maybe eligible for a salary increase sufficient to reach the minimum salary level upon regularization. This must be in accordance to what has been approved in the PRF.[8]

The 18 affected supervisors were hired at Hay Levels 5 through 8. For those at Hay Level 5, the minimum rate was ₱17,792.00 but they were paid probationary rates that ranged from ₱12,000.00 to ₱12,793.00 and regularization rates that ranged from ₱12,793.00 to ₱17,207.00. Similar disparities were evident among the probationary, regularization and minimum rates for those hired at Hay Levels 6 and 7.[9]

Respondent claimed that, contrary to the Local Policy, petitioner paid the affected supervisors salary rates below their respective minimum rates at the time of their regularization.[10]

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[8] *Id.* at 13-16.

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

[10] *Id.* at 16-17.

It argued that, similar to a CBA, the Local Policy is an enforceable instrument which is binding on petitioner.[11] Petitioner refused to pay the claims and denied that the Local Policy was binding, as this had already been superseded by the Global Policy.[12] Moreover, the decision to implement any company policy is a prerogative of the management.

In a Decision[13] dated June 11, 2012, the Voluntary Arbitrator of the Department of Labor and Employment dismissed the complaint on the ground of the sanctity of contract: the affected supervisors freely entered into their employment contracts and willingly accepted the stipulated salaries.[14] The Arbitrator interpreted the Local Policy to mean that "it does not strictly require the hiring Manager to give the minimum range as the initial salary rate" [15] and that regularization and merit promotion are conditions for entitlement to the minimum rate.[16]

Respondent's Petition for Review,[17] challenging the decision of the Voluntary Arbitrator, was granted by the CA:

> WHEREFORE, the instant petition is hereby GRANTED and the Decision rendered by the Voluntary Arbitrator dated 11 June 2012 is SET ASIDE. A new Decision is hereby rendered GRANTING the money claims of the eighteen (18) affected employees for salary differentials from the dates of their regularization. Consequently, this case is remanded to the Voluntary Arbitrator for the final computation of the corresponding monetary award from the dates of their regularization. The corresponding minimum rate of the applicable Hay Level at the time the affected supervisors became regular shall be applied in the computation of the salary differentials (including the monthly rate variance, holiday pay, Vacation Leave and Sick Leave , 13th month pay and other benefits based on their salary rates).

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[11] *Id.* at 18.

[12] *Id.* at 18-19.

[13] *Id.* at 174-181.

[14] *Id.* at 177-178.

[15] *Id.* at 178.

[16] *Id.* at 179-180.

[17] *Id.* at 182-204.

SO ORDERED.[18]

Petitioner filed a Motion for Partial Reconsideration[19] but the same was denied by the CA in its Resolution[20] dated May 18, 2016.

The CA interpreted the Local Policy and Global Policy to mean that petitioner has the discretion to pay newly-hired employees a salary rate lower than the minimum rate during the probationary period.[21] However, once the probationary period ends and the employee is regularized, petitioner must pay the minimum rate.[22] Entitlement to the minimum rate requires mere regularization based solely on performance review, without need of merit promotion.[23] The management has no discretion over the payment of the minimum rate upon regularization of an employee. Once the employee is regularized, management prerogative must give way and be subject to the limitations composed by law, the collective bargaining agreement and general principles of fair play and justice.[24]

Issues and Arguments

Petitioner argues that the CA erred in:

1. Allowing the Petition for Review of respondent even though it was filed out of time;

2. Applying the rules of statutory construction to interpret employment contracts;

3. Interfering with the management prerogatives of petitioner when it comes to determining the salary range applicable to its employees; and

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[18] CA Decision, *id.* at 32-33.

[19] *Id.* at 97-107.

[20] CA Resolution, *id.* at 108-111.

[21] CA Decision, *id.* at 27.

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

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

[24] *Id.* at 31.

4 . Impairing the contracts between petitioner and individual members of respondent.[25]

The Court's Ruling

The petition lacks merit.

Being essentially procedural, the first and second issues are addressed summarily. The more substantive third and fourth issues are discussed more fully.

According to petitioner, the CA erred in giving due course to the petition for review of respondent. Paragraph 4 of Article 262-A of the Labor Code requires that an appeal from a decision of the Voluntary Arbitrator must be filed within 10 days from notice,[26] and that the Supreme Court, in *Philippine Electric Corporation v. Court of Appeals*,[27] has held that this statutory period must prevail over the 15-day period allowed under Section 4, Rule 43 of the Rules of Court.[28] Respondent's petition for review was belatedly filed on the 12th day from notice of decision of the Voluntary Arbitrator; the same should not have been entertained, much less given due course.[29]

As respondent points out, the issue of timeliness was not raised by petitioner before the CA.[30] Nonetheless, it is addressed here if only to reiterate the ruling of the Supreme Court *En Banc* in *Guagua National Colleges v. Court of Appeals*,[31] *et al.*, to wit:

Hence, the 10-day period stated in Article 276 should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion

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[25] Petition, *id.* at 56-57.

[26] *Id.* at 65-67.

[27] 749 Phil. 686 (2014).

[28] *Id.* at 707.

[29] Reply to Respondent's Comment, *rollo*, pp. 224-227.

[30] Respondent's Comment, *id.* at 219-220.

[31] G.R. No. 188492, August 28, 2018.

for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing the petition for review under Rule 43 of the Rules of Court within 15 days from notice pursuant to Section 4 of Rule 43.

The foregoing ruling applies to a petition for review under Rule 43 that is not preceded by a motion for reconsideration with the Voluntary Arbitrator, for, at that time, such motion was a prohibited pleading under the procedural rules of the Department of Labor and Employment and the National Conciliation and Mediation Board.[32]

It should be emphasized that the Court *En Banc* adopted the foregoing interpretation precisely to put an end to conflicting rulings that have been adopted over the period 1984 through 2015. Accordingly, respondent's petition for review with the CA was filed on time on the 12th day from notice of the decision of the Labor Arbiter.

Petitioner further argues that the CA erred in subjecting the term "shall" in the company's Local Policy to rules of interpretation that are appropriate only for statutory construction.[33] It is true that the Court has applied the rules of statutory construction to labor legislations and regulations.[34] However, there is no prohibition to the application of these rules to labor contracts, for Article 1702 of the Civil Code itself provides:

Article 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.[35]

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[32] *Id.* See Department of Labor's Department Order No. 40, series of 2003, Rule XLX, Section 7, and the 2005 Procedural Guidelines, Section 7.

[33] Petition, *rollo*, pp. 62-64.

[34] See *Salinas, Jr. v. National Labor Relations Commission*, 377 Phil. 55-67 (1999); and *Kapisanang Manggagawang Pinagyakap v. National Labor Relations Commission*, 236 Phil.103-110 (1987).

[35] *Claret School of Quezon City v. Madelyn I. Sinday*, G.R. No. 226358, Oct. 9, 2019.

In the case at hand, there is doubt over how the Local Policy and Global Policy affect the employment contracts of the 18 supervisors. Thus, the CA was warranted in its application of existing rules of interpretation of these policies in relation to the contracts.[36]

Going now to the substantive issues, petitioner argues that the CA erred in enforcing the Local Policy and holding petitioner liable to pay the difference between the minimum rate and the actual rate that had been paid to the 18 supervisors since their regularization. To begin with, such unpublished Local Policy is not binding. Implementation of the salary rates set out therein is a management prerogative. Acceptance of the actual salary rates by the 18 supervisors is protected by the sanctity of contracts. The ruling of the CA interferes with management prerogative and disregards the sanctity of contracts.[37]

The CA addressed this particular issue by pointing out that it was in exercise of management prerogative that petitioner issued the Local Policy and Global Policy, in the sense that the formulation and adoption of these policies involved considerations of business factors that petitioner alone can make.[38] However, after having been officially issued , these policies became part of employment contracts and their implementation ceased to be a matter of management prerogative. Rather, implementation is governed "by law, collective bargaining and general principles of fair play and justice."[39]

The CA is correct. There is no question that employers enjoy management prerogative when it comes to the formulation of business policies, including those that affect their employees.[40]

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[36] See *Philippine Federation of Credit Cooperatives, Inc. v. National Labor Relations Commission*, 360 Phil. 254-261(1998).

[37] Petition, *rollo*, pp. 57-62.

[38] CA Decision, *id.* at 84.

[39] *Id.*

[40] See *Lagatic v. National Labor Relations Commission*, 349 Phil. 172-186 (1998); and see *Pantoja v. SCA Hygiene Products Corporation*, 633 Phil. 235-243 (2010).

However, company policies that are an outcome of an exercise of management prerogative can implicate the rights and obligations of employees, and to that extent they become part of the employment contract,[41] as when the violation of policies is considered a ground for contract termination.[42] In previous cases, petitioner itself invoked company policy to justify termination of employment contracts.[43] In the present case, petitioner admits to being governed by and having implemented the Local Policy and Global Policy.[44] The text itself indicates that such policies are effective upon approval.[45]

The real question, however, is whether implementation of the terms of these policies, in particular Section 2.1.2.4 of the Local Policy relating to the minimum rates for regularized employees, is mandatory.

Petitioner bewails that mandatory implementation will deny it of the flexibility necessary in order to assess individual strengths and weaknesses of regularized employees or to adjust salaries in order to deal with business distress.[46] In other words, petitioner seeks consideration of extrinsic factors to interpret the Local Policy. In no way does petitioner counter the specific findings of the CA on the meaning of the express provisions of the policy.

In particular, the CA held, Section 2.1.2.1 and Section 2.1.2.4 of the Local Policy, as well as Section 4.4 and Section 4.6 of the Global Policy, "are clear that at the point of hiring and during the newly-hired employee's probationary period"

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[41] See *Duncan Association of Detailman-PTGWO v. Glaxo Wellcome Philippines, Inc.*, 481 Phil. 687-705 (2004).

[42] See *Buenaflor Car Services, Inc. v. David, Jr.*, 798 Phil. 195-208 (2016).

[43] See *Del Monte Philippines, Inc. v. Velasco*, 546 Phil. 339-351(2007); and see *Zagala v. Mikado Philippines Corp.*, 534 Phil. 711-724 (2007).

[44] Petition, *rollo*, pp. 49-53.

[45] CA Decision, *id.* at 13.

[46] Petition, *id.* at 59-60.

discretion is given to the hiring manager to determine the starting rate. Meanwhile, Section 2.1.2.4 of the Local Policy gives "no discretion x x x to the hiring manager since [it] uses the word 'shall' in providing that "upon regularization or successful completion of the probationary or 'introductory' period, the regular employee shall be granted a salary increase to raise his salary before regularization to the minimum rate.[47] These are textual interpretations by the CA that the petitioner glossed over in favor of a mere contextual approach. The CA even anticipated such contextual arguments by pointing out that the policies do not preclude petitioner from making an assessment of the individual merits of probationary employees; petitioner may decide that said employees do not meet its standards for regularization.[48]

Finally, petitioner objects to the CA's mandatory implementation of the Local Policy on the minimum rate on the ground that it impairs the employment contract which the 18 supervisors had freely signed. This is a worn-out defense in labor cases. As the Court has repeatedly stated, labor contracts are no ordinary private contracts; rather, they are imbued with public interest and a proper subject matter of police power measures.[49] In this case, the CA sought to uphold rather than impair the contract between petitioner and its employees by requiring implementation of a policy that is adjunct to the contract.

WHEREFORE, premises considered, the instant Petition is **DENIED** for lack of merit. The assailed Decision dated May 13, 2015 and Resolution dated May 18, 2016 of the Court of Appeals in CA-G.R. SP No. 04980-MIN are **AFFIRMED**.

SO ORDERED .

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

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[47] CA Decision, *id.* at 27.

[48] *Id.* at 28.

[49] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018.

SECOND DIVISION

[G.R. No. 228572. January 27, 2020]

MICHAEL ADRIANO CALLEON, *petitioner, vs.* **HZSC REALTY CORPORATION, JOHN LEANLON P. RAYMUNDO, EMERSON D. ANGELES, LLOYD T. ISON, SHERWIN M. ODOÑO, LEMUEL D. VENZON, and RONALD F. CALING,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; IF ANY PARTY HAS APPEARED BY COUNSEL, SERVICE UPON HIM SHALL BE MADE UPON HIS COUNSEL OR ONE OF THEM, UNLESS SERVICE UPON THE PARTY HIMSELF IS ORDERED BY THE COURT. — Section 2, Rule 13 of the Rules of Court (Rules) provides that "[i]f any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." **Thus, even if a party represented by counsel has been actually notified, said notice is not considered notice in law.** "The reason is simple – the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only with one person in the interest of orderly procedure – either the lawyer retained by the party or the party him/herself if [he/she] does not intend to hire a lawyer."

APPEARANCES OF COUNSEL

Ariel C. Santos for petitioner.

Public Attorney's Office for respondents John Raymundo, *et al.*

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] with Urgent Prayer for the Issuance of a Temporary Restraining Order (TRO) filed by petitioner Michael Adriano Calleon (petitioner) assailing the Resolution[2] dated November 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP. No. 147486, which denied his motion for reconsideration from the Resolution[3] dated September 23, 2016 for having been belatedly filed.

The Facts

The instant controversy stemmed from complaints[4] for illegal (constructive) dismissal, non-payment of salary, 13th month pay, and separation pay, as well as payment of moral and exemplary damages and attorney's fees filed by respondents John Leanlon P. Raymundo, Emerson D. Angeles, Lloyd T. Ison, Sherwin M. Odoño, Lemuel D. Venzon, and Ronald F. Caling (respondents) against respondent HZSC Realty Corporation (HZSC) and its President, herein petitioner, arising from HZSC's failure to rehire them after more than six (6) months from the temporary shutdown of its business operation due to business losses on January 23, 2015.[5]

In a Decision[6] dated April 29, 2016, the Labor Arbiter (LA) declared HZSC and petitioner guilty of illegal (constructive) dismissal for HZSC's failure to comply with the procedural requirements under Article 283 (now Article 298)[7] of the Labor

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[1] *Rollo*, pp. 3-12.

[2] *Id.* at 16. Signed by Division Clerk of Court Michael F. Real.

[3] *Id.* at 118-119. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Renato C. Francisco, concurring.

[4] CA *rollo*, pp. 31-36.

[5] See *rollo*, pp. 50-53.

[6] *Id.* at 50-56. Penned by Labor Arbiter Augusto L. Villanueva.

[7] As renumbered pursuant to Section 5 of Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS,

Code, and ordered them to pay respondents their respective unpaid salary, separation pay, nominal damages, plus ten percent (10%) of the total monetary awards as attorney's fees.[8]

Aggrieved, HZSC and petitioner appealed[9] to the National Labor Relations Commission (NLRC).

In a Decision[10] dated June 30, 2016, the NLRC dismissed the appeal of HZSC and petitioner,[11] and thereafter, denied their motions for reconsideration[12] in a Resolution[13] dated August 31, 2016.

THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, As AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also Department Advisory No. 01, Series of 2015 of the Department of Labor and Employment entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED." Article 298 provides:

Article 298. (283) *Closure of Establishment and Reduction of Personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[8] See *rollo*, pp. 53-55.

[9] See Memorandum of Appeal dated June 13, 2016; *id*. at 59-68.

[10] *Id.* at 74-86. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Pablo C. Espiritu, Jr. and Cecilio Alejandro C. Villanueva, concurring.

[11] *Id.* at 85.

[12] See HZSC's motion for reconsideration (*id.* at 69-73); and petitioner's motion for reconsideration dated July 25, 2016 (*id.* at 87-92).

[13] *Id.* at 102-103.

Petitioner filed a petition for *certiorari*[14] before the CA, praying to be absolved from liability in the absence of any finding of malice and fraud on his part.[15]

The CA Ruling

In a Resolution[16] dated September 23, 2016, the CA dismissed the petition for failure to comply with the required contents thereof, and the documents which should accompany it.[17]

Petitioner received his personal notice of the September 23, 2016 Resolution on October 5, 2016.[18] On October 26, 2016, he filed a motion for reconsideration[19] claiming that: (*a*) he received (referring to his counsel's receipt) notice of the September 23, 2016 Resolution on October 11, 2016; and (*b*) he had already remedied the procedural defects in his petition,[20] attaching therewith an Amended Petition for *Certiorari*.[21]

In a Resolution[22] dated November 28, 2016, the CA denied the motion for reconsideration for having been belatedly filed. Hence, this petition claiming that petitioner's counsel, Atty. Ariel C. Santos (Atty. Santos), received notice of the September 23, 2016 Resolution on October 17, 2016, and as such, the motion for reconsideration was timely filed.[23]

In a Resolution[24] dated January 25, 2017, the Court required respondents to file their comment to the petition, and issued a

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[14] Dated September 14, 2016. *Id.* at 104-115.

[15] See *id.* at 111.

[16] *Id.* at 118-119.

[17] See *id.*

[18] See petitioner's letter dated October 6, 2016; CA *rollo*, p. 106.

[19] Dated October 25, 2016. *Rollo*, pp. 120-121.

[20] *Id.* at 120.

[21] *Id.* at 125-136.

[22] *Id.* at 16.

[23] See *id.* at 6.

[24] *Id.* at 144, including dorsal portion. Signed by Division Clerk of Court Edgar O. Aricheta.

TRO enjoining the NLRC from implementing its June 30, 2016 Decision and August 31, 2016 Resolution. Considering the discrepancy in petitioner's statements as to his counsel's receipt of notice of the September 23, 2016 Resolution, the Court resolved to direct the CA to elevate the complete records of the case.[25]

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in dismissing the motion for reconsideration for having been belatedly filed.

The Court's Ruling

The petition is meritorious.

Section 2, Rule 13 of the Rules of Court (Rules) provides that "[i]f any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." **Thus, even if a party represented by counsel has been actually notified, said notice is not considered notice in law**.[26] "The reason is simple — the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only with one person in the interest of orderly procedure — either the lawyer retained by the party or the party him/herself if [he/she] does not intend to hire a lawyer."[27]

As to service of court resolutions, Section 9, Rule 13 of the Rules pertinently provides:

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[25] See Resolution dated June 3, 2019; *id.* at 220. Signed by Deputy Division Clerk of Court Teresita Aquino Tuazon.

[26] See *Prudential Bank v. Business Assistance Group, Inc.*, 488 Phil. 191, 197 (2004).

[27] *Villalongha v. CA*, G.R. No. 227222, August 20, 2019; citation omitted.

Section 9. *Service of judgments, final orders or resolutions.*— Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

In the case at bar, a copy of the September 23, 2016 Resolution was sent to Atty. Santos at his registered address in Meycauayan, Bulacan through registered Letter No. BDN-2291.[28] On November 8, 2016, the CA sent a tracer[29] to the Postmaster of Meycauyan, Bulacan directing him to inform the court of the exact date when the said letter was delivered to and received by the addressee. However, prior to the receipt of the Postmaster's reply, the CA already issued its assailed November 28, 2016 Resolution denying petitioner's motion for reconsideration for having been belatedly filed, apparently reckoning the same from petitioner's receipt of his personal notice of the September 23, 2016 Resolution on October 5, 2016.

On December 2, 2016, the CA received the Postmaster's reply[30] to tracer informing the court that Atty. Santos received registered Letter No. BDN-2291 on October 11, 2016. Consequently, petitioner had fifteen (15) days from such receipt,[31] or until October 26, 2016, within which to file his motion for reconsideration. Thus, petitioner's motion for reconsideration was timely filed, contrary to the ruling of the CA.

Accordingly, there is a need to remand the case to the CA to resolve the motion for reconsideration on the merits. Notably, petitioner had submitted, together with the said motion, an Amended Petition for *Certiorari*[32] which he claims to have

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[28] See CA *rollo*, p. 235.

[29] *Id.*

[30] *Id.* at 237.

[31] See Section 1, Rule 52 of the Rules.

[32] *Rollo*, pp. 125-136.

already rectified the procedural deficiencies cited by the CA in its September 23, 2016 Resolution. In view thereof, the other issues raised in this petition which involve mixed questions of fact and law on the substantive merits of the petition should properly be addressed to and resolved by the CA.

Finally, considering that petitioner raises as an issue the propriety of the order adjudging him solidarily liable with the non-operating[33] respondent, HZSC, for the individual respondents' money claims,[34] which is yet to be resolved by the CA, the TRO[35] issued by the Court on January 25, 2017 enjoining the NLRC from implementing its June 30, 2016 Decision and August 31, 2016 Resolution stands until further orders from the Court.

WHEREFORE, the petition is **GRANTED**. The Resolution dated November 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP. No. 147486 is hereby **SET ASIDE**. The case is **REMANDED** to the CA which is hereby **DIRECTED** to resolve petitioner Michael Adriano Calleon's motion for reconsideration, with motion to admit the Amended Petition for *Certiorari*. The Temporary Restraining Order issued on January 25, 2017 **REMAINS** in full force and effect, until further orders.

SO ORDERED.

Inting and *Delos Santos, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

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[33] See *id.* at 77.

[34] See *id.* at 130-132.

[35] *Id.* at 141-143. Signed by Division Clerk of Court Edgar O. Aricheta.

SECOND DIVISION

[G.R. No. 231991. January 27, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOLI FORNILLOS *y* MABAJEN @ "INTOY"**, *accused-appellant*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW, AND IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE, AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED. — Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT AND DETERMINATION THEREOF, BEST LEFT TO THE TRIAL COURT, AND HENCE, DUE DEFERENCE MUST BE ACCORDED TO THE SAME. — [I]t must be stressed that the Court agrees with the findings of the courts *a quo* that the prosecution — through the positive, candid, straightforward, and unwavering testimony of AAA — was able to prove beyond reasonable doubt that Fornillos sexually abused AAA on five (5) separate incidents, wherein in two (2) of those instances, he inserted his penis into the latter's mouth; while in the remaining three (3) occasions, he touched AAA's private parts. Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the

best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.

3. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT); LASCIVIOUS CONDUCT UNDER SECTION 5 (B) THEREOF; PROPER CRIME COMMITTED IN CASE AT BAR; PENALTY. — Applying the x x x guidelines [set by Court *En Banc* in the case of *People v. Tulagan*], as well as the fact that AAA was then a 13-year-old minor when the incidents of sexual abuse occurred, Fornillos' conviction under Criminal Case Nos. CC-2007-1652, CC-2007-1653, CC-2007-1654, CC-2007-1655, and CC-2007-1656 should all be modified to "Lascivious Conduct under Section 5 (b) of RA 7610." As such, in accordance with the Indeterminate Sentence Law, Fornillos must be sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, for each count of the aforesaid crime.

4. CIVIL LAW; DAMAGES; CIVIL LIABILITY *EX DELICTO*, AWARDED IN CASE AT BAR. — [H]e is also ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with legal interest of six percent (6%) per annum imposed on all monetary awards from the date of finality of this Decision until full payment, for each count of the aforesaid crime.

APPEARANCES OF COUNSEL

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

D E CI S I O N

PERLAS-BERNABE, ***J.*:**

Before the Court is an ordinary appeal [1] assailing the Decision[2] dated February 15, 2017 of the Court of Appeals (CA) in CA-G.R. CEB-CR HC No. 01821, which upheld the Decision [3] dated March 24, 2014 of the Regional Trial Court of [redacted] Samar, Branch 33 (RTC) in Criminal Case Nos. CC-2007-1652, CC-2007-1653, CC-2007-1654, CC-2007-1655, and CC-2007-1656 finding accused appellant Noli Fornillos *y* Mabajen @ "Intoy" (Fornillos) guilty beyond reasonable doubt of two (2) counts of Rape by Sexual Assault defined and penalized under Article 266-A (2) of the Revised Penal Code (RPC) and three (3) counts of Acts of Lasciviousness defined and penalized under Article 336 of the same Code, in relation to Republic Act No. (RA) 7610,[4] otherwise known as the "Special Protection of Children Against Abuse, Exploitation, and Discrimination Act."

The Facts

The instant case stemmed from numerous Informations charging Fornillos of two (2) counts of Rape by Sexual Assault and three (3) counts of Acts of Lasciviousness committed against AAA, the accusatory portions of which state:

Criminal Case No. CC-2007-1652

That on or about the 23rd day of February, 2006, at about 9:00 o'clock in the evening, more or less, at [redacted] Province of Samar, Philippines, and within the jurisdiction

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[1] See Notice of Appeal dated March 7, 2017; *rollo*, pp. 30-31.

[2] *Id.* at 4-29. Penned by Associate Justice Pablito A. Perez with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring.

[3] CA *rollo*, pp. 36-47. Penned by Judge Janet M. Cabalona.

[4] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES."

of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously kissed and held the two breast[s] of 13[-]year[-]old minor [AAA], then inserted his penis into [the] victim's mouth until something came out of his penis while pointing a knife at her which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.

Criminal Case No. CC-2007-1653

That on or about the 24th day of February, 2006, at about 5:00 o'clock in the afternoon, more or less, at [redacted] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously dragged 13[-]year[-]old minor [AAA] to the backyard while pointing a knife at her and inserted his erect penis into the victim's mouth until a whitish salty substance came out which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.

Criminal Case No. CC-2007-1654

That on or about the 24th day of February, 2006, at about 8:30 o'clock in the evening, more or less, at [redacted] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously kissed and held the two breast[s] of 13[-]year[-]old minor [AAA], while pointing a knife at her which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.

Criminal Case No. CC-2007-1655

That on or about the 22nd day of February, 2006, at about 8:00 o'clock in the evening, more or less, at [redacted] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully,

unlawfully[,] and feloniously kissed and held the two breast[s] of 13[-]year[-]old minor [AAA] while pointing a knife at her which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.

Criminal Case No. CC-2007-1656

That on or sometime in the month of January, 2006, about 7:00 o'clock in the evening, more or less, at [redacted] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously kissed and held the two breasts of 13[-]year[-]old minor [AAA] while pointing a knife at her which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.[5]

Essentially, the prosecution alleged that in separate incidents, Fornillos sexually abused AAA, then a 13-year old minor, all while he was equipped with a knife and threatening her of bodily harm should she divulge what happened. In particular, the series of sexual abuses were outlined as follows: ***first***, one evening in January 2006, AAA was walking towards a neighborhood store when she passed by Fornillos. Suddenly, Fornillos grabbed AAA and pulled her into a dark area and thereat, kissed and touched AAA's breasts. After some time, AAA managed to escape Fornillos' grip and was able to run away; ***second***, about a month later, or in the evening of February 22, 2006, AAA was supposed to go to a neighbor's house to watch television when Fornillos appeared out of nowhere, grabbed her, and then took her to a dark area, where Fornillos again touched AAA's private parts;[6] ***third***, the next night, or on February 23, 2006,

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[5] CA *rollo*, pp. 36-39.

[6] See *rollo*, pp. 8-9.

AAA's father and Fornillos were having a drinking session at their house when AAA's parents went out to gather firewood. Fornillos was able to gain access inside the house and while inside, inserted his penis into AAA's mouth until a white substance came out therefrom; ***fourth***, in the afternoon of February 24, 2006, AAA was in school when Fornillos appeared by the school fence and motioned her to come near him. When AAA approached Fornillos, the latter took her to an isolated area where he again inserted his penis into AAA's mouth until a whitish liquid came out; and ***fifth***, in the evening of the same day, Fornillos and AAA's father was then having a drinking spree when the latter ordered AAA to buy food at the neighborhood store. While AAA was on her way to the store, Fornillos caught up with her and started touching her private parts again, only letting her go when he heard AAA's cousin looking for her. Finally, AAA told her mother about the incidents, prompting them to report the same to the authorities.[7]

Initially, these cases were archived because Fornillos was nowhere to be found and remained at large. Eventually, he was arrested on May 22, 2012 and proceedings resumed with his arraignment, wherein he pleaded not guilty to the charges against him.[8] For his part, Fornillos averred that while he indeed had drinking sessions with AAA's father, he denied the incidents of sexual abuse against AAA. He then claimed that he only met with AAA to tell her that they could not elope as the latter was still very young, and asked her to stop following him around.[9]

The RTC Ruling

In a Decision[10] dated March 24, 2014, the RTC found Fornillos guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: *(a)* in Criminal Case

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[7] See *id.* at 9-10.

[8] *Id.* at 8.

[9] See *id.* at 10.

[10] CA *rollo*, pp. 36-47.

No. CC-2007-1652, he was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages; *(b)* in Criminal Case No. CC-2007-1653, he was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages; *(c)* in Criminal Case No. CC-2007-1654, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of seventeen (17) years and five (5) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages; *(d)* in Criminal Case No. CC-2007-1655, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of seventeen (17) years and five (5) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages; and *(e)* in Criminal Case No. CC-2007-1656, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of seventeen (17) years and five (5) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages.[11]

The RTC found that the prosecution — through AAA's honest, sincere, candid, and straightforward testimony — had established beyond reasonable doubt that Fornillos subjected AAA to a series of sexual abuses, wherein he inserted his penis into AAA's mouth in two (2) separate incidents, and mashed her breasts in three (3) other separate incidents. In view of such positive testimony, the RTC disregarded Fornillos' defense of denial,

[11] *Id.* at 46-47.

even pointing out that his flight indicates his guilt for the crimes charged against him.[12]

Aggrieved, Fornillos appealed to the CA.

The CA Ruling

In a Decision[13] dated February 15, 2017, the CA affirmed the RTC ruling with the following modifications: *(a)* in Criminal Case Nos. CC-2007-1652 and CC-2007-1653, Fornillos was sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages for each count of Rape by Sexual Assault as defined and penalized under Article 266-A (2) of the RPC; and *(b)* in Criminal Case Nos. CC-2007-1654, CC-2007-1655, and CC-2007-1656, he is sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages for each count of Acts of Lasciviousness under Article 336 of the RPC in relation to RA 7610.[14]

In upholding Fornillos' conviction, the CA held that Fornillos' repeated sexual abuses on the victim, AAA, were done through force and intimidation as he threatened the victim with a bladed instrument and forced her to submit to his bestial desires.[15]

Hence, this appeal.[16]

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[12] See *id.* at 43-46.

[13] *Rollo*, pp. 4-29.

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

[15] See *id.* at 12-23.

[16] See Notice of Appeal dated March 7, 2017; *id.* at 30-31.

The Issue Before the Court

The issue for the Court's resolution is whether or not Fornillos is guilty beyond reasonable doubt of two (2) counts of Rape by Sexual Assault and three (3) counts of Acts of Lasciviousness.

The Court's Ruling

The appeal is bereft of merit.

Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[17]

Guided by this consideration, the Court finds it proper to modify Fornillos' convictions as will be explained hereunder.

At the outset, it must be stressed that the Court agrees with the findings of the courts *a quo* that the prosecution — through the positive, candid, straightforward, and unwavering testimony of AAA — was able to prove beyond reasonable doubt that Fornillos sexually abused AAA on five (5) separate incidents, wherein in two (2) of those instances, he inserted his penis into the latter's mouth; while in the remaining three (3) occasions, he touched AAA's private parts. Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[18]

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[17] *People v. De Guzman*, G.R. No. 234190, October 1, 2018, citation omitted.

[18] See *id.*, citing *Peralta v. People*, 817 Phil. 554, 563 (2017).

However, there is a need to adjust the nomenclature of the crimes in question, the concomitant penalties attached thereto, and the civil liability *ex delicto* in accordance with the guidelines set by the Court *En Banc* in the very recent case of People v. Tulagan (*Tulagan*).[19]

In *Tulagan*, the Court threshed out the "applicable laws and [consequent penalties] for the crimes of acts of lasciviousness or lascivious conduct and rape by carnal knowledge or sexual assault, depending on the age of the victim, in view of the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the [RPC], as amended by [Republic Act No. (RA)] 8353 and Section 5 (b) of [RA] 7610."[20] For this purpose, *Tulagan* provided a comprehensive table stating the proper nomenclature of crimes involving sexual abuse against children, to wit:[21]

Age of Victim: / **Crime Committed:**	Under 12 years old or demented	12 years old or below 18, or 18 under special circumstances	18 years old and above
Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610: *reclusion temporal* in its medium period	**Lascivious Conduct under Section 5 (b) of RA 7610: *reclusion temporal* in its medium period to *reclusion perpetua***	Not applicable
Sexual Assault committed against children exploited in prostitution or other sexual abuse	Sexual Assault under Article 266-A (2) of the RPC in relation to Section 5 (b) of	Lascivious Conduct under Section 5 (b) of RA 7610: *reclusion temporal* in its medium	Not applicable

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

[20] *Id.*

[21] *Id.*; emphases and underscoring supplied.

	RA 7610: *reclusion temporal* in its medium period	period to *reclusion perpetua*	
Sexual Intercourse committed against children exploited in prostitution or other sexual abuse	Rape under Article 266-A (1) of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed	Sexual Abuse under Section 5 (b) of RA 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Rape by carnal knowledge	Rape under Article 266-A (1) in relation to Article 266-B of the RPC: *reclusion perpetua* except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A (1) in relation to Article 266-B of the RPC: *reclusion perpetua*	Rape under Article 266-A (1) of the RPC: *reclusion perpetua*
Rape through Sexual Assault	Sexual Assault under Article 266-A (2) of the RPC in relation to Section 5 (b) of RA 7610: *reclusion temporal* in its medium period	**Lascivious Conduct under Section 5 (b) of RA 7610: *reclusion temporal* in its medium period to *reclusion perpetua***	Sexual Assault under Article 266-A (2) of the RPC: *prision mayor*

Applying the foregoing guidelines, as well as the fact that AAA was then a 13-year-old minor when the incidents of sexual abuse occurred, Fornillos' conviction under Criminal Case Nos. CC-2007-1652, CC-2007-1653, CC-2007-1654, CC-2007-1655, and CC-2007-1656 should all be modified to "Lascivious

Conduct under Section 5 (b) of RA 7610." As such, in accordance with the Indeterminate Sentence Law,[22] Fornillos must be sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, for each count of the aforesaid crime. Finally, he is also ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with legal interest of six percent (6%) per annum imposed on all monetary awards from the date of finality of this Decision until full payment,[23] for each count of the aforesaid crime.

WHEREFORE, the appeal is **DENIED**. Accordingly, the Decision dated February 15, 2017 of the Court of Appeals in CA-G.R. CEB-CR HC No. 01821 is hereby **AFFIRMED with MODIFICATION**, finding accused-appellant Noli Fornillos *y* Mabajen @ "Intoy" **GUILTY** beyond reasonable doubt of five (5) counts of Lascivious Conduct under Section 5 (b) of RA 7610. Accordingly, he is sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, for each count of the aforesaid crime, and is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with legal interest of six percent (6%) per annum imposed on all monetary awards from the date of finality of this Decision until full payment, for each count of the aforesaid crime.

SO ORDERED.

Inting and *Delos Santos, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

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[22] "[I]f the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC." (*Cahulogan v. People*, G.R. No. 225695, March 21, 2018, 860 SCRA 86, 97)

[23] See *People v. Tulagan, supra* note 19.

SECOND DIVISION

[G.R. No. 238212. January 27, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTIAN DELA CRUZ *y* DAYO and ARSENIO FORBES *y* DAYO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS OF BOTH CRIMES, ENUMERATED AND FOUND TO BE PRESENT IN CASE AT BAR; TRIAL COURT'S FINDINGS ACCORDED RESPECT. — The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: *(a)* the identity of the buyer and the seller, the object, and the consideration; and *(b)* the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: *(a)* the accused was in possession of an item or object identified as a prohibited drug; *(b)* such possession was not authorized by law; and *(c)* the accused freely and consciously possessed the said drug. Here, the courts *a quo* correctly found that Dela Cruz committed the crime of Illegal Sale of Dangerous Drugs, as the records clearly show that he was caught *in flagrante delicto* to be selling *shabu* to the poseur-buyer, P01 Disono, during a legitimate buy-bust operation conducted by the Balanga City Police Station. Similarly, the courts *a quo* also correctly ruled that Forbes committed the crime of Illegal Possession of Dangerous Drugs as he freely and consciously possessed the plastic sachet containing *shabu* given to him by Dela Cruz prior to the latter's arrest. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; TO ESTABLISH THE IDENTITY OF THE DRUGS WITH MORAL CERTAINTY, THE PROSECUTION MUST BE ABLE TO ACCOUNT EACH LINK IN THE CHAIN OF CUSTODY. —

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, as amended by RA 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or *(b)* if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; ID.; THERE IS SUFFICIENT COMPLIANCE WITH THE CHAIN OF CUSTODY RULE, AND THUS, THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DRUGS, WHICH IS THE *CORPUS DELICTI* OF THE CRIME, HAVE BEEN PRESERVED. — In this case, it is glaring from the records that after accused-appellants were arrested, the buy-bust team immediately took custody of the seized plastic sachets and marked them at the place of arrest. Thereafter, they went to the police station where the inventory and photography of the seized plastic sachets were conducted in the presence of a public elected official (Kgwd. Zabala) and a DOJ Representative (DOJ Rep. Sanchez), in conformity with the amended witness requirement under RA 10640. P01 Disono then personally delivered the plastic sachets to Police Senior

Inspector Maria Cecilia Gonzales Tang (PSI Tang) of the Bataan Provincial Crime Laboratory who performed the necessary tests thereon. Finally, PSI Tang kept the seized items and eventually brought it to the RTC for identification. In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* has been preserved. Perforce, accused-appellants' conviction must stand.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated November 27, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08953, which affirmed the Joint Decision[3] dated August 4, 2016 of the Regional Trial Court of Balanga City, Bataan, Branch 92 (RTC) in: (*a*) Criminal Case No. 15233, finding accused-appellant Christian Dela Cruz *y* Dayo (Dela Cruz) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002"; and (*b*) Criminal Case No. 15234, finding accused-appellant Arsenio

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[1] See Notice of Appeal dated December 11, 2017; *rollo*, pp. 25-27.

[2] *Id.* at 2-24. Penned by Associate Justice Ramon R. Garcia with Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh, concurring.

[3] CA *rollo*, pp. 44-62. Penned by Presiding Judge Gener M. Gito.

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

Forbes *y* Dayo (Forbes) guilty beyond reasonable doubt of violating Section 11 of the same law.

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC accusing accused-appellants Dela Cruz and Forbes (accused-appellants) of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, respectively. The prosecution alleged that around five (5) o'clock in the afternoon of October 6, 2015 following a successful illegal drug operation by the Balanga City Police Station against one Gil Obordo (Obordo), a certain "Intan" (later on identified as Dela Cruz) called Obordo's cellphone. After Obordo confessed that Dela Cruz is his supplier, the policemen successfully attempted to set up an entrapment operation against Dela Cruz later that day, with Police Officer 1 Michael Disono (PO1 Disono) acting as poseur-buyer. About two (2) and a half hours later, the buy-bust team proceeded to the meeting place, where after a few moments, Dela Cruz arrived aboard a motorcycle driven by a companion (later on identified as Forbes). After alighting from the motorcycle, Dela Cruz handed over to Forbes a sachet containing white crystalline substance and told the latter, "*Ito, para hindi ka mainip*," and thereafter, approached PO1 Disono for the transaction. As the sale was consummated, the buy-bust team swooped in to arrest Dela Cruz. At this point, PO1 Disono also ordered the arrest of Forbes considering that he saw the latter receiving a plastic sachet containing white crystalline substance from Dela Cruz. Forbes was frisked and a plastic sachet containing white crystalline substance was recovered from his right pocket. After marking the items respectively seized from Dela Cruz and Forbes at the place of arrest, the buy-bust team took them and the seized items to the police station, where the inventory and photography was

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[5] Criminal Case No. 15233 is for violation of Section 5, Article II of RA 9165 against Dela Cruz (records [Criminal Case No. 15233], pp. 1-2), while Criminal Case No. 15234 is for violation of Section 11, Article II of RA 9165 against Forbes (records [Criminal Case No. 15234], pp. 1-2). Both dated October 8, 2015.

conducted in the presence of Barangay Kagawad Armando S. Zabala (Kgwd. Zabala) and Department of Justice (DOJ) Representative Villamor Sanchez (DOJ Rep. Sanchez). The seized items were then brought to the crime laboratory where, after examination,[6] the contents thereof yielded positive for 0.0811 gram and 0.0736 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.[7]

In defense, accused-appellants denied the respective charges against them, and offered their own narration of the events. Dela Cruz averred that on the day he was arrested, he was just on his way home aboard his motorcycle when he was suddenly flagged down by a group of men wearing civilian clothes who then pointed a gun at him. He was then dragged into a car and initially taken to a safe house, and thereafter, to the police station where he claimed to have been forced to sign a piece of paper "for his protection." On the other hand, Forbes narrated that he was just waiting for his live-in partner to arrive from Manila when three (3) men in civilian clothes alighted from a white car and dragged him therein. He then claimed to have been initially taken to a safe house where he was beaten up and forced to drink a glass of water, and thereafter, taken to the police station where he saw his cousin, Dela Cruz.[8]

In a Joint Decision[9] dated August 4, 2016, the RTC found accused- appellants guilty beyond reasonable doubt of the crimes respectively charged against them. Accordingly, in Criminal Case No. 15233, Dela Cruz was sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and in Criminal Case No. 15234, Forbes was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as

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[6] See Chemistry Report No. D-381-15 BATAAN dated October 7, 2015 signed by Forensic Chemist Police Senior Inspector Maria Cecilia Gonzales Tang; records (Criminal Case No. 15233), p. 19.

[7] See *rollo*, pp. 3-7.

[8] See *id.* at 7-9.

[9] CA *rollo*, pp. 44-62.

minimum, to fifteen (15) years, as maximum, and to pay a fine in the amount of ₱300,000.00.[10] The RTC found that the prosecution had established that Dela Cruz indeed sold a plastic sachet containing *shabu* to PO1 Disono, and that Forbes possessed a plastic sachet also containing *shabu* which the latter received from Dela Cruz. In this regard, the RTC found untenable accused-appellants' defense of frame-up and denial for being uncorroborated and self-serving.[11] Aggrieved, both accused- appellants appealed[12] to the CA.

In a Decision[13] dated November 27, 2017 the CA affirmed the RTC ruling.[14] It held that the prosecution had established beyond reasonable doubt all the elements of the crimes respectively charged against accused-appellants, and that the integrity and evidentiary value of the seized items have been preserved as an unbroken chain of custody was duly established in this case.[15]

Hence, this appeal seeking that accused-appellants' respective convictions be overturned.

The Court's Ruling

The appeal is without merit.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession

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[10] *Id.* at 61.

[11] See *id.* at 53-60.

[12] See Notices of Appeal both dated August 4, 2016; *id.* at 15-16 and 18-19.

[13] *Rollo,* pp. 2-24.

[14] *Id.* at 23.

[15] See *id.* at 13-23.

of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[16] Here, the courts *a quo* correctly found that Dela Cruz committed the crime of Illegal Sale of Dangerous Drugs, as the records clearly show that he was caught *in flagrante delicto* to be selling *shabu* to the poseur-buyer, PO1 Disono, during a legitimate buy-bust operation conducted by the Balanga City Police Station. Similarly, the courts *a quo* also correctly ruled that Forbes committed the crime of Illegal Possession of Dangerous Drugs as he freely and consciously possessed the plastic sachet containing *shabu* given to him by Dela Cruz prior to the latter's arrest. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.[17]

Further, the Court notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165, as amended by RA 10640.[18]

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[16] See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671 , January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 (2015) and *People v. Bio*, 753 Phil. 730, 736 (2015).

[17] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, 860 SCRA 86, 95, citing *Peralta v. People*, 817 Phil. 554, 563 (2017), further citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[18] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof,

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, as amended by RA 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[19] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[20]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[21] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[22] The law further requires that the

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it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and "Manila Bulletin" (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

[19] See *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *supra* note 16, at 370; *People v. Miranda*, *supra* note 16; *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

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

[21] See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 389; *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *supra* note 16, at 370; *People v. Miranda*, *supra* note 16, at 53; and *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, *supra* note 19.

[22] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*,

said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official;[23] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service[24] *OR* the media.[25] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[26]

In this case, it is glaring from the records that after accused-appellants were arrested, the buy-bust team immediately took custody of the seized plastic sachets and marked them at the place of arrest. Thereafter, they went to the police station where the inventory[27]

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618 Phil. 520, 532 [2009]) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumulak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015].)

[23] Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

[24] The NPS falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

[25] Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[26] See *People v. Miranda*, *supra* note 16, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[27] See Inventory Receipt of Property/ies Seized dated October 6, 2015; records (Criminal Case No. 15233), p. 13.

and photography[28] of the seized plastic sachets were conducted in the presence of a public elected official (Kgwd. Zabala) and a DOJ Representative (DOJ Rep. Sanchez), in conformity with the amended witness requirement under RA 10640. PO1 Disono then personally delivered the plastic sachets to Police Senior Inspector Maria Cecilia Gonzales Tang (PSI Tang) of the Bataan Provincial Crime Laboratory who performed the necessary tests thereon. Finally, PSI Tang kept the seized items and eventually brought it to the RTC for identification. In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* has been preserved. Perforce, accused-appellants' conviction must stand.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated November 27, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08953 is hereby **AFFIRMED**. Accordingly, (*a*) in Criminal Case No. 15233, accused-appellant Christian Dela Cruz *y* Dayo is found **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165 and is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (*b*) in Criminal Case No. 15234, accused-appellant Arsenio Forbes *y* Dayo is found **GUILTY** beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165 and is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of ₱300,000.00.

SO ORDERED.

Inting and *Delos Santos, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

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[28] See *id.* at 15.

FIRST DIVISION

[G.R. No. 239793. January 27, 2020]

MULTINATIONAL SHIP MANAGEMENT, INC./SINGA SHIP AGENCIES, PTE. LTD., and ALVIN HITEROZA, *petitioners, vs.* **LOLET B. BRIONES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS. — As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by the Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: 1. When the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of 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 of 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.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; THIRD DOCTOR REFERRAL; CONSIDERED A MANDATORY PROCEDURE IN CASE THERE IS A DIVERGENCE IN MEDICAL FINDINGS BETWEEN THE COMPANY-DESIGNATED PHYSICIAN AND THE SEAFARER'S PERSONAL DOCTOR, AND THE SEAFARER'S NON-COMPLIANCE THEREWITH RESULTS IN THE AFFIRMANCE OF THE FIT-TO-WORK CERTIFICATION OF THE COMPANY-DESIGNATED PHYSICIAN. — The Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, also known as POEA Standard Employment Contract (POEA-SEC) provides for the procedure to be followed in case there is a divergence in medical findings between the company-designated physician and the seafarer's personal doctor. Under Section 20(A)(3) of the 2010 POEA-SEC, "[if] a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties." The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the dispute assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it. This referral to a third doctor has been held by this Court to be a mandatory procedure and the seafarer's non-compliance with the conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.

3. ID.; ID.; ID.; ID.; A SEAFARER'S COMPLIANCE THEREWITH PRESUPPOSES THAT THE COMPANY-DESIGNATED PHYSICIAN CAME UP WITH AN ASSESSMENT AS TO HIS FITNESS OR UNFITNESS TO

WORK BEFORE THE EXPIRATION OF THE 120-DAY OR 240-DAY PERIODS BUT NON-COMPLIANCE THEREWITH DOES NOT AUTOMATICALLY MAKE THE DIAGNOSIS OF THE COMPANY-DESIGNATED PHYSICIAN CONCLUSIVE AND BINDING ON THE COURTS. — [N]on-compliance with the third doctor referral does not automatically make the diagnosis of the company-designated physician conclusive and binding on the courts. The Court has previously held that, "if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer." We also ruled in *Kestrel Shipping Co., Inc., et al. v. Munar,* that, "A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240[-]day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent."

4. ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; A TOTAL DISABILITY DOES NOT REQUIRE THAT THE EMPLOYEE BE COMPLETELY DISABLED OR TOTALLY PARALYZED FOR WHAT IS NECESSARY IS THAT THE INJURY MUST BE SUCH THAT THE EMPLOYEE CANNOT PURSUE HER USUAL WORK AND EARN FROM IT, AND A TOTAL DISABILITY IS CONSIDERED PERMANENT IF IT LASTS CONTINUOUSLY FOR MORE THAN 120 DAYS. — A perusal of the Medical Report issued by Dr. Celino, the company-designated physician, would reveal that it failed to state a definite assessment of Briones' fitness or unfitness to work, or to give a disability rating of her injury. On the other hand, the Medical Report dated March 10, 2016 issued x x x by Dr. Magtira gave an explanation on the nature, cause, effects, and possible treatment of the injury sustained by Briones. x x x [T]he Court, thus,

finds Dr. Magtira's assessment as exhaustive and more reflective of the medical condition of Briones especially so since both medical reports acknowledged the passage of time as a key factor in resolving the back pain experienced by Briones. A total disability does not require that the employee be completely disabled, or totally paralyzed. **What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it.** On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. **What is crucial is whether the employee who suffers from disability could still perform his work notwithstanding the disability he incurred.**

APPEARANCES OF COUNSEL

Nolasco and Associates Law Offices for petitioners.
Justiniano B. Panambo, Jr. for respondent.

D E C I S I O N

PERALTA, *C.J.*:

This Petition for Review under Rule 45 of the Rules of Court seeks to annul the Decision[1] dated January 12, 2018 of the Court of Appeals (*CA*) in CA-G.R. SP No. 151642, which nullified, except with respect to the award of sickness allowance in respondent's favor, the Decision[2] dated March 8, 2017 and the Resolution[3] dated May 15, 2017 of the National Labor Relations Commission (2nd Division) (*NLRC*) that reversed and set aside the Labor Arbiter's Decision[4] dated November 23, 2016, and dismissed the respondent's complaint for total and permanent disability, unpaid sickness allowance, damages and attorney's

[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Manuel M. Barrios and Jhosep Y. Lopez, concurring; *rollo*, pp. 42-62.

[2] *Rollo*, pp. 82-96.

[3] *Id.* at 98-101.

[4] *Id.* at 67-80.

fees. Likewise assailed in this petition is the Court of Appeals' Resolution[5] dated May 30, 2018, which denied petitioners' Motion for Reconsideration.

Petitioner Multinational Ship Management Inc. (*MSMI*) is a corporation duly established and existing under the laws of the Philippines and duly licensed to do business as a manning agency with petitioner Alvin Hiteroza (*Hiteroza*) as its President/ General Manager. Petitioner Singa Ship Agencies PTE. LTD. is petitioner MSMI's foreign principal for the vessel M/V Viking Mimir. On March 25, 2015, MSMI and respondent Lolet Briones (*Briones*) entered into an employment contract whereby the latter was hired as Cabin Stewardess in the vessel Viking Mimir for a period of eight (8) months with a basic salary of US$980.00. The employment contract incorporated the POEA's "Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels."[6]

After undergoing a series of medical tests or routine Pre-Employment Medical Examination (*PEME*), Briones was declared fit for duty. Thereafter, she boarded her vessel of assignment and commenced her work as Cabin Stewardess on May 15, 2015.[7]

While on board the vessel and in the course of her tour of duty, Briones experienced back pains. She alleged that on July 17, 2015, she assisted in the unloading of luggage of departing passengers and in retrieving boxes of mattresses and bedsheets from the laundry section to the state rooms. She felt pain in her back while in the middle of replacing the mattresses. When the pain did not subside the following day, she went to see the ship's doctor and was given pain relievers. She was allowed to continue her work, but the pain persisted and became unbearable after almost two (2) weeks of continuous duty.[8]

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

[6] *Id.* at 5-8.

[7] *Id.* at 43.

[8] *Id.*

When the vessel arrived in Hungary on July 23, 2015, Briones was sent to a hospital. She was diagnosed to have lower back pain and muscle strain and was prescribed pain relievers. She rejoined the vessel and went back to her normal routine, but her back pain worsened. She was again disembarked when the vessel arrived in Passau, Germany on July 29, 2015. After undergoing X-ray and MRI on her back, she was suspected to have lumbar spine problem. She was prescribed with medicines to alleviate the pain and was advised to have a thorough check-up. As the vessel had to leave the port, she was not able to undergo further check-up.[9]

Briones' condition deteriorated and her mobility was seriously impaired after two (2) months of heavy manual labor. Thus, when the vessel arrived in Austria on September 21, 2015, she was sent to the General Hospital of Vienna where she was attended by Dr. Gerold Holzer. She was found to have serious back pain and was advised to be repatriated and undergo physiotherapy.[10]

Briones was finally repatriated on September 24, 2015 and she was immediately referred by MSMI to the Ship to Shore Medical Center under the care of the company-designated physician, Dr. Keith Adrian Celino (Dr. Celino). She underwent her various laboratory examinations the results of which revealed that she was suffering from *back pain* and *Lumbago*. She was advised to undergo physical therapy sessions and to continue her medications.[11]

Despite treatment and therapy, Briones claimed that she was not able to recover from her back pain. She requested for MRI on her back and upper portion of her body and MRI on her thoracic portion. Her request on the latter MRI, however, was denied. In a follow-up report dated November 17, 2015, Briones was noted to have tenderness on the lumbar area. She was advised

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[9] *Id.* at 44.

[10] *Id.*

[11] *Id.*

to undergo MRI of the lumbosacral area. She made several follow-up consults with the company-designated doctor to monitor her medical progress.[12]

On December 1, 2015, the company-designated doctor cleared Briones from the cause of her repatriation and declared that her *Lumbago* was resolved. MSMI alleged that it unconditionally shouldered all of Briones' medical expenses and seasonably paid her sick wages.[13]

Briones claimed that the company doctors discontinued her treatment despite of her failure to recover and plea to the company to continue the medical treatment. This constrained her to consult an orthopedic specialist, Dr. Manuel Fidel Magtira (*Dr. Magtira*), from the Department of Orthopedic Surgery & Traumatology of the Armed Forces of the Philippines Medical Center. Upon advice of Dr. Magtira, she underwent MRI on her thorax and lumbar spine on February 4, 2016.

Dr. Magtira prescribed her pain relievers, but after more than one (1) month of treatment, Dr. Magtira issued a Certification dated March 10, 2016 stating, among others, that Briones is "permanently UNFIT in any capacity to resume her sea duties as a Sea woman." When MSMI failed to pay Briones the required benefits, the latter filed a labor complaint for total and permanent disability benefits, sickness allowance, medical benefits, damages and attorney's fees.

On November 23, 2016, the Labor Arbiter rendered a Decision[14] granting Briones' claims for total permanent disability and sick wage benefits, damages and attorney's fees. In resolving the labor complaint in favor of Briones, the Labor Arbiter reasoned out that the disability provision in the POEA Standard Employment Contract (*POEA-SEC*) recognizes the seafarer's right to seek a second medical opinion and prerogative to consult

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[12] *Id.* at 45.

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

[14] *Supra* note 4.

a physician of his choice. The Labor Arbiter opined that while the POEA-SEC provides for the designation of a third doctor in case of difference between the company-designated doctor's assessment and that of the seafarer's doctor of choice, the provision, however, is merely directory and not mandatory. The fact that Briones initiated the complaint for permanent disability benefit based on her personal doctor's findings is sufficient notice to MSMI to exercise the option to refer the same to a third doctor. Finally, the Labor Arbiter viewed Dr. Magtira's Medical Report more complete and exhaustive than the certification issued by the company-designated doctor, which was merely concerned with the examination of the complaint for purposes of diagnosis and treatment rather than a determination of Briones' fitness to resume her work as a seafarer.

On appeal, the NLRC reversed and set aside the Labor Arbiter's decision. In its Decision dated March 8, 2017, the NLRC pointed out that the ruling in *Maersk Filipinas Crewing, Inc./Maersk Services Ltd., et al. v Mesina*,[15] wherein it was ruled that referral to a third doctor opinion is merely directory and not mandatory, was superseded by the ruling in *INC Shipmanagement Incorporated (now INC Navigation Co. Philippines, Inc.), et al. v. Rosales*,[16] and reiterated in the subsequent case of *Silagan v. Southfield Agencies, Inc., et al.*,[17] which described the nature of the referral to a third party doctor opinion as a mandatory procedure. It, thus, ruled that the failure of Briones to comply with the mandatory procedure makes her complaint susceptible to dismissal for being premature. In contrast to the Labor Arbiter's findings, the NLRC upheld the company-designated physician's findings as against Dr. Magtira's unfit to work certification. It took note of the medical treatment provided by the company-designated physician after her repatriation on September 24, 2015, and the MRI and series of physical therapy sessions undertaken by Briones until

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[15] 710 Phil. 531, 545 (2013).

[16] 744 Phil. 774 (2014).

[17] 793 Phil. 751, 764 (2016).

December 1, 2015, when her *Lumbago* was declared to have been resolved. This was after the result of the MRI was found to be unremarkable and the physical exercises required from Briones were done without complaints from her. Thus, the NLRC concluded that Dr. Magtira's medical opinion, which was arrived at only after a single consultation, cannot override the assessment of the company-designated physician who had treated and monitored Briones' condition for months.

Aggrieved, Briones elevated the Decision of the NLRC, dated March 8, 2017, to the CA via Petition for *Certiorari* under Rule 65 of the Rules of Court. In a Decision[18] dated January 12, 2018, the CA granted the petition and nullified the decision of the NLRC, except with respect to the award of sickness allowance in favor of Briones. The CA held that while the seafarer's non-compliance with the conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician, the seafarer's compliance with such procedure, however, presupposes that the company-designated physician came up with an assessment of one's fitness or unfitness to work before the expiration of the 120-day or 240-day periods and that the certification must be a definite assessment of the seafarer's fitness to work or permanent disability.[19] According to the CA, the Medical Report dated December 1, 2015 issued by Dr. Celino, the company-designated physician, failed to make a categorical or definite assessment/declaration on Briones' fitness to work for sea duty, or a disability rating.[20] The appellate court noted that the Medical Report dated March 10, 2016 issued by Briones' personal physician, Dr. Magtira, confirmed that Briones was continuously suffering from back pain. It considered Dr. Magtira's detailed explanation on Briones' injury and result of the MRI of the Thoraco-Lumbar Spine (Non-Contrast) dated February 4, 2016. Thus, as between the findings of Dr. Celino and Dr. Magtira, the CA accorded

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[18] *Supra* note 1.

[19] *Rollo*, p. 49.

[20] *Id.* at 46.

more weight to the assessment of the latter, who opined that Briones does not have the physical capacity to return to the type of work she was performing at the time of her injury. Accordingly, the CA granted the claims of Briones for payment of total and permanent disability benefits; sickness allowance and attorney's fees, but denied the award of actual and exemplary damages for lack of sufficient factual and legal basis.

After their motion for reconsideration was denied by the CA, petitioner filed the present petition raising this lone issue:

DID THE COURT OF APPEALS COMMIT SERIOUS, GRAVE AND PATENT ERRORS, AS WELL AS GRAVE ABUSE OF DISCRETION, IN REVERSING THE DECISION OF THE NLRC, THEREBY AWARDING RESPONDENT FULL DISABILITY BENEFITS AND OTHER MONEY CLAIMS DESPITE CLEAR NON-ENTITLEMENT THERETO, CONTRARY TO THE RELEVANT LAW, RULE AND JURISPRUDENCE?[21]

Petitioners assert that the CA's decision militates against the provisions of the POEA-SEC and recent jurisprudence on maritime compensation cases.[22] It contends that the failure of Briones to comply with the mandatory provision of the POEA-SEC on third-doctor referral made her claim for total permanent disability premature and rendered the fit-to work findings of Dr. Celino, the company-designated physician, as prevailing and uncontested. The said mandatory procedure under Section 20(A)(3) of the POEA-SEC is supposed to be an extrajudicial measure premised on the timely contest of the company-designated physician's final disability assessment through the presentation of a contrary second medical opinion before the institution of any complaint for disability benefits. It argued that unlike Dr. Magtira's medical certificate, which was only presented during the submission of position papers before the Labor Arbiter, Dr. Celino's final assessment was amply supported by diagnosis and hence, a valid and definite

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[21] *Id.* at 11-12.

[22] *Id.* at 12.

assessment of the fit-to-work condition of Briones. Petitioners, thus, conclude that Briones is not entitled to disability benefits because she breached her contractual duties under the conflict resolution provision of the POEA-SEC.[23]

Sought for comment to the present petition, Briones contends that the CA was correct in reversing the decision of the NLRC. She argued that the medical report of Dr. Celino is vague and not responsive as to her true medical condition, since it failed to categorically state her fitness to resume her duties as seafarer. Briones points out that although she was cleared from the orthopedic standpoint, the report cannot be considered as a final disability rating as she was still required to undergo fifteen (15) sessions of physical therapy and treatment. She insists that the company-designated physician's assessment on the seafarer's fitness to work or permanent disability must be definite. If the company-designated physician failed to issue a definite assessment and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. In the absence of a definite and accurate assessment by the company-designated physician, Briones claims that the provision in POEA-SEC on the appointment of a third-doctor does not apply since there was no final assessment to contest.

Additionally, Briones avers that more than five (5) months have transpired from the date of her injuries on July 17, 2015 until the time that Dr. Celino issued his medical report on December 1, 2015. While the medical treatment may go beyond 120 days and extended up to the maximum period of 240 days, such extension, however, requires a justification for the same. She alleged that there was no sufficient justification offered by the petitioners for the extension of her medical treatment.

Simply stated, the issue brought for resolution before this Court is whether Briones is entitled to payment of total permanent disability benefit despite of her failure to observe the third-doctor referral provision in the POEA-SEC, which was incorporated in the employment contract.

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[23] *Id.* at 31.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by the Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. When the findings are grounded entirely on speculations, surmises or conjectures;

2. when the inference made is manifestly mistaken, absurd or impossible;

3. when there is grave abuse of discretion;

4. when the judgment is based on a misapprehension of facts;

5. when the findings of fact are conflicting;

6. when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

7. when the findings are contrary to that of 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 of 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.[24]

As there is a divergence of findings between the Labor Arbiter and the CA, on one hand, and the NLRC, on the other, on the medical report made by the company-designated physician, Dr.

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[24] *Philippine Transmarine Carriers, Inc., et al. v. Cristino*, 755 Phil. 108, 121-122 (2015).

Celino, and medical certificate issued by Briones' personal doctor, Dr. Magtira, this Court will exercise its discretionary power of review.

After a judicious review of the records, the Court resolves to deny the petition.

The Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, also known as POEA Standard Employment Contract (POEA-SEC) provides for the procedure to be followed in case there is a divergence in medical findings between the company-designated physician and the seafarer's personal doctor. Under Section 20(A)(3) of the 2010 POEA-SEC, "[if] a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties." The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the dispute assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it.[25] This referral to a third doctor has been held by this Court to be a mandatory procedure[26] and the seafarer's non-compliance with the conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.[27]

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[25] *Hernandez v. Magsaysay Maritime Corporation, et al.*, G.R. No. 226103, January 24, 2018, 853 SCRA 104, 113-114. (Citations omitted).

[26] *INC Shipmanagement, Inc. (now INC Navigation Co. Phil., Inc.), et. al. v. Rosales*, *supra* note 16, at 787.

[27] *Philippine Hammonia Ship Agency, Inc. [now known as BSM Crew Service Centre Philippines, Inc.], et al. v. Dumagdag*, 712 Phil. 507, 521 (2013).

It should, however, be stressed that non-compliance with the third doctor referral does not automatically make the diagnosis of the company-designated physician conclusive and binding on the courts. The Court has previously held that, "if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer."[28] We also ruled in *Kestrel Shipping Co., Inc., et al. v. Munar*,[29] that, "A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent."

In the present case, both the Labor Arbiter and the CA gave more weight to the diagnosis of Dr. Magtira, who stated in his Medical Report dated March 10, 2016 that:

> **Ms. Briones** continues to complain and suffer from back pain. The pain is made worse by prolonged standing and walking. She has difficulty climbing up and down the stairs. She has lost her pre-injury capacity and is UNFIT to work back at her previous occupation. **Ms. Briones** is now permanently disabled.
>
> The intervertebral discs are cartilaginous plates surrounded by fibrous ring, which lie between the vertebral bodies and serve to cushion them. Through degeneration, wear and tear, or trauma, the fibrous tissue (annulus fibrosus) constraining the soft disc material (nucleus pulposus) may tear. These results in protrusion of the disc

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[28] *C.F. Sharp Crew Management, Inc., et al. v. Castillo*, 809 Phil. 180, 194 (2017); *Nonay v. Bahia Shipping Services, Inc., et al.*, 781 Phil. 197, 228 (2016).

[29] 702 Phil. 717, 737-738 (2013).

or even extrusion of disc material into the spinal canal or neural foramen. This has been called herniated disc, ruptured disc, herniated nucleus pulposus, or prolapsed disc.

The disc act as cushions between our vertebral bones, and as a part of walking upright and placing stress upon our backs, these discs can start to wear out. This is similar to a tire of a car. If your (sic) drive around a car long enough, the tire will begin to go bald. A degenerative disc is similar to a balding tire. Sometimes, a bald tire can become a flat tire, just as a degenerative disc can tear and become a rupture disc. A degenerative disc can cause problems in two ways then. It can cause local pain, if it occurs in the neck it can cause neck pain, and if it occurs in the back it can cause back pain. A degenerative disc can irritate an adjacent nerve causing pain to radiate into an extremity.

When the degenerative changes are minimal, one may assume that relatively severe trauma is required to cause tear. When degenerative changes in the annulus are advanced, minimal trauma such as simple forward bending and twisting may cause tear. The significance of this posterior bulge of the degenerated disc is that this is the area where the nerves run that supply the extremities. This patient has been complaining of back pain. The vast majority of patients responded well to non-surgical treatment though. Probably the most important of which is time, that is to say, that no matter what is done, most cases of acute back and neck pain slowly resolve if given enough time to get better. Active interventions include the use of medications, exercise/ therapy, and activity modifications. If a long term and more permanent result are desired however, she should refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting. Things **Ms. Briones** is expected to do as a Sea Woman.

Some restriction must be placed on **Ms. Briones**[’] work activities. This is in order to prevent the impending late sequelae of her current condition. She presently does not have the physical capacity to return to the type of work he (sic) was performing at the time of her injury. She is therefore permanently **UNFIT** in any capacity to resume her sea duties as a Sea Woman.[30] (Emphasis in the original)

On the other hand, the NLRC upheld Dr. Celino’s medical report which stated the following:

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[30] CA’s Decision dated January 12, 2018, *rollo*, pp. 55-56.

MRI of the Lumbosacral spine was unremarkable. Patient was subsequently cleared by the Orthopedic specialist. During physical therapy, she was noted to do sit ups and planking/core exercises without complaints. However, the patient still claims of low back pain (graded 5/10), subjective) during activities (*i.e.*, walking, carrying her bag) but her symptom is relieved by rest. No further work-ups or treatment is warranted. Ms. Briones was advised to continue home exercises and that pain is foreseen to improve with time. Final Impression: Lumbago, Resolved, S/P 15 Physical Therapy Sessions. The patient is cleared from the Orthopedic specialist. Ms. Briones has been discharged from post medical care as of 27 November 2015.[31]

A perusal of the Medical Report issued by Dr. Celino, the company-designated physician, would reveal that it failed to state a definite assessment of Briones' fitness or unfitness to work, or to give a disability rating of her injury. As it is, the report lacked substantiation on the medical condition of Briones concerning her fitness to return to the type of work she was performing at the time of her injury. What was clear in the medical report is that Briones has not fully recovered from her injury as she "was advised to continue home exercises and that pain is foreseen to improve with time" and that she has to undergo "15 Physical Therapy Sessions." With such statements, Dr. Celino, in effect, admits that the pain experienced by Briones is still subsisting and that it is thru the passage of time that it was expected to improve.

On the other hand, the Medical Report dated March 10, 2016 issued by Dr. Magtira gave an explanation on the nature, cause, effects, and possible treatment of the injury sustained by Briones. Unlike Dr. Celino's medical report which merely describes the MRI of the Lumbosacral spine as "unremarkable", Dr. Magtira's report on the MRI of the Thoraco-Lumbar Spine (Non-Contrast) conducted on Briones on February 4, 2016, contained the following impression: "*L4-L5: Mild bilateral neural foraminal narrowing due to disc bulge; L5-SJ: Mild bilateral neural foraminal narrowing due to disc bulge and facet hypertrophy; Facet arthrosis and ligamentum flavum hypertrophy; Mild lumbar curvature to the right may be positional versus mild*

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[31] *Id.* at 54.

lumbar dextroscoliosis; Small non-specific pelvic fluid; Small uterine myomas." Consistent with the result of the said MRI, Dr. Magtira explained that, "The significance of this posterior bulge of the degenerated disc is that this is the area where the nerves run that supply the extremities. This patient has been complaining of back pain. The vast majority of patients responded well to non-surgical treatment though. Probably the most important of which is time, that is to say, that no matter what is done, most cases of acute back and neck pain slowly resolve if given enough time to get better." He adds that, "If a long term and more permanent result are desired however, she should refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting. Things Ms. Briones is expected to do as a Sea woman."

Prescinding from the foregoing, the Court, thus, finds Dr. Magtira's assessment as exhaustive and more reflective of the medical condition of Briones especially so since both medical reports acknowledged the passage of time as a key factor in resolving the back pain experienced by Briones. A total disability does not require that the employee be completely disabled, or totally paralyzed. **What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it.** On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. **What is crucial is whether the employee who suffers from disability could still perform his work notwithstanding the disability he incurred**.[32]

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. The assailed Decision dated January 12, 2018 and the Resolution dated May 30, 2018 of the Court of Appeals in CA-G.R. SP No. 151642 are **AFFIRMED** *in toto*.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[32] *Talaroc v. Arpaphil Shipping Corporation, et al.,* 817 Phil. 598, 615 (2017), citing *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262, 274 (2011).

FIRST DIVISION

[G.R. No. 240645. January 27, 2020]

REDENTOR CATAPANG and CASIANA CATAPANG GARBIN, *petitioners, vs.* **LIPA BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; REQUISITES; WHEN ONE OF THE ELEMENTS IS WANTING, NO CONTRACT CAN BE PERFECTED. — A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. There can be no contract unless all of the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) the cause of the obligation which is established. When one of the elements is wanting, no contract can be perfected.

2. ID.; ID.; ID.; A CONTRACT IS CONSENSUAL IN NATURE AS IT IS PERFECTED UPON THE CONCURRENCE OF THE OFFER AND THE ACCEPTANCE, AND WHEN THE CONTRACTING PARTIES DO NOT AGREE AS TO THE SUBJECT MATTER OF THE CONTRACT, CONSENT IS ABSENT, MAKING THE CONTRACT NULL AND VOID. — Consent, in turn, is the acceptance by one of the offer made by the other. It is the meeting of the minds of the parties on the object and the cause which constitutes the contract. The area of agreement must extend to all points that the parties deem material or there is no consent at all. As a contract is consensual in nature, it is perfected upon the concurrence of the offer and the acceptance. The offer must be certain and the acceptance must be absolute, unconditional and without variance of any sort from the proposal. Hence, where the contracting parties do not agree as to the subject matter of the contract, consent is absent, making the contract null and void. x x x [T]he contract of loan and its accessory contract of mortgage as contained in the Promissory Note and Deed of Real Estate Mortgage were entered into without the consent of petitioner Casiana and were

absolutely simulated by respondent Lipa Bank, making the same void *ab initio*. The evidence revealed that when respondent Lipa Bank's representative asked petitioner Casiana to sign the aforesaid documents, he openly misrepresented the very substance, tenor, and purpose of these documents, taking advantage of petitioner Casiana's lack of education and failure to understand English. This establishes the failure to agree as to the subject matter of the aforesaid documents rendering the Promissory Note and Deed of Real Estate Mortgage null and void. x x x It is clear x x x that ***petitioner Casiana had no intention whatsoever to borrow any money from respondent Lipa Bank***. It was simply her understanding that petitioner Redentor had already obtained a loan from respondent Lipa Bank and that she merely was aiding her nephew by providing a "*garantiya*" to the loan by way of lending her owner's duplicate certificate of title to petitioner Redentor so that the latter could show it to respondent Lipa Bank. It was also clear to her that giving the title as "*garantiya*" was different from, and did not mean that it would be used as collateral for petitioner Redentor's loan. This, to the Court, shows that there was no meeting of the minds as to the subject matter of the supposed contracts.

3. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PRIVATE DOCUMENTS; A PRIVATE DOCUMENT IS INADMISSIBLE IF IT IS NOT AUTHENTICATED BY A COMPETENT WITNESS. — [T]he Court finds it highly erroneous that the CA took cognizance of two documents presented by Melo in his Judicial Affidavit, *i.e.*, the Disbursement Voucher and Credit Ticket dated June 30, 1999, in reaching the conclusion that petitioner Casiana received the proceeds of the loan. As these were signed together with the Promissory Note and Deed of Real Estate Mortgage on June 30, 1999, then they were, as already explained, likewise signed by petitioner Casiana without any understanding and comprehension of their tenor. Moreover, as readily admitted by Melo under oath, he had no participation and personal knowledge whatsoever as to the execution of these documents. He was not a signatory to the documents. He did not witness their execution. Nor did he testify that he is familiar with the signatures contained therein as he was not privy to the transaction. Under Section 20, Rule 132 of the Revised Rules on Evidence,

before a private document is admitted in evidence, it must be authenticated either by the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, or who after its execution, saw it and recognized the signatures, or the person to whom the parties to the instruments had previously confessed execution thereof. Therefore, with the Disbursement Voucher and Credit Ticket not having been authenticated by a competent witness, the documents are inadmissible. Hence, there is no evidence on record that proves that petitioner Casiana received any loan proceeds from respondent Lipa Bank.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; WHEN THE DOCUMENTS ARE IN A LANGUAGE NOT UNDERSTOOD BY ONE OF THE PARTIES, AND MISTAKE OR FRAUD IS ALLEGED, THE PERSON ENFORCING THE CONTRACT HAS THE BURDEN OF PROVING THAT THE TERMS OF THE DOCUMENTS ARE FULLY EXPLAINED TO THE CONTRACTING PARTY. — Article 1332 of the Civil Code states that when a contract is in a language not understood by one of the parties, and mistake or fraud is alleged, the person enforcing the contract has the burden of proving that the terms of the contract were fully explained to the contracting party x x x. Article 1332 was intended for the protection of a party to a contract who is at a disadvantage due to his illiteracy, ignorance, mental weakness or other handicap. This article contemplates a situation wherein a contract has been entered into, but the consent of one of the parties is vitiated by mistake or fraud committed by the other contracting party. x x x [S]ince it was established that the Promissory Note and Deed of Real Estate Mortgage were in a language not understood by petitioner Casiana, in accordance with Article 1332 of the Civil Code, the burden shifted to respondent Lipa Bank to prove that it was able to fully explain the terms of the documents to petitioner Casiana, and that the loan documents were not executed by mistake or through fraud. The evidence on record shows that respondent Lipa Bank was not able to satisfy this burden. As established by the testimony of respondent Lipa Bank's own representative, Alayon, the terms of the Promissory Note and Deed of Real Estate Mortgage were not explained whatsoever

to petitioner Casiana. Worse, respondent Lipa Bank misrepresented to petitioner Casiana that she was signing documents that merely provided for a "*garantiya*" of petitioner Redentor's loan.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE EVALUATION OF TESTIMONIAL EVIDENCE AND THE CONDITION OF THE WITNESSES BY THE TRIAL COURT IS ACCORDED GREAT RESPECT BECAUSE IT IS IN A BEST POSITION TO OBSERVE FIRST-HAND THE DEMEANOR OF THE WITNESSES. — [T]he Court concurs with the factual finding of the RTC that petitioner Casiana is not capable of understanding English and that she did not understand the words in the Promissory Note and Deed of Real Estate Mortgage as they were in the English language. The Court finds the RTC's factual finding supported by the evidence on record. x x x It must be stressed that, as a general rule, the evaluation of testimonial evidence and the condition of the witnesses by the trial courts is accorded great respect precisely because it is in the best position to observe first-hand the demeanor of the witnesses, a matter which is important in determining whether what has been testified to may be taken to be the truth or falsehood.

6. MERCANTILE LAW; CORPORATION LAW; BANKING INSTITUTIONS; THE BANKING INDUSTRY IS ONE IMPRESSED WITH GREAT PUBLIC INTEREST AND THE LAW ALLOWS THE GRANT OF EXEMPLARY DAMAGES BY WAY OF EXAMPLE FOR THE PUBLIC GOOD WHEN BANKS TAKE ADVANTAGE OF THE FAITH AND TRUST BESTOWED UPON THEM. — Aside from restoring the RTC's award of moral damages and attorney's fees, the Court likewise awards *exemplary damages* in favor of petitioner Casiana. The banking industry is one impressed with great public interest as it affects economies and plays a significant role in businesses and commerce. Hence, "[t]he public reposes its faith and confidence upon banks, such that 'even the humble wage-earner has not hesitated to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him.'" This is the reason why the fiduciary nature of the banks' functions is well-entrenched in jurisprudence. "The law allows the grant of exemplary damages by way of example for the public good.

The public relies on the banks' sworn profession of diligence and meticulousness in giving irreproachable service. The level of meticulousness must be maintained at all times by the banking sector." In the instant case, respondent Lipa Bank took advantage of the faith and trust bestowed upon it as a banking institution and acted without the level of professionalism, meticulousness, good faith, trustworthiness, and fidelity to the public expected from every banking institution. Therefore, in light of recent jurisprudence, the Court finds that exemplary and moral damages in the amount of ₱100,000.00 each should also be awarded in favor of petitioner Casiana.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Tolentino Corvera Macasaet & Reig for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court by petitioner Redentor Catapang (petitioner Redentor) and his aunt, petitioner Casiana Catapang Garbin (petitioner Casiana), assailing the Decision[2] dated October 25, 2017 (assailed Decision) and Resolution[3] dated July 10, 2018 (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CV No. 99885.

The Facts and Antecedent Proceedings

As culled from the CA's recital of the facts and the records of the instant case, the essential facts and antecedent proceedings are as follows:

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[1] *Rollo*, pp. 12-32.

[2] *Id.* at 34-49. Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Magdangal M. De Leon and Franchito N. Diamante, concurring.

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

Petitioner Redentor and his aunt, petitioner Casiana, alleged that the former's parents, the Spouses Alejandro and Rosalinda Catapang (Sps. Catapang), obtained a loan from respondent Lipa Bank. The loan was secured by a Deed of Real Estate Mortgage over the Sps. Catapang's property located at Barrio Namuco, Rosario, Batangas, covered by Transfer Certificate of Title (TCT) No. T-50140.[4]

As the Sps. Catapang failed to pay their loan obligation, the mortgage was foreclosed. The Sps. Catapang also failed to exercise their right of redemption. Thereafter, in February 1999, the aforesaid property was consolidated in the name of respondent Lipa Bank and a new title, *i.e.*, TCT No. 102308, was issued in its favor.[5]

Subsequently, the Sps. Catapang, who were allowed by respondent Lipa Bank to stay in the property, offered to repurchase the property. However, respondent Lipa Bank refused to negotiate with them. Instead, in June 1999, respondent Lipa Bank offered to sell the property to petitioner Redentor, who respondent Lipa Bank perceived to be in a better financial position, for the amount of ₱1,500,000.00. Respondent Lipa Bank then executed a Sales Contract[6] dated June 30, 1999 with petitioner Redentor, which provided that a downpayment of ₱400,000.00 should be paid by petitioner Redentor upon the signing and execution of the Sales Contract.

However, out of the required ₱400,000.00 downpayment, only the amount of ₱200,000.00 was paid by petitioner Redentor. In order to secure the complete amount of downpayment, upon the advice of respondent Lipa Bank's loan division head, Mr. Damian, petitioner Redentor supposedly secured a loan of ₱270,000.00 with respondent Lipa Bank. As collateral for the said loan, petitioner Redentor presented and submitted to respondent Lipa Bank the owner's duplicate copy of a TCT

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[4] *Id.* at 84.

[5] *Id.* at 14, 35.

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

covering a certain parcel of land registered in the name of his aunts Gregoria Catapang and petitioner Casiana,[7] *i.e.*, TCT No. T-52886[8] (the subject property).

Allegedly, without petitioner Redentor's knowledge and consent, respondent Lipa Bank successfully convinced petitioner Casiana to sign a Promissory Note[9] dated June 30, 1999 for a ₱270,000.00 loan and a Deed of Real Estate Mortgage[10] dated August 6, 1999 over the subject property for ₱1,440,000.00.[11]

Petitioners Redentor and Casiana alleged that the execution of the aforesaid Promissory Note and Deed of Real Estate Mortgage was tainted with fraud, undue influence, and trickery, considering that petitioner Casiana was allegedly not a borrower of respondent Lipa Bank and that she has never been a party to the Sales Contract. Petitioner Casiana also alleged that she did not receive any proceeds from the ₱270,000.00 loan. In short, petitioners Redentor and Casiana allege that the Promissory Note and Deed of Real Estate Mortgage executed by the latter supposedly in relation to the Sales Contract were procured with fraud as petitioner Casiana had nothing to do with the repurchase of the subject property.[12]

Hence, petitioners Redentor and Casiana filed a Complaint[13] dated February 14, 2006 before the Regional Trial Court of Rosario, Batangas, Branch 87 (RTC), praying that the Promissory Note and the Deed of Real Estate Mortgage be declared null and void. Petitioners Redentor and Casiana also prayed that the Sales Contract be declared null and void, arguing that it was dependent on the supposedly null and void Promissory

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[7] *Id.* at 35-36.

[8] *Id.* at 87-88.

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

[10] *Id.* at 89.

[11] *Id.* at 36.

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

[13] *Id.* at 76-83.

Note and Deed of Real Estate Mortgage. Further, petitioners Redentor and Casiana also asked for the refund of the amount of ₱200,000.00 paid by petitioner Redentor and for the return by respondent Lipa Bank of the owner's duplicate copy of TCT No. T-52886. The case was docketed as Civil Case No. 06-010.

On the part of respondent Lipa Bank, it alleged in its Answer with Counterclaim[14] dated May 18, 2006 that petitioner Redentor voluntarily entered into a Sales Contract with the former on June 30, 1999, with petitioner Redentor's father Alejandro even witnessing the execution of the said Contract. Petitioner Redentor was able to pay ₱200,000.00 of the ₱400,000.00 downpayment that was agreed upon by the parties. Respondent Lipa Bank then claimed that it was petitioner Redentor himself who wanted to secure a loan in the amount of ₱270,000.00 in order to fully pay the downpayment. According to respondent Lipa Bank, it was petitioner Redentor, together with petitioner Casiana, who voluntarily and willingly submitted to respondent Lipa Bank the owner's duplicate copy of TCT No. T-52886 so that the subject property could be used as collateral to secure the loan.

With respect to the Promissory Note for ₱270,000.00 and Deed of Real Estate Mortgage, respondent Lipa Bank, through its lone witness, respondent Lipa Bank's Vice President, Johnson Melo (Melo), claimed that such transactions were entered into by petitioner Casiana as transactions separate from the Sales Contract.[15] According to respondent Lipa Bank, petitioner Casiana issued the Promissory Note in the amount of ₱270,000.00, as secured by the Deed of Real Estate Mortgage, not in relation to the Sales Contract, but for the purchase of machineries, preventive maintenance of rice mill equipment, and for a motor vehicle repair shop, as indicated on the face of the Promissory Note. Also, respondent Lipa Bank alleged that petitioner Casiana received the net proceeds of her personal loan with respondent

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[14] *Id.* at 96-106.

[15] *Id.* at 164.

Lipa Bank, as evidenced by a Disbursement Voucher and Credit Ticket.[16]

The Ruling of the RTC

After the trial, the RTC issued its Decision[17] dated September 9, 2011, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered:
>
> (a) Declaring the Sales Contract entered into by plaintiff Redentor Catapang with defendant bank as valid and effective;
>
> (b) Declaring the Promissory Note and Real Estate Mortgage signed by plaintiff Casiana Catapang null and void and ineffective;
>
> (c) Ordering the defendant to release and surrender TCT No. T-52886 in favor of plaintiff Casiana Catapang;
>
> (d) Ordering defendant to pay plaintiff Casiana Catapang the amount of ₱30,000.00 as and by way of moral damages and the amount of ₱20,000.00 as and by way of attorney's fees.
>
> SO ORDERED.[18]

The RTC held that the Sales Contract entered into by petitioner Redentor and respondent Lipa Bank is valid and effective, and thus denied petitioner Redentor's prayer for the refund of the ₱200,000.00 downpayment paid to respondent Lipa Bank.[19]

As to the Promissory Note and Deed of Real Estate Mortgage, the RTC held them to be null and void for having been procured with fraud. The RTC centered on the inability of petitioner Casiana to comprehend the English language. Hence, the RTC ordered respondent Lipa Bank to release and surrender TCT No. T-52886 to petitioner Casiana.[20]

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[16] *Id.* at 164-165.

[17] *Id.* at 158-170.

[18] *Id.* at 170.

[19] *Id.* at 165-167.

[20] *Id.* at 167-169.

Lastly, respondent Lipa Bank was ordered to pay petitioner Casiana the amount of ₱30,000.00 as moral damages and ₱20,000.00 as attorney's fees.[21]

Respondent Lipa Bank filed a Motion for Partial Reconsideration[22] dated October 10, 2011, which was denied by the RTC in its Order[23] dated February 29, 2012.

Respondent Lipa Bank then appealed before the CA, and docketed therein as CA- G.R. CV No. 99885.

The Ruling of the CA

In its assailed Decision,[24] the CA partially granted the appeal of respondent Lipa Bank. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the *Appeal* is **PARTIALLY GRANTED**. The *Decision* dated September 9, 2011 of the RTC, Branch 87, Rosario, Batangas in Civil Case No. 06-010 is **MODIFIED** to the effect that the Promissory Note dated June 30, 1999 and the Deed of Real Estate Mortgage dated August 6, 1999 signed by plaintiff-appellee Casiana Catapang are declared valid and effective. Accordingly, there is no need for Lipa Bank to release and surrender TCT No. T-52886 to plaintiff-appellee Casiana Catapang. Also, the awards of moral damages and attorney's fees in favor of plaintiff-appellee Casiana Catapang are deleted.
>
> **SO ORDERED**.[25]

In partially granting the appeal, the CA was not convinced that petitioner Casiana failed to comprehend and understand the circumstances surrounding and the meaning behind the documents she executed. The CA likewise held that the documents presented by respondent Lipa Bank, *i.e.*, Disbursement

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[21] *Id.* at 170.

[22] *Id.* at 171-176-C.

[23] Records, p. 297.

[24] *Supra* note 2.

[25] *Rollo*, p. 48; emphasis and italics in the original.

Voucher and Credit Ticket dated June 30, 1999, was sufficient proof that petitioner Casiana actually received the proceeds of the loan with respondent Lipa Bank. Lastly, the CA deleted the award for moral damages and attorney's fees in favor of petitioner Casiana.[26]

Petitioners Redentor and Casiana filed their Motion for Reconsideration[27] dated November 17, 2017, which was denied by the CA in its assailed Resolution[28] dated July 10, 2018.

Hence, the instant Petition before the Court.

On February 28, 2019, respondent Lipa Bank filed its Comment/Opposition,[29] reiterating its position that no fraud attended the execution of the Promissory Note and Deed of Real Estate Mortgage.

On June 10, 2019, petitioners Redentor and Casiana filed their Reply.[30]

Issue

Stripped to its core, the critical issue to be resolved by the Court is whether the Promissory Note and Deed of Real Estate Mortgage entered into between petitioner Casiana and respondent Lipa Bank are valid and binding contracts.

The Court's Ruling

The Court finds the instant Petition impressed with merit.

The absence of a meeting of the minds makes a contract null and void.

A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something

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[26] *Id.* at 41-48.

[27] *Id.* at 53-61.

[28] *Supra* note 3.

[29] *Rollo*, pp. 242-256.

[30] *Id.* at 265-277.

or to render some service.[31] There can be no contract unless all of the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) the cause of the obligation which is established.[32] When one of the elements is wanting, no contract can be perfected.[33]

Consent, in turn, is the acceptance by one of the offer made by the other. It is the meeting of the minds of the parties on the object and the cause which constitutes the contract. The area of agreement must extend to all points that the parties deem material or there is no consent at all.[34] As a contract is consensual in nature, it is perfected upon the concurrence of the offer and the acceptance. The offer must be certain and the acceptance must be absolute, unconditional and without variance of any sort from the proposal.[35]

Hence, where the contracting parties do not agree as to the subject matter of the contract, consent is absent, making the contract null and void.

In *Go v. Intermediate Appellate Court (First Civil Cases Div.)*,[36] when the contracting parties were made to sign a compromise agreement not comprehending whatsoever that they were actually relinquishing their rights over their homestead, the Court held that "[i]nnocuous-looking documents [that] were foisted on the simple-minded homesteaders on the pretext that these were 'formalities'"[37] were null and void as there was no meeting of the minds.

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[31] CIVIL CODE, Art. 1305.

[32] CIVIL CODE, Art. 1318.

[33] *Sps. Limso v. Philippine National Bank, et al.*, 779 Phil. 287, 372 (2016); citation omitted.

[34] *Leonardo v. Court of Appeals*, 481 Phil. 520, 530 (2004); citation omitted.

[35] *Uy v. Hon. Evangelista*, 413 Phil. 403, 415 (2001); citation omitted.

[36] 262 Phil. 91 (1990).

[37] *Id.* at 97; citation omitted.

There was no meeting of the minds as to the Promissory Note and Deed of Real Estate Mortgage.

Applying the foregoing to the instant case, the contract of loan and its accessory contract of mortgage as contained in the Promissory Note and Deed of Real Estate Mortgage were entered into without the consent of petitioner Casiana and were absolutely simulated by respondent Lipa Bank, making the same void *ab initio*. The evidence revealed that when respondent Lipa Bank's representative asked petitioner Casiana to sign the aforesaid documents, he openly misrepresented the very substance, tenor, and purpose of these documents, taking advantage of petitioner Casiana's lack of education and failure to understand English.[38] This establishes the failure to agree as to the subject matter of the aforesaid documents rendering the Promissory Note and Deed of Real Estate Mortgage null and void.

Respondent Lipa Bank contends that petitioner Casiana freely, willfully, and knowingly borrowed ₱270,000.00 from respondent Lipa Bank, as evidenced by the Promissory Note dated June 30, 1999, which she signed on the same day. As well, respondent Lipa Bank insists that petitioner Casiana also freely, willingly and knowingly mortgaged the subject property to secure the aforesaid loan obligation, as evidenced by the Deed of Real Estate Mortgage dated August 6, 1999.

However, as already intimated, the evidence on record tells a vastly different story: Petitioner Casiana had no intention at all to borrow ₱270,000.00 or mortgage the subject property.

During trial, petitioner Casiana testified that she was only a Grade 6 graduate and not capable of understanding English. She testified, in Tagalog, that she was approached by petitioner Redentor about a loan procured by him with respondent Lipa Bank. According to her testimony, petitioner Redentor told her that he obtained a loan from respondent Lipa Bank in order to purchase the property previously owned by his parents, the Sps.

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[38] *Rollo*, p. 163.

Catapang, and that he needed to borrow petitioner Casiana's owner's duplicate copy of TCT No. T-52886 because he was advised by respondent Lipa Bank to borrow the owner's duplicate certificate of title and submit the same to the bank so that the loan would push through:

Q Do you know defendant Lipa Bank?

A Yes, sir.

Q Why do you know Lipa Bank?

A My nephew Redentor Catapang obtained a loan from that bank, sir.

Q How did you know that your nephew Redentor Catapang obtained a loan from the Lipa Bank?

A He told me, sir.

Q When did you come to know that he obtained a loan from the Lipa Bank?

A When he came to me, sir.

Q Why did he come to you?

A He told me that he was instructed by the bank to go to me to borrow the title, sir.

x x x x x x x x x

Q What did you do with the title of the property?

A My nephew told me that the bank instructed him to get the title to security (*sic*) in the loan, sir.

Q What did he tell you?

A I asked him what he will do with the title, sir.

Q Did you give him the title?

A Yes, sir.[39]

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[39] TSN, May 20, 2008, pp. 10-12. Petitioner Casiana testified through a Court Interpreter.

Petitioner Casiana reiterated the same testimony on cross-examination:

Q Did you ask Redentor why he is borrowing your title?

A Yes, ma'am, I ask (*sic*) him.

Q And what did Redentor tell you?

A He told me that the bank told him that the title can served (*sic*) as a guarantee to his loan to which (*sic*) seems to be foreclosed.

Q And you gave this title to him?

A Yes, ma'am. I gave it to Redentor because of his request.

x x x x x x x x x

[Q] And you trusted Redentor Catapang with the title of the property?

[A] Yes, ma'am.

[Q] That he approached you and borrowed you (*sic*) a title in order, according to you is in order to guarantee his loan of Php200,000.00 at that time?

[A] I do not know how much is the indebtedness to the bank but what he told me is that he has already a deposit in the amount of Php200,000.00 and he will use the property to secure another Php200,000.00 to make it Php400,000.00 as a downpayment to the bank.

[Q] Did he tell you what for is he going to make a downpayment of Php400,000.00?

[A] So that the property should not be foreclosed by the bank?[40]

During petitioner Casiana's cross-examination, it became evident that she failed to fully comprehend and understand the reason behind lending her owner's duplicate TCT to petitioner Redentor. All she understood was that, in lending the title to petitioner Redentor, she would merely provide a "*garantiya*" as regards petitioner Redentor's loan with respondent Lipa Bank,

[40] TSN, August 4, 2008, pp. 7, 14-15.

and not a collateral. Petitioner Casiana did not really fully grasp the import of this "*garantiya*":

> ATTY. BERNARDO
>
> Madam witness, you kept mentioning that Redentor told you that this title will be used as guarantee for a loan. Did you understand what it meant by that your property will be used as a guarantee? Do you understand what a guarantee is?
>
> x x x x x x x x x
>
> WITNESS
>
> **I asked him what he will do with the title and he told me that we will not secure a loan. It will be just a guarantee for a loan of Php200,000.00.**
>
> ATTY. BERNARDO
>
> Did Redentor explain how your property will be used as a guarantee?
>
> WITNESS
>
> ***All that he said is that it will be used as a guarantee but it will not be utilized as collateral for a loan***.
>
> ATTY. BERNARDO
>
> Aside from that, he did not explain how the property will be used as a guarantee[?]
>
> WITNESS
>
> None, ma'am.[41]

Petitioner Casiana's testimony is further corroborated by the testimony of Rosalinda Catapang, the mother of petitioner Redentor and former co-owner of the property sought to be purchased by the latter, who testified that it was everyone's understanding that petitioner Redentor obtained a loan from respondent Lipa Bank in order to pay the downpayment and that petitioner Casiana's owner's duplicate copy of TCT No. T-52886 was borrowed and used by petitioner Redentor merely to "guarantee" his loan amounting to ₱270,000.00.[42]

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[41] *Id.* at 13-14; emphasis, italics and underscoring supplied.

[42] *Rollo*, p. 161.

It is clear from the foregoing that ***petitioner Casiana had no intention whatsoever to borrow any money from respondent Lipa Bank***. It was simply her understanding that petitioner Redentor had already obtained a loan from respondent Lipa Bank and that she merely was aiding her nephew by providing a "*garantiya*" to the loan by way of lending her owner's duplicate certificate of title to petitioner Redentor so that the latter could show it to respondent Lipa Bank. It was also clear to her that giving the title as "*garantiya*" was different from, and did not mean that it would be used as collateral for petitioner Redentor's loan. This, to the Court, shows that there was no meeting of the minds as to the subject matter of the supposed contracts.

Petitioner Casiana also testified that a week after she lent the owner's duplicate copy of TCT No. T-52886 to petitioner Redentor, respondent Lipa Bank's representative, Mr. Nestor Alayon (Alayon), went to her residence and asked her to sign documents that she testified she had failed to read or understand. She signed the documents on the basis of Alayon's representations that they merely ensured that there will be a "*garantiya sa utang*." Completely contrary to her understanding of what "*garantiya*" meant, she signed the documents:

Q After the title or the original torrens title registered in your name and that of your sister Gregoria [Catapang] was handed by you to your nephew Redentor Catapang, what [happened next]?

A A week after, [a] representative of the bank named Nestor Alayon went to our place, sir.

Q In what place did he go?

A In my house in Mayuro, Rosario, Batangas, sir.

Q When he arrived thereat, what did he do?

A He has with him a document for signing, sir.

COURT

Q Did he give to you the documents or it was only shown to you?

A It was only shown to me, Your Honor.

ATTY. MARQUEZ

Q What is your highest educational attainment?

A Grade VI, sir.

Q Do you know the nature or the kind of the document which are required of you by Nestor Alayon to be signed?

A I asked Nestor Alayon, sir.

Q What did you ask of him?

A I asked him what is that document that you are requiring me to sign?

Q What was his answer?

A You sign this and it will serve as mere guarantee for a loan (garantiya sa utang).

Q Did you ask him further about what is this "garantiya"?

A It is a guarantee for the loan of my nephew in the amount of Two Hundred Thousand (Php 200,000.00) Pesos, sir.

Q And then, when this matter was explained to you, what did you do?

A I affixed my signature, sir.

Q Did you read what you have signed?

A It was written in English, sir.

Q What would you like to impress this Honorable Court that because it was written in English, do you know how to read English?

A I can read English but I cannot understand, sir

Q Did you read those documents required of you to be signed?

A I did not read it anymore, sir.[43]

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[43] TSN, May 20, 2008, pp. 12-15; emphasis supplied.

Petitioner Casiana reiterated her testimony on cross-examination, stressing that she understood the documents she signed as mere "*garantiya*" of petitioner Redentor's loan and that she did not read or understand these documents as they were in English:

ATTY. BERNARDO

> Madam witness, you mentioned one Mr. Nelson Alayon, a Lipa Bank representative, go to your house to have document (*sic*) signed. Do you recall what these documents are?

WITNESS

> **Yes, ma'am. What I know is, it is a guarantee.**

ATTY. BERNARDO

> Did you look at the documents that he gave to you for signing?

WITNESS

> **I saw it but considering I do not know English, I did not read it nor I did not understand it. All that he say is (*sic*) that it is merely a guarantee.**[44]

With her understanding of what "*garantiya*" meant, petitioner Casiana testified that she had absolutely no intention whatsoever to obtain any loan from respondent Lipa Bank:

WITNESS

> **I do not know about the transaction** [referring to her loan in the amount of ₱270,000.00 with respondent Lipa Bank] **and I have no loan whatsoever**.[45]

Notably, petitioner Casiana's clear misunderstanding of the Promissory Note and its adjunct Deed of Real Estate Mortgage is corroborated, substantiated, and confirmed by *the testimony of Alayon himself, the bank collector of respondent Lipa Bank, who testified as a witness for petitioner Casiana.*

Alayon testified that he was instructed by Mr. Damian, the head of the loans division of respondent Lipa Bank, to proceed

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[44] TSN, August 4, 2008, pp. 19-20; emphasis supplied.

[45] *Id.* at 19; emphasis supplied.

to the residence of petitioner Casiana to make her sign the Promissory Note and the Deed of Real Estate Mortgage. According to Alayon, when he presented these documents to petitioner Casiana, the latter did not know why she was being asked to sign the documents. Thus, petitioner Casiana asked Alayon what these documents were and the purpose of signing the same.

Following the direct instructions of Mr. Damian, Alayon told petitioner Casiana that these documents were for the purpose of a mere "*garantiya*":[46]

Q: So when you handed the envelope to her, did Casiana pulled (*sic*) the documents herself?

A: Yes, ma'am.

Q: Did she ask you what the envelope contained?

A: Yes, ma'am.

Q: And what did you tell her?

A: I told her that it was being sent by Mr. Damian for her to sign.

Q: Did you see Casiana look or try to read all the documents that was handed to her?

A: She did not look at it, she only asked me what is that (*sic*) documents were?

Q: After she asked you what the documents where (*sic*), did she ask any further questions?

A: *I told her that it was sent to by Mr. Damian for her signature for guarantee*.

Q: So, I (*sic*) she knows that it was for a guarantee?

A: It was instructed to me by Mr. Damian.[47]

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[46] *Rollo*, p. 163.

[47] TSN, May 11, 2009, pp. 8-10; emphasis, italics and underscoring supplied.

Hence, believing that Alayon's representations were in line with her understanding of what "*garantiya*" meant, she signed the Promissory Note and Deed of Real Estate Mortgage *not comprehending* that these documents showed that it was she who was the borrower of ₱270,000.00 and that the subject property was to be the collateral for that loan.

The foregoing testimony of Alayon corroborates the testimony of petitioner Casiana and, more importantly, completely belies the very terms of the Promissory Note which, on its face, states that the purpose of the loan is for the "[p]urchase of machineries and preventive maintenance of rice mill equipment and [motor] vehicle repair shop."[48] Indeed, as testified by petitioner Casiana, which was corroborated by Rosalinda Catapang, the former has no business. She is a plain housewife[49] and never engaged in the operation or management of a rice mill.[50]

In fine, the Court finds that respondent Lipa Bank was not able to controvert the positive testimonies of petitioners Redentor and Casiana's witnesses, which clearly substantiate the fact that petitioner Casiana, being only a Grade 6 graduate, did not understand English and was unable to read and comprehend the tenor of the Promissory Note and Deed of Real Estate Mortgage which she signed — documents which were opposite to her understanding of why she lent to petitioner Redentor her owner's duplicate copy of the subject property.

As important, the very fact that respondent Lipa Bank took the posture that the Promissory Note and the Deed of Real Estate Mortgage were proof that it was petitioner Casiana herself who had borrowed money for a business that did not exist tells the

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[48] *Rollo*, p. 88-A.

[49] TSN, April 8, 2008, p. 30.

[50] TSN, May 20, 2008, p. 18. This was not sufficiently refuted by respondent Lipa Bank. According to Melo, respondent Lipa Bank's lone witness, his sole basis for finding that petitioner Casiana is supposedly not a mere housewife and that she is engaged in farming, is the bare fact that she signed the Promissory Note. TSN, February 17, 2010, p. 32.

Court that it unduly took advantage of petitioner Casiana's poor education.

This finding is not diminished whatsoever by the testimony of respondent Lipa Bank's Vice President Melo, whose testimony never refuted the testimony of Alayon. Moreover, Melo's testimony was purely *hearsay*.

On direct examination, Melo admitted that during the time of the subject transaction, he was not yet Vice President of respondent Lipa Bank and that he was the head of Human Resource Management.[51] Melo also admitted that he was not fully aware as to petitioner Casiana's transactions with respondent Lipa Bank because "during that time I was not yet on that transaction, sir"[52] and that "I cannot give you an information because I was not yet there when the loan was granted."[53]

In this regard, the Court finds it highly erroneous that the CA took cognizance of two documents presented by Melo in his Judicial Affidavit, *i.e.*, the Disbursement Voucher and Credit Ticket dated June 30, 1999, in reaching the conclusion that petitioner Casiana received the proceeds of the loan. As these were signed together with the Promissory Note and Deed of Real Estate Mortgage on June 30, 1999, then they were, as already explained, likewise signed by petitioner Casiana without any understanding and comprehension of their tenor.

Moreover, as readily admitted by Melo under oath, he had no participation and personal knowledge whatsoever as to the execution of these documents. He was not a signatory to the documents. He did not witness their execution. Nor did he testify that he is familiar with the signatures contained therein as he was not privy to the transaction. Under Section 20, Rule 132 of the Revised Rules on Evidence, before a private document is admitted in evidence, it must be authenticated either by the

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[51] TSN, February 17, 2010, p. 20.

[52] *Id.* at 25.

[53] *Id.* at 33.

person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, or who after its execution, saw it and recognized the signatures, or the person to whom the parties to the instruments had previously confessed execution thereof.[54] Therefore, with the Disbursement Voucher and Credit Ticket not having been authenticated by a competent witness, the documents are inadmissible. Hence, there is no evidence on record that proves that petitioner Casiana received any loan proceeds from respondent Lipa Bank.

Interestingly, while respondent Lipa Bank vigorously asserts that the loan transaction of petitioner Casiana is legitimate and that such transaction had nothing to do with petitioner Redentor and his family's quest to repurchase the Sps. Catapang's former property, in the same breath, it expressed in its pleadings that it was "Alejandro Catapang, through his son plaintiff Redentor Catapang, who had all the motivations to induce and influence his own sister plaintiff Casiana Catapang to again extend accommodation to him by allowing her interest in the subject property to be used as collateral security."[55] This is an admission on the part of respondent Lipa Bank that petitioner Casiana was *induced and influenced* in executing the Promissory Note and Deed of Real Estate Mortgage.

All in all, respondent Lipa Bank's assertion that the loan obligation entered into by petitioner Casiana is above-board and that the latter received the proceeds of the loan has *no basis in evidence*.

Under Article 1332 of the Civil Code, respondent Lipa Bank has the burden of proving that the terms of the loan documents were fully explained to petitioner Casiana.

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[54] *Cercado-Siga, et al. v. Cercado, Jr., et al.*, 755 Phil. 583, 593 (2015); citations omitted.

[55] *Rollo*, p. 103.

Article 1332 of the Civil Code states that when a contract is in a language not understood by one of the parties, and mistake or fraud is alleged, the person enforcing the contract has the burden of proving that the terms of the contract were fully explained to the contracting party:

> ART. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.

Article 1332 was intended for the protection of a party to a contract who is at a disadvantage due to his illiteracy, ignorance, mental weakness or other handicap. This article contemplates a situation wherein a contract has been entered into, but the consent of one of the parties is vitiated by mistake or fraud committed by the other contracting party.[56]

As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, Article 1332, which is a new provision taken from American law, is justified by the Code Commission by the fact that in this country, there is a fairly large number of illiterates and documents are usually drawn up in English or Spanish. The above article shifts the burden of proof from the party alleging the mistake to the party enforcing the contract. It also alters the rule that a party is presumed to know the meaning of a document which he signed. Hence, if one of the parties is unable to read or if the contract is in a language not understood by him, and he alleges fraud or mistake, the burden of proving that the terms of the contract have been fully explained to the former is shifted to the person enforcing the contract. If this burden is not satisfied, the presumption of mistake or fraud stands unrebutted.[57]

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[56] *Hemedes v. Court of Appeals*, 374 Phil. 692, 716 (1999); citations omitted.

[57] Eduardo P. Caguioa, *Comments and Cases On Civil Law, Civil Code of The Philippines*, Revised 2nd ed., 1983, Vol. IV, pp. 526-527.

In *Lim v. Court of Appeals*,[58] a Deed of Confirmation of Extrajudicial Partition, which was written in English, was entered into by an elderly woman who does not understand English. The Court found that since it was proven that the said woman was unable to understand English, the burden was on the other contracting party to prove that the content of the said Deed was explained to the elderly woman. Because such burden was not met, the Deed was annulled.[59]

Applying the foregoing to the instant case, the Court concurs with the factual finding of the RTC that petitioner Casiana is not capable of understanding English and that she did not understand the words in the Promissory Note and Deed of Real Estate Mortgage as they were in the English language. The Court finds the RTC's factual finding supported by the evidence on record.

As testified by petitioner Casiana on direct examination, her highest educational attainment was Grade 6[60] and that she does not understand English.[61] On cross-examination, petitioner Casiana reiterated that she cannot comprehend the English language.[62] Petitioner Casiana's testimony on her failure to understand English and low educational attainment is corroborated by Rosalinda Catapang, who testified that petitioner Casiana is only an elementary graduate.[63]

In fact, during Casiana's cross-examination, the RTC itself observed the witness and unequivocally stated on record that "[s]he does not know English, whether she is college graduate or not, she does not know english."[64]

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[58] 299 Phil. 657 (1994).

[59] *Id.* at 666.

[60] TSN, May 20, 2008, p. 13.

[61] *Id.* at 14.

[62] TSN, August 4, 2008, p. 22.

[63] TSN, April 8, 2008, p. 29.

[64] TSN, August 4, 2008, p. 22; underscoring supplied.

It must be stressed that, as a general rule, the evaluation of testimonial evidence and the condition of the witnesses by the trial courts is accorded great respect precisely because it is in the best position to observe first-hand the demeanor of the witnesses, a matter which is important in determining whether what has been testified to may be taken to be the truth or falsehood.[65]

In disregarding the RTC's factual finding, the CA reasoned that because petitioner Casiana had previously mortgaged her rights and interests over the subject property in favor of her brother, Alejandro Catapang, it shows that petitioner Casiana was able to comprehend the subject loan documents. The CA's argument is bereft of logic. The fact that petitioner Casiana was able to previously mortgage the subject property does not support in any way the CA's belief that she understands the English language or that she understood "*garantiya*" correctly. It is a *non sequitur* argument.

In believing that petitioner Casiana understood English and was able to comprehend the tenor of the Deed of Real Estate Mortgage, the CA relied heavily on the notarization of the Deed of Real Estate Mortgage. Upon careful examination of the Deed of Real Estate Mortgage, however, it is clear that it was irregularly notarized.

It is not disputed that the Deed of Real Estate Mortgage, which was dated and supposedly notarized on August 6, 1999, was actually signed and executed by petitioner Casiana on June 30, 1999 at her residence. Alayon, respondent Lipa Bank's own employee, unequivocally testified that he went alone to the residence of petitioner Casiana on June 30, 1999. Aside from petitioner Casiana's husband, there were no other persons present. There were no witnesses to the signing of the documents, contrary to what is stated in the Deed of Real Estate Mortgage.[66]

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[65] *People v. Ramos*, 386 Phil. 662, 667 (2000).

[66] TSN, May 11, 2009, p. 27.

As admitted by Alayon during trial, when petitioner Casiana signed the Deed of Real Estate Mortgage, there was no notary public who witnessed the same:

Q By the way, did you have any companion when you went to the house of Casiana Catapang?

A None, sir.

Q Did you have with you a Notary Public when you went to the house of Casiana Catapang?

A None, sir.[67]

Therefore, contrary to what was stated in the jurat of the notarization portion of the Deed of Real Estate Mortgage, petitioner Casiana did not appear in person before the notary public, did not sign the document in the presence of the notary public, and did not take an oath or affirmation before the notary public. Further, as seen in the jurat of the Deed of Real Estate Mortgage itself, there was no competent evidence of petitioner Casiana's identity that was provided and indicated on the document. It is clear to the Court that the said document was first signed by petitioner Casiana on June 30, 1999 and was belatedly notarized by the notary public without the affiant's presence on August 6, 1999. Hence, contrary to the assertion of the CA, the Deed of Real Estate Mortgage does not enjoy any presumption of regularity. Indisputably, the notarization of the Deed of Real Estate Mortgage was a sham.

In plain terms, since it was established that the Promissory Note and Deed of Real Estate Mortgage were in a language not understood by petitioner Casiana, in accordance with Article 1332 of the Civil Code, the burden shifted to respondent Lipa Bank to prove that it was able to fully explain the terms of the documents to petitioner Casiana, and that the loan documents were not executed by mistake or through fraud.

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[67] TSN, February 10, 2009, p. 12.

The evidence on record shows that respondent Lipa Bank was not able to satisfy this burden. As established by the testimony of respondent Lipa Bank's own representative, Alayon, the terms of the Promissory Note and Deed of Real Estate Mortgage were not explained whatsoever to petitioner Casiana. Worse, respondent Lipa Bank misrepresented to petitioner Casiana that she was signing documents that merely provided for a "*garantiya*" of petitioner Redentor's loan.

Epilogue: The Fiduciary Duty of Banking Institutions.

In sum, the Court nullifies the Promissory Note and Deed of Real Estate Mortgage for lacking the essential requisite of consent. Hence, the reinstatement of the RTC's Decision dated September 9, 2011 is warranted. Aside from restoring the RTC's award of moral damages and attorney's fees, the Court likewise awards *exemplary damages* in favor of petitioner Casiana.

The banking industry is one impressed with great public interest as it affects economies and plays a significant role in businesses and commerce. Hence, "[t]he public reposes its faith and confidence upon banks, such that 'even the humble wage-earner has not hesitated to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him.'"[68] This is the reason why the fiduciary nature of the banks' functions is well-entrenched in jurisprudence.

"The law allows the grant of exemplary damages by way of example for the public good. The public relies on the banks' sworn profession of diligence and meticulousness in giving irreproachable service. The level of meticulousness must be maintained at all times by the banking sector."[69]

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[68] *Philippine National Bank v. Santos, et al.*, 749 Phil. 948, 961 (2014); citation omitted.

[69] *Prudential Bank v. Court of Appeals*, 384 Phil. 817, 826 (2000); citation omitted.

In the instant case, respondent Lipa Bank took advantage of the faith and trust bestowed upon it as a banking institution and acted without the level of professionalism, meticulousness, good faith, trustworthiness, and fidelity to the public expected from every banking institution. Therefore, in light of recent jurisprudence,[70] the Court finds that exemplary and moral damages in the amount of ₱100,000.00 each should also be awarded in favor of petitioner Casiana.

All monetary awards shall then earn interest at the rate of 6% *per annum* from finality of this Decision until full satisfaction in accordance with the Court's pronouncement in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*[71]

WHEREFORE, the instant Petition is **GRANTED**. The assailed Decision dated October 25, 2017 and Resolution dated July 10, 2018 rendered by the Court of Appeals in CA-G.R. CV No. 99885 are **REVERSED AND SET ASIDE**.

The Decision dated September 9, 2011 of the Regional Trial Court of Rosario, Batangas, Branch 87, is hereby **REINSTATED WITH MODIFICATIONS**. The dispositive portion of the modified Decision reads as follows:

> WHEREFORE, judgment is hereby rendered:
>
> (a) Declaring the Sales Contract entered into by plaintiff Redentor Catapang with defendant bank as valid and effective;
>
> (b) Declaring the Promissory Note and Deed of Real Estate Mortgage signed by plaintiff Casiana Catapang null and void and ineffective;
>
> (c) Ordering the defendant to release and surrender TCT No. T-52886 in favor of plaintiff Casiana Catapang;
>
> (d) Ordering defendant to pay plaintiff Casiana Catapang the amount of ₱100,000.00 as and by way of moral damages, the amount of ₱100,000.00 as and by way of exemplary

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[70] *Philippine National Bank v. Santos, et al., supra.*

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

damages, and the amount of ₱20,000.00 as and by way of attorney's fees.

All monetary awards shall then earn interest at the rate of 6% *per annum* from finality of the Decision until full satisfaction.

SO ORDERED.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 244144. January 27, 2020]

HERMA SHIPPING AND TRANSPORT CORPORATION and HERMINIO S. ESGUERRA,* *petitioners, vs.* **CALVIN JABALLA CORDERO,** *respondent.*

[G.R. No. 244210. January 27, 2020]

CALVIN JABALLA CORDERO, *petitioner, vs.* **HERMA SHIPPING and TRANSPORT CORPORATION and HERMINIO S. ESGUERRA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO RESOLVING ONLY QUESTIONS OF LAW;

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* "Hermenio S. Esquera" in some parts of the records.

QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — [T]he settled rule is that the Court's jurisdiction in a petition for review on *certiorari* is limited to resolving only questions of law. A question of law arises when doubt exists as to what the law is on a certain state of facts, while there is a question of fact when doubt arises as to the truth or falsity of the alleged facts. In this case, Cordero's petition in G.R. No. 244210 is anchored on his factual allegations that no just cause existed for HSTC and Esguerra to dismiss him validly from employment, as he continuously denies participation in the oil pilferage that transpired during the significant voyages in 2015. Considering that questions of fact are generally proscribed in a Rule 45 petition, and that although there are jurisprudentially recognized exceptions to this rule, none exists in the present case. The correctness of the labor tribunals' factual finding that he had, in fact, participated in the oil pilferage while navigating at sea, which resulted in losses for HSTC, as affirmed by the CA, is upheld.

2. **ID.; ID.; ID.; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES, IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED RESPECT AND EVEN FINALITY. —** [I]t deserves mentioning that factual findings of quasi- judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA, as in this case.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SEPARATION PAY; SHALL BE ALLOWED AS A MEASURE OF SOCIAL JUSTICE ONLY IN INSTANCES WHERE THE EMPLOYEE IS VALIDLY DISMISSED FOR CAUSES OTHER THAN SERIOUS MISCONDUCT OR THOSE REFLECTING ON HIS MORAL CHARACTER. —** In *Manila Water Company v. Del Rosario (Manila Water Company)*, the Court succinctly explained: **As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay**. x x x **In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2)**

did not reflect on the moral character of the employee. Hence, in the cases of *Philippine Long Distance Telephone Company v. NLRC* and subsequently, *Toyota Motor Phils. Corp. Workers Association v. NLRC*, the Court stressed that "separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes **other than serious misconduct or those reflecting on his moral character**." x x x Applying the foregoing principles, the Court, in the case of *Daabay v. Coca-Cola Bottlers Phils., Inc.*, disallowed the grant of separation pay to an employee who was found guilty of stealing the company's property. Likewise, in *Manila Water Company*, the Court similarly denied the award of separation pay to the employee who was found responsible for the loss of the water meters in flagrant violation of the company's policy. Indeed, equity as an exceptional extenuating circumstance does not favor, nor may it be used to reward, the indolent or the wrongdoer for that matter. This Court will not allow a party, in guise of equity, to benefit from his own fault. Considering the foregoing, the CA erred in awarding separation pay to Cordero "as a measure of compassionate justice." That Cordero had been employed with HSTC for twenty-four (24) years does not serve to mitigate his offense nor should it be considered in meting out the appropriate penalty therefor. In fact, it may be reasonably argued that the infraction that he committed against HSTC, *i.e.*, theft of invaluable company property, demonstrates the highest degree of ingratitude to an institution that has been the source of his livelihood for twenty-four (24) years, constitutive of disloyalty and betrayal of the trust and confidence reposed upon him. Indeed, HSTC's full trust and confidence in him, coupled with the fact that he occupied a position that allowed him full access to HSTC's property, aggravated the offense. x x x Further, it would appear that the offense for which Cordero was validly dismissed in 2016 was not his first offense, thereby negating the CA's finding that he had no previous derogatory record. x x x [T]he last offense that Cordero committed against HSTC constitutes Serious Misconduct, which resulted in the latter's loss of trust and confidence in him. Hence, the penalty of dismissal cannot be considered as "too harsh" under the circumstances. Having established that Cordero's employment was terminated for just cause and that he was therefore validly dismissed, as well as the fact that the infractions he committed against HSTC involve

moral turpitude and constitute Serious Misconduct, the award of separation pay in his favor is devoid of basis in fact and in law.

APPEARANCES OF COUNSEL

Salazar Enrile Defensor De Mata & Yap Law Offices for Herma Shipping and Transport Corp., *et al.*

Public Attorney's Office for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in these consolidated cases[1] are the Decision[2] dated April 20, 2018 and the Resolution[3] dated January 14, 2019 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 151737 which affirmed with modification the February 28, 2017 Decision[4] and the April 27, 2017 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000457-17 NLRC NCR Case No. 05-05780-16, directing Herma Shipping and Transport Corporation (HSTC) and Herminio S. Esguerra (Esguerra) to pay Calvin Jaballa Cordero (Cordero) separation pay equivalent to one (1) month salary for every year of service.

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[1] See petition, *rollo* (G.R. No. 244144), pp. 3-52; and petition, *rollo* (G.R. No. 244210), pp. 23-52.

[2] *Rollo* (G.R. No. 244144), pp. 60-69; and *rollo* (G.R. No. 244210), pp. 57-66. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Sesinando A. Villon and Rafael Antonio M. Santos, concurring.

[3] *Rollo* (G.R. No. 244144), pp. 71-74; and *rollo* (G.R. No. 244210), pp. 68-71.

[4] *Rollo* (G.R. No. 244144), pp. 103-121; and *rollo* (G.R. No. 244210), pp. 100-118. Penned by Commissioner Bernardino B. Julve, with Commissioner Leonard Vinz O. Ignacio and Presiding Commissioner Grace M. Venus, concurring.

[5] *Rollo* (G.R. No. 244144), pp. 123-129; and *rollo* (G.R. No. 244210), pp. 120-126.

The Facts

Cordero was employed on March 31, 1992 as Able Seaman by HSTC, a corporation engaged in the business of hauling, shipping and/or transporting oil and petroleum products in Philippine waters, on board one of its vessels. During his employment, Cordero was part of the complement of *M/Tkr Angat*, where one of his primary duties entailed being a Helmsman or a duty look-out during vessel navigation.[6]

Sometime in 2015, HSTC discovered significant losses of the oil and petroleum products transported by *M/Tkr Angat* during its past twelve (12) voyages. Consequently, HSTC conducted an investigation and sent a Notice to Explain/Show Cause Memo on January 28, 2016 to five (5) crew members, including Cordero, requiring them to submit a written explanation for allegedly committing: (*a*) violation of HSTC's Code of Discipline; (*b*) Serious Misconduct; and (*c*) Willful Breach of Trust and Confidence. Pending the investigation, the five (5) crew members were placed on preventive suspension.[7]

In his defense, Cordero denied the allegations against him and claimed that he did not see anything unusual or suspicious during the voyages, and that if there were any such case, he did not see them due to his poor eyesight.[8] After HSTC found Cordero's explanation insufficient, he was dismissed from employment through a Notice of Termination dated March 8, 2016.[9] This prompted Cordero to file a complaint[10] for illegal dismissal and payment of 13th month pay, separation pay, damages, and attorney's fees against HSTC and Esguerra, as its Chief Executive Officer,[11] before the NLRC.

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[6] See *rollo* (G.R. No. 244144), pp. 60-61.

[7] See *id.* See also *id.* at 149 and 174.

[8] See *id.* at 62.

[9] See *id.* at 237.

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

[11] *Id.* at 61.

For their part, HSTC and Esguerra contended that the significant losses in the oil and petroleum products were confirmed after using a Four Point Analysis, an accepted formula adopted in the oil shipping industry to determine oil/petroleum loss during a sea voyage. Moreover, a suspicious event was captured and recorded by *M/Tkr Angat*' s CCTV camera, showing an unknown boat navigating its way at the side of the vessel, crew members coming out of their quarters, examining/ investigating, and waving off the boat, and the blocking/covering of the CCTV camera for three (3) hours between December 26 and 27, 2015.[12] They maintained that Cordero, as *M/Tkr Angat*'s Helmsman/Watchman, was undoubtedly aware of the oil pilferage; having had a vantage point from the bridge of the vessel, he would not have missed any boat or vessel that will approach *M/Tkr Angat* from the side. Likewise, Cordero would have seen who removed the cover of the CCTV camera that was blocked. However, despite the incident, Cordero did not report any irregularity to HSTC.[13]

The Labor Arbiter Ruling

In a Decision[14] dated November 21, 2016, the Labor Arbiter (LA) found Cordero's employment to have been validly terminated and thus, dismissed the complaint for lack of merit.[15] The LA ruled that there was substantial evidence to show that Cordero participated in the oil pilferage while navigating at sea. Hence, he committed Serious Misconduct and Willful Breach of Trust and Confidence when he perpetrated a serious infraction amounting to theft of property entrusted to him.[16]

Aggrieved, Cordero appealed[17] to the NLRC.

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[12] See *id.* at 62 and 388-389.

[13] See *id.* at 389-390.

[14] *Id.* at 382-398. Penned by Labor Arbiter Nicolas B. Nicolas.

[15] *Id.* at 398.

[16] *Id.* at 395-398.

[17] See Notice of Appeal and Memorandum of Appeal dated January 13, 2017; *id.* at 399-416.

The NLRC Ruling

In a Decision[18] dated February 28, 2017, the NLRC affirmed the LA's dismissal of the complaint[19] upon a finding that Cordero was validly dismissed for a just cause. It explained that for failure to call out the irregularity during his duty and report the same to HSTC, Cordero committed a dereliction of duty that amounted to Serious Misconduct.[20] Moreover, Cordero also committed Willful Breach of Trust and Confidence, since he was considered as a fiduciary rank-and-file employee who was entrusted with the care and custody of HSTC's vessel and the oil it transported.[21] Finally, the NLRC found that HSTC and Esguerra complied with the procedural due process rule in terminating Cordero's employment, having been apprised of the charges against him and given the opportunity to be heard.[22]

Dissatisfied, Cordero moved for reconsideration,[23] which was denied in a Resolution[24] dated April 27, 2017. Hence, the matter was elevated to the CA *via* a petition for *certiorari*.[25]

The CA Ruling

In a Decision[26] dated April 20, 2018, the CA affirmed the NLRC Decision with a modification directing HSTC and Esguerra to pay Cordero separation pay equivalent to one (1)-month salary for every year of service from March 1992 until finality of judgment.[27] While the CA concurred with the labor

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[18] *Id.* at 103-121.

[19] See *id.* at 121.

[20] See *id.* at 112-113.

[21] See *id.* at 115-117.

[22] See *id.* at 118-119.

[23] See motion for reconsideration dated March 31, 2017; *id.* at 475-490.

[24] *Id.* at 123-129.

[25] Dated July 20, 2017. *Id.* at 75-100.

[26] *Id.* at 60-69.

[27] *Id.* at 68.

tribunals' finding that Cordero's employment was validly terminated for a just cause, it found that the penalty of dismissal was too harsh under the following circumstances: (*a*) Cordero worked for HSTC for twenty-four (24) years; (*b*) the incident while he was on duty was his first offense; (*c*) he had no derogatory record; and (*d*) he was already preventively suspended for the infractions he committed.[28] Accordingly, the CA remanded the case to the LA for the proper computation of separation pay.[29]

Undeterred, both parties respectively moved for reconsideration.[30] In their motion for reconsideration, HSTC and Esguerra maintained that Cordero was validly dismissed; hence, there was no basis for the CA's award of separation pay. They likewise took exception to the CA's observation that the penalty of dismissal was "too harsh" under the circumstances, considering that there was just cause for the termination of Cordero's employment.[31] On the other hand, Cordero insisted in his motion for partial reconsideration that there was no just cause for dismissal, hence, he was illegally dismissed.[32]

Both motions were denied in a Resolution[33] dated January 14, 2019; hence, this petition.

The Issue Before the Court

The present controversy revolves around the CA's award of separation pay in favor of Cordero.

In the petition docketed as **G.R. No. 244144**, HSTC and Esguerra submit that the CA erred in awarding separation pay in favor of Cordero, considering that there was just cause to

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[28] *Id.* at 64-68.

[29] *Id.* at 68.

[30] See motion for reconsideration of HSTC and Esguerra dated May 17, 2018; *rollo* (G.R. No. 244144), pp. 906-938. See motion for partial reconsideration of Cordero dated May 17, 2018; *id.* at 941-946.

[31] See *id.* at 909-923.

[32] See *id.* at 942-944.

[33] *Rollo* (G.R. No. 244144), pp. 71-74.

validly dismiss him. Further, they disagree with the CA's ruling that the penalty of dismissal was "too harsh" under the circumstances for being contrary to law and prevailing jurisprudence. On the other hand, in the petition docketed as **G.R. No. 244210**, Cordero insists that the CA erred in affirming the labor tribunals' finding that he was validly dismissed and that he is not entitled to his monetary claims.

The Court's Ruling

The petition in **G.R. No. 244144** is granted, while the petition in **G.R. No. 244210** is denied.

At the outset, the settled rule is that the Court's jurisdiction in a petition for review on *certiorari* is limited to resolving only questions of law. A question of law arises when doubt exists as to what the law is on a certain state of facts, while there is a question of fact when doubt arises as to the truth or falsity of the alleged facts.[34]

In this case, Cordero's petition in G.R. No. 244210 is anchored on his factual allegations that no just cause existed for HSTC and Esguerra to dismiss him validly from employment, as he continuously denies participation in the oil pilferage that transpired during the significant voyages in 2015.

Considering that questions of fact are generally proscribed in a Rule 45 petition, and that although there are jurisprudentially recognized exceptions[35] to this rule, none exists in the present case. The correctness of the labor tribunals' factual finding that he had, in fact, participated in the oil pilferage while navigating at sea, which resulted in losses for HSTC, as affirmed by the CA, is upheld.

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[34] *Heirs of Teresita Montoya v. National Housing Authority*, 730 Phil. 120, 132-133 (2014).

[35] In *Naguit v. San Miguel Corporation*, 761 Phil. 184, 193 (2015), the Court noted the following exceptions to the general rule that questions of fact can no longer be raised in a Rule 45 petition: "(1) the findings are grounded entirely on speculations, surmises, or conjectures; (2) the inference made is manifestly mistaken, absurd, or impossible; (3) there is a grave

In this regard, it deserves mentioning that factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA, as in this case.

Accordingly, in view of the existence of a just cause for termination, Cordero's dismissal was valid and his petition in G.R. No. 244210 is denied for lack of merit.

That being said, the Court now determines whether or not the CA correctly awarded separation pay in favor of Cordero "as a measure of compassionate justice" in the exercise of its "equity jurisdiction,"[36] which is the issue in G.R. No. 244144.

In *Manila Water Company v. Del Rosario (Manila Water Company)*,[37] the Court succinctly explained:

> **As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay**. Section 7, Rule I, Book VI of the Omnibus Rules implementing the Labor Code provides:
>
> Sec. 7. *Termination of employment by employer*. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

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abuse of discretion; (4) the judgment is based on misappreciation of facts; (5) the findings of fact are conflicting; (6) in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."

[36] *Rollo* (G.R. No. 244144), p. 73.

[37] 725 Phil. 513 (2014).

In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee.[38] (Emphases and underscoring supplied)

Hence, in the cases of *Philippine Long Distance Telephone Company v. NLRC*[39] and subsequently, *Toyota Motor Phils. Corp. Workers Association v. NLRC*,[40] the Court stressed that "separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes **other than serious misconduct or those reflecting on his moral character**." As the Court declared:

Where the reason for the valid dismissal is, for example, habitual intoxication or **an offense involving moral turpitude, like theft** or illicit sexual relations with a fellow worker, **the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice**.

A contrary rule would, as the petitioner correctly argues, have the effect of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged.

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[38] *Id.* at 521; citations omitted.

[39] 247 Phil. 641, 649 (1988); emphasis and underscoring supplied.

[40] 562 Phil. 759, 810 (2007); emphasis and underscoring supplied.

At best[,] it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[41] (Emphases and underscoring supplied)

Applying the foregoing principles, the Court, in the case of *Daabay v. Coca-Cola Bottlers Phils., Inc.*,[42] disallowed the grant of separation pay to an employee who was found guilty of stealing the company's property. Likewise, in *Manila Water Company*,[43] the Court similarly denied the award of separation pay to the employee who was found responsible for the loss of the water meters in flagrant violation of the company's policy. Indeed, equity as an exceptional extenuating circumstance does not favor, nor may it be used to reward, the indolent or the wrongdoer for that matter. This Court will not allow a party, in guise of equity, to benefit from his own fault.[44]

Considering the foregoing, the CA erred in awarding separation pay to Cordero "as a measure of compassionate justice."

That Cordero had been employed with HSTC for twenty-four (24) years does not serve to mitigate his offense nor should it be considered in meting out the appropriate penalty therefor. In fact, it may be reasonably argued that the infraction that he

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[41] *Toyota Motor Phils. Corp. Workers Association v. NLRC*; *id.* at 810; and *Philippine Long Distance Telephone Company v. NLRC*, *supra* note 39, at 649-650.

[42] See 716 Phil. 806 (2013).

[43] *Supra* note 37.

[44] *Id.* at 524.

committed against HSTC, *i.e.*, theft of invaluable company property, demonstrates the highest degree of ingratitude to an institution that has been the source of his livelihood for twenty-four (24) years, constitutive of disloyalty and betrayal of the trust and confidence reposed upon him.[45] Indeed, HSTC's full trust and confidence in him, coupled with the fact that he occupied a position that allowed him full access to HSTC's property, aggravated the offense. In *Manila Water Company*,[46] the Court refused to take into account the errant employee's length of service of more than twenty (20) years, considering that his violation reflects "a regrettable lack of loyalty and worse, betrayal of the company,"[47] *viz.*:

> Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity under the Labor Code nor under our prior decisions. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. **If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables**.[48] (Emphasis and underscoring supplied)

Further, it would appear that the offense for which Cordero was validly dismissed in 2016 was not his first offense, thereby negating the CA's finding[49] that he had no previous derogatory

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[45] See *Duque III v. Veloso*, 688 Phil. 318, 326 (2012).

[46] *Supra* note 37.

[47] *Id.* at 525.

[48] *Id.* at 524-525; citing *Central Pangasinan Electric Cooperative, Inc. v. NLRC*, 555 Phil. 134, 139-140 (2007).

[49] See *rollo* (G.R. No. 244144), pp. 67-68 and 73.

record. The fact that Cordero had been given Notices to Explain in 2003 and another in 2013[50] for entirely different offenses only proves that he had committed infractions against HSTC even prior to the present incident of oil pilferage. Moreover, while it is true that Cordero remained in the employ of HSTC until his dismissal in 2016, HSTC's right as an employer to call out, investigate, and eventually, dismiss him for just cause must still be recognized. On this score, it must be pointed out that the last offense that Cordero committed against HSTC constitutes Serious Misconduct, which resulted in the latter's loss of trust and confidence in him. Hence, the penalty of dismissal cannot be considered as "too harsh" under the circumstances.

Having established that Cordero's employment was terminated for just cause and that he was therefore validly dismissed, as well as the fact that the infractions he committed against HSTC involve moral turpitude and constitute Serious Misconduct, the award of separation pay in his favor is devoid of basis in fact and in law. Accordingly, the same must be deleted.

WHEREFORE, the petition in **G.R. No. 244144** is **GRANTED**, while the petition in **G.R. No. 244210** is **DENIED**. Accordingly, the Decision dated April 20, 2018 and the Resolution dated January 14, 2019 rendered by the Court of Appeals in CA-G.R. SP No. 151737 are hereby **AFFIRMED** with **MODIFICATION** deleting the award of separation pay in favor of Calvin Jaballa Cordero. The rest of the Decision stands.

SO ORDERED.

Inting and *Delos Santos, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

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[50] See *id.* at 30-31 and 372-373.

EN BANC

[A.C. No. 12660. January 28, 2020]

JOANN G. MINAS, *complainant, vs.* **ATTY. DOMINGO A. DOCTOR, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; RESPONDENT'S FAILURE TO RETURN THE MONEY TO COMPLAINANT DESPITE FAILURE TO USE THE SAME FOR INTENDED PURPOSE SHOWS HIS LACK OF INTEGRITY AND PROPRIETY AND A VIOLATION OF THE TRUST REPOSED IN HIM. — The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer 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. Thus, a lawyer's failure to return, upon demand, the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use, in violation of the trust reposed in him by his client. This act is a gross violation of general morality, as well as of professional ethics. x x x Complainant was able to establish that Atty. Doctor received from him the amounts of ₱400,000.00 on June 8, 2011, another ₱400,000.00 on June 21, 2011, and US$50,000.00 on June 21, 2011. x x x Atty. Doctor should have properly accounted for said amounts and immediately returned the money to complainant when he failed to use the same. If he had done so, there would have been no need for complainant to send demand letters to him. x x x Atty. Doctor's failure to return the money to complainant despite failure to use the same for the intended purpose is conduct indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainant warrants the imposition of disciplinary action.

2. ID.; ID.; ID.; RESPONDENT'S INVOCATION OF PRIVILEGED COMMUNICATION AS TO THE FACT OF THE DELIVERY OF THE AMOUNTS FROM COMPLAINANT CANNOT PROSPER CONSIDERING

THAT MERE RELATION OF ATTORNEY AND CLIENT DOES NOT RAISE A PRESUMPTION OF CONFIDENTIALITY; THE AGREEMENT OF THE PARTIES IN THIS CASE IS NOT PRIVILEGED COMMUNICATION, THE ELEMENT OF CONFIDENTIALITY NOT BEING PRESENT. — The invocation of privileged communication on the part of Atty. Doctor as to the fact of the delivery of the amounts from complainant deserves no consideration. x x x The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend for the communication to be confidential. A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means, which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, as in this case, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present. We affirm the observation made by the IBP-CBD that Atty. Doctor did not even specify the alleged communication in confidence disclosed by the Taiwanese nationals. All his contentions were couched in general terms and lacked specificity. The burden of proving that the privilege applies is placed upon the party asserting the privilege. Atty. Doctor failed to discharge this burden.

3. ID.; ID.; ID.; PENALTY; THE COURT IMPOSED THE PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS; RESPONDENT IS ALSO ORDERED TO RETURN TO COMPLAINANT THE REMAINING BALANCE WITH LEGAL INTEREST SINCE THE SAID AMOUNTS WERE INTRINSICALLY LINKED TO HIS PROFESSIONAL ENGAGEMENT. — Guided by [existing jurisprudence], it is only proper that Atty. Doctor be meted the same penalty of suspension from the practice of law for two years, as recommended by the IBP Board of Governors. In addition, the Court hereby orders Atty. Doctor to return the amount of ₱800,000.00 and US$4,600.00 which

he received in connection with his professional engagement. It is well to note that while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative liability and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement. Here, since the aforesaid amounts were given by the complainant and received by Atty. Doctor in connection with the cases he handled for complainant and intrinsically linked to his professional engagement, the Court finds the return of the amounts thereof to be in order.

LEONEN*, J., dissenting opinion:*

LEGAL ETHICS; ATTORNEYS; RESPONDENT'S FAILURE TO RETURN THE MONEY HE RECEIVED DESPITE REPEATED DEMANDS CONSTITUTES VIOLATIONS OF SEVERAL PROVISIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY; BY THE TOTALITY OF RESPONDENT'S ACTS, HE HAS GROSSLY TRANSGRESSED UPON THE PRINCIPLES OF PROFESSIONAL ETHICS; HE SHOULD NOT REMAIN AS A MEMBER OF THE BAR. — [R]espondent received a total of ₱800,000.00 and US$50,000.00 from complainant, the owner of a fishing vessel with both Filipino and foreign crew members, to assist her in her legal troubles with the Bureau of Fisheries and Aquatic Resources, Bureau of Immigration, and various other courts and agencies. Despite respondent's receipt of inordinate amounts of money, he did not use these amounts for the purposes they were intended for. While respondent returned US$46,400.00 to complainant, he failed to account for or return the amounts of ₱800,000.00 and US$4,600.00 to complainant despite repeated demands. x x x A lawyer-client relationship is fiduciary in nature and requires the lawyer to exercise fidelity and good faith in dealings with clients. Thus, [Canon 16,] Rules 16.01 and 16.03 [of the Code of Professional Responsibility] mandate that lawyers must account for any money or property collected from the client, and that any money or

property held in trust for the client is deliverable upon the client's demand. If a lawyer fails to return any of these amounts despite demand, the act may be considered a "gross violation of general morality, as well as professional ethics" since it gives rise to the presumption that the lawyer violated the client's trust and appropriated the amounts for his or her own use. x x x Canon 18 of the Code of Professional Responsibility, on the other hand, mandates that lawyers must serve their clients with competence and diligence. x x x Lawyers are not obligated to act as counsels for every member of the public that seek their services. However, when they do agree to take up a client's cause, they must not be neglectful of the legal matters entrusted to them and should always keep their clients updated as to the status of their cases. x x x Owing to the sensitive nature of these cases, respondent had the duty, as a member of the Philippine Bar, to serve with fidelity and to maintain his client's trust. He miserably failed to do so. He not only was unable to retrieve complainant's fishing vessel or have the immigration cases settled, complainant was also deprived of her day in court, having been declared in default due to respondent's gross negligence. The imposition of the appropriate penalty for violation of Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility requires "sound judicial discretion based on the surrounding facts." On the other hand, penalties for the violation of Canon 16, Rule 16.01 and 16.03 depends "on the amount involved and the severity of the lawyer's misconduct[.]" x x x In this case, if this Court were to include respondent's acceptance fee of ₱200,000.00, complainant had given respondent a total of ₱1 million and US$50,000.00 (or about ₱2.5 million) to assist her in the retrieval of her fishing vessel and the protection of her crew member's rights, which had included both Filipinos and foreigners. Respondent not only failed in performing his legal duties, but he failed to return the full amounts received despite complainant's demand as well. This Court has disbarred lawyers for less odious behaviors in cases involving misappropriation of much lesser amounts. Respondent's behavior in this case was worse. The amounts extorted from his client were excessive. By the totality of his acts, respondent has grossly transgressed upon the principles of professional ethics. He should not remain as a member of the Bar.

APPEARANCES OF COUNSEL

Joel E. Macababbad for complainant.

R E S O L U T I O N

***PER CURIAM*:**

For the Court's consideration is the disbarment complaint[1] filed by Joann G. Minas (complainant) against Atty. Domingo A. Doctor, Jr. (Atty. Doctor) for violation of Canon 16, Rule 16.01 and Rule 16.03, and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility.[2]

Antecedents

Complainant alleged that on May 21, 2011, one of her fishing vessels, FV/JVPHIL 5, with Filipino and Taiwanese crew members, including Hsu Hung-Tse and Chen Fu Nan, was apprehended by the members of the Philippine Coast Guard (PCG) and the Bureau of Fisheries and Aquatic Resources (BFAR). Criminal cases were filed against the crew members before the Regional Trial Court (RTC) of Ilagan, Isabela, and administrative cases were filed before the Maritime Industry Authority (MARINA) and BFAR. Aside from said cases, two other cases involving the vessel were filed against complainant before the Prosecutor's Office of the Province of Zambales and the City of Olongapo. Complainant engaged the services of Atty. Doctor to handle these cases, for which the latter asked for an acceptance fee of ₱100,000.00, which complainant paid. Two days later, Atty. Doctor informed complainant that his law partners find the acceptance fee dismal and asked that the same be increased to ₱200,000.00. Complainant agreed and paid in cash.[3]

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[1] *Rollo,* pp. 2-8.

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

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

Sometime in the last week of May 2011, Atty. Doctor informed complainant that the two Taiwanese crew members cannot leave the country because of the pending cases before the Bureau of Immigration and Deportation (BID), and corresponding administrative penalty and miscellaneous fees in the amount of ₱400,000.00 have to be settled. Thus, on June 8, 2011, complainant, together with Evangeline Conge (Evangeline) and Kevin Arias (Kevin), met Atty. Doctor at the canteen of the BID Office in Intramuros, Manila and she personally handed the amount of ₱400,000.00 placed in a brown envelope. After receiving the amount, Atty. Doctor told complainant and her companions to leave him behind as he will take care to settle the penalty and fees so that the two Taiwanese national would be cleared by the BID. Atty. Doctor also told complainant that he will just forward the corresponding official receipts.[4]

A few days later, Atty. Doctor informed complainant that she has to post a "replevin bond" (as Atty. Doctor has termed it) in the amount of ₱400,000.00 in order for BFAR to immediately release the vessel. Also, she has to pay US$50,000.00 as administrative fine to convince the BFAR to put an end to the administrative case so that her license will not be cancelled. Thus, complainant, accompanied by Evangeline and Kevin, met Atty. Doctor on June 21, 2011 at KFC, Timog St., Quezon City and gave him the amount of ₱400,000.00 and US$50,000.00. After receiving the money, Atty. Doctor assured complainant that the fishing vessel will be released in two days and that the BFAR case will be terminated in three days. Complainant did not receive any receipt or bond and the BFAR case was not terminated. Complainant found out that no replevin bond was posted by Atty. Doctor and worse, the prosecution had already presented its evidence *ex-parte*, since complainant was declared in default for failure of Atty. Doctor to file the required answer on her behalf.[5]

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[4] *Id.* at 3.

[5] *Id.* at 4.

Complainant immediately called Atty. Doctor to return the ₱800,000.00, representing the ₱400,000.00 given on June 8, 2011 and ₱400,000.00 given on June 21, 2011, and the US$50,000.00 given on June 21, 2011. Out of the amount, Atty. Doctor only returned to complainant US$40,000.00 on June 27, 2011. A week after, Atty. Doctor returned the amount of US$2,000.00, and he was able to account for the US$1,500.00. Complainant repeatedly called and sent text messages to Atty. Doctor relative to the status of the cases. However, Atty. Doctor did not answer complainant's call nor her text messages. Complainant even went to his residence and office just to get an update of the cases being handled by him.[6]

In view of Atty. Doctor's refusal to return and/or account for the money given by complainant, the latter was constrained to send formal demand letters and eventually terminated Atty. Doctor's services. After receiving the letters, Atty. Doctor appeared in one of the hearings before the BFAR and returned to complainant the amount of US$1,900.00, thus, leaving in his trust and possession the amount of ₱800,000.00 and US$4,600.00, which he refuses and continues to refuse to account and/or return. Hence, complainant filed this administrative complainant for disbarment against Atty. Doctor for violation of Canon 16, Rule 16.01 and Rule 16.03 and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility. Complainant, likewise, asks that Atty. Doctor be made to return to her the amount of ₱800,000.00 and US$4,600.00.[7]

In his Verified Answer,[8] Atty. Doctor stated that the fishing boat, which was apprehended and impounded by the PCG and the BFAR, is actually owned by Hsu Hung Tse @ Cheng Hung Ta, a Taiwanese national, and herein complainant was a mere dummy who submitted perjured and spurious documents for foreigners to evade extant maritime regulations and fishing

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[6] *Id*.

[7] *Id*. at 6.

[8] *Id*. at 29-36.

prohibitions in the Philippines;[9] and that complainant was criminally charged before the Prosecutor of Olangapo City and the Province of Zambales for falsification of public documents and for qualified theft is not correct and the same is misleading. Complainant was charged in connection with the falsification of the deeds of sale covering other fishing boats (*i.e.*, FV/JVPHIL 7, FV/JVPHIL 6 and FV/JVPHIL 11). He was also hired as counsel of complainant in the case pending before the MARINA. The three fishing boats (*i.e.*, FV/JVPHIL 7, FV/JVPHIL 6 and FV/JVPHIL 11) were apprehended and impounded by the PCG in Bolinao, Pangasinan and he worked and exerted extra efforts for their successful release from PCG custody.[10] Also, Atty. Doctor rendered legal services in the cases pending before the Department of Labor and Employment (DOLE) for violation of labor laws and alleged illegal recruitment. He was requested by complainant to be her counsel in the administrative case before the BFAR.[11]

Although, in the first four cases, which Atty. Doctor handled for complainant, the subject matters involved were extremely important, which required so much labor, time, and trouble, not only in litigation but close coordination and appearance before concerned agencies of the government, he only charged complainant a reasonable acceptance fee of ₱10,000.00 to ₱20,000.00 for each case and an appearance fee of ₱3,000.00 to ₱7,000.00, depending on the distance of his residence to the place of court appearance/litigation. Atty. Doctor was not able to collect his acceptance fee and attorney's fee in the other cases for which he was hired by complainant, *i.e.*, cases before the DOLE in San Fernando City, Pampanga and Olongapo City, Zambales, the Ombudsman, BFAR and MARINA.[12]

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[9] *Id*. at 29.

[10] *Id*. at 30.

[11] *Id*. at 31.

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

Atty. Doctor averred that he acted as counsel for complainant from April 2011 to July 23, 2011, when he suffered a stroke which affected his mobility and speech. Even then, he forced himself to attend the scheduled hearing of complainant on a wheelchair and with the aid of a walking cane. Complainant went to his residence and was able to see for herself his actual medical condition. He was able to attend the BFAR hearing scheduled on August 5, 2011. Atty. Doctor believes that herein complainant is not a proper party with respect to matters and issues which are personal and exclusive between him and his Taiwanese clients in the cases pending before the RTC and the administrative case before the BFAR. He further argued that the recitals of complainant, particularly paragraphs 4, 5, 6 and 8 of the complaint (*i.e.*, pertaining to the delivery of the cited amount from complainant to Atty. Doctor), constitute privileged communication covered under the attorney-client relationship. Without the consent or waiver of his Taiwanese clients, he cannot be at liberty to discuss and answer the allegations of complainant.[13]

IBP Report and Recommendation

The Report and Recommendation[14] of the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (IBP-CBD) dated April 25, 2016 recommended the imposition of disciplinary action against Atty. Doctor for committing acts contrary to and violative of Canon 16 and Canon 18, respectively, of the Code of Professional Responsibility and imposed the penalty of **suspension** from the practice of law **for six months** with a stern warning that his commission of a similar offense will be dealt with more severely.[15]

The IBP-CBD found Atty. Doctor's defense of denial and his assertion of privileged communication between a lawyer and his client, particularly as to his answer to paragraphs 4, 5,

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

[14] *Id*. at 110-118.

[15] *Id*. at 118.

6 and 8 of the complaint (*i.e.*, pertaining to the delivery of the cited amount from complainant to Atty. Doctor), are without merit. Atty. Doctor did not adduce any evidence to prove or counter the allegations relative to the receipt of money from complainant.[16] On the other hand, complainant was able to show that a lawyer-client relationship existed between her and Atty. Doctor, and that the latter received money in relation to the cases that he handled for complainant. Atty. Doctor's apparent failure to account for the said amounts constitute a violation of Canon 16, in relation to Canon 18, of the Code of Professional Responsibility.[17]

IBP Board of Governors

In a Resolution[18] dated February 22, 2018, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner, with modification, by increasing the recommended penalty of **suspension** from the practice of law from six months to **two years**.[19]

Atty. Doctor moved for reconsideration, but the same was denied per Resolution[20] dated December 6, 2018.

Issue

The sole issue for resolution is whether Atty. Doctor should be held administratively liable for his failure to account the money received from complainant and serve his client with competence and diligence, in violation of Canon 16, Rule 16.01 and Rule 16.03 and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility.

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[16] *Id*. at 115-116.

[17] *Id*. at 116.

[18] *Id*. at 142-143.

[19] *Id*. at 142.

[20] *Id*. at 140-141.

The Court's Ruling

The Court concurs with the finding of the IBP-CBD, as adopted by the IBP Board of Governors, that Atty. Doctor violated Canon 16, Rule 16.01 and Rule 16.03 and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility warranting his suspension from the practice of law for two years.

The Code of Professional Responsibility states:

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

x x x x x x x x x

CANON 18 — A lawyer shall serve his client with competence and diligence.

x x x x x x x x x

RULE 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

RULE 18.04. — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.

The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer 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. Thus, a lawyer's failure to return, upon demand, the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use, in violation of

the trust reposed in him by his client. This act is a gross violation of general morality, as well as of professional ethics.[21]

As stressed by this Court in the case of *Del Mundo v. Atty. Capistrano,*[22] to wit:

> Moreover, a lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.[23]

Complainant was able to establish that Atty. Doctor received from him the amounts of ₱400,000.00 on June 8, 2011, another ₱400,000.00 on June 21, 2011, and US$50,000.00 on June 21, 2011. She submitted the Joint Affidavit[24] of Evangeline and Kevin, who accompanied her during those dates and witnessed the act of receipt of said amounts by Atty. Doctor from complainant. However, Atty. Doctor failed to issue official receipts despite assurances to do so. Moreover, Atty. Doctor failed to use the money for the intended purpose, *i.e.*: (1) as settlement for the Taiwanese crew members to be cleared by the BID; (2) for the immediate release of the vessel from the custody of the BFAR; and (3) for the termination of the BFAR administrative case. Atty. Doctor should have properly accounted for said amounts and immediately returned the money to complainant when he failed to use the same. If he had done so, there would have been no need for complainant to send demand letters to him.[25]

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[21] *Go v. Buri,* A.C. No. 12296, December 4, 2018.

[22] 685 Phil. 687 (2012).

[23] *Id.* at 693.

[24] *Rollo,* p. 7.

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

Another evidence of receipt of money is the fact of partial return on the part of Atty. Doctor. The IBP-CBD found that Atty. Doctor partially returned the amount of US$45,400.00 and has a remaining balance to be accounted for in favor of complainant in the amount of ₱800,000.00 and US$4,600.00.[26]

The invocation of privileged communication on the part of Atty. Doctor as to the fact of the delivery of the amounts from complainant deserves no consideration. Atty. Doctor claimed that "he cannot in any manner be at liberty to discuss and answer the allegation of complainant in the absence of waiver or authority from his Taiwanese clients since the recitals of complainant, more particularly in paragraphs 4, 5, 6 and 8 of the complaint on ground of the privilege status of communication covered under the attorney-client relationship."[27]

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend for the communication to be confidential. A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means, which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, as in this case, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.[28]

We affirm the observation made by the IBP-CBD that Atty. Doctor did not even specify the alleged communication in confidence disclosed by the Taiwanese nationals. All his

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[26] *Id.* at 116.

[27] *Id.* at 112-114.

[28] *Mercado v. Vitriolo,* 498 Phil. 49, 60 (2005).

contentions were couched in general terms and lacked specificity. The burden of proving that the privilege applies is placed upon the party asserting the privilege.[29] Atty. Doctor failed to discharge this burden.

Atty. Doctor's failure to return the money to complainant despite failure to use the same for the intended purpose is conduct indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainant warrants the imposition of disciplinary action.

Jurisprudence provides instances where the lawyer commits similar acts against their respective clients and the Court imposed upon them the penalty of suspension from the practice of law for a period of two years.[30] In the case of *Jinon v. Atty. Jiz,*[31] the Court suspended the erring lawyer for such period for his failure to return the amount of ₱67,000.00 to his client for his legal services which he never performed. Also, in *Agot v. Atty. Rivera,*[32] the lawyer was also suspended for two years when he neglected his obligation to secure his client's visa and failed to return his client's money worth ₱350,000.00 despite demand. In the case of *Luna v. Atty. Galarrita,*[33] the lawyer failed to promptly inform his client of his receipt of the proceeds of a settlement for the client, and further refused to turn over the amount received amounting to ₱100,000.00. The Court suspended him from the practice of law for two years.

Guided by the foregoing, it is only proper that Atty. Doctor be meted the same penalty of suspension from the practice of law for two years, as recommended by the IBP Board of Governors.

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[29] *Id*. at 61.

[30] *Go v. Buri, supra* note 21.

[31] 705 Phil. 321 (2013).

[32] 740 Phil. 393 (2014).

[33] 763 Phil. 175 (2015).

In addition, the Court hereby orders Atty. Doctor to return the amount of ₱800,000.00 and US$4,600.00 which he received in connection with his professional engagement. It is well to note that while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative liability and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement. Here, since the aforesaid amounts were given by the complainant and received by Atty. Doctor in connection with the cases he handled for complainant and intrinsically linked to his professional engagement, the Court finds the return of the amounts thereof to be in order.

The Code of Professional Responsibility demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship. Any lawyer who does not live up to this duty must be prepared to take the consequences of his waywardness.[34]

WHEREFORE, premises considered, respondent Atty. Domingo A. Doctor, Jr. is found **GUILTY** of violating Canon 16, Rule 16.01 and Rule 16.03, and Canon 18, Rule 18.03 and Rule 18.04, of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of **TWO (2) YEARS**, effective upon receipt of this Resolution, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Atty. Doctor is **ORDERED** to return to complainant Joann G. Minas the remaining balance of ₱800,000.00 and US$4,600.00 with legal interest, if it is still unpaid, within ninety (90) days from the finality of this Resolution. Failure to comply with this directive will merit the imposition of the more severe penalty.

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[34] *De Borja v. Mendez, Jr.,* A.C. No. 11185, July 4, 2018.

Let copies of this Resolution be furnished to the Office of the Bar Confidant to be appended to the personal record of Atty. Doctor as a member of the Bar, to the Integrated Bar of the Philippines, and to the Office of the Court Administrator for circulation to all court in the country for their information and guidance.

SO ORDERED.

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

Leonen, J., see separate opinion.

Reyes, A. Jr. and *Hernando, JJ.,* on official leave.

DISSENTING OPINION

LEONEN, *J.*:

Respondent violated Canon 16, Rule 16.01 and 16.03,[1] Canon 18, and Canon 18, Rule 18.03 and Rule 18.04[2] of the Code of

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[1] 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.

. . . . . .

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

[2] CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

. . . . . .

Professional Responsibility. The penalty of a two (2) year suspension is too lenient for the gravity of his transgressions. In my view, respondent should have been disbarred from the practice of law.

Joann G. Minas (complainant) owned a fishing vessel FV/ JVPHIL 5, which had Filipino and Taiwanese crew members. Sometime in 2011, Taiwanese crew members Hsu Heng-Tse and Chen Fu Nan were apprehended by the Philippine Coast Guard and the Bureau of Fisheries and Aquatic Resources. Criminal cases were also filed against the rest of the crew members before the Regional Trial Court of Ilagan, Isabela, the Maritime Industry Authority, and the Bureau of Fisheries and Aquatic Resources. Two other cases were filed against the vessel FV/JVPHIL 5 before the Office of the Provincial Prosecutor of Zambales and Office of the City Prosecutor of Olongapo.[3]

Complainant engaged Atty. Domingo A. Doctor, Jr.'s (respondent) legal services to assist in these cases.[4]

Respondent initially asked for a ₱100,000.00 acceptance fee, but later on increased the amount to ₱200,000.00. After receiving his acceptance fee, he later informed complainant that Hsu Heng-Tse and Chen Fu Nan could not leave the country as they had pending cases before the "Bureau of Immigration and Deportation."[5] He then asked for ₱400,000.00 to settle the immigration cases, which complainant paid.[6]

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

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

[4] *Id*. at 2.

[5] *Id*. Prior to 1987, the Bureau of Immigration was named the Bureau of Immigration and Deportation. The Administrative Code, however, renamed the agency simply as the "Bureau of Immigration."

[6] *Id*.

A few days from receiving these amounts, respondent again sought out complainant to post what he termed as a "replevin bond" of ₱400,000.00 for the release of her vessel, FV/JVPHIL 5, from the Bureau of Fisheries and Aquatic Resources, as well as a US$50,000.00 "administrative fine" so her license would not be cancelled. Complainant paid both amounts and respondent assured her that her vessel would be released and that the case before the Bureau of Fisheries and Aquatic Resources would be terminated.[7]

Complainant discovered later on that no such "replevin bond" was posted and that she had been declared in default by the Bureau of Fisheries and Aquatic Resources for respondent's failure to file the required Answer.[8]

Thus, complainant demanded the return of the ₱800,000.00 and US$50,000.00 that she had paid. She was constrained to file this administrative case as she was only able to recover US$45,400.00 from respondent.[9]

Respondent, for his part, first accused complainant for being a mere dummy for foreign fishers.[10] However, he admitted that he handled legal cases for complainant, albeit for a "reasonable acceptance fee of ₱10,000.00 to ₱20,000.00 for each case and an appearance fee of ₱3,000.00 to ₱7,000.00"[11] that he was not able to collect. He counters that he could not discuss the case concerning his Taiwanese clients since these matters were privileged communications under the attorney-client relationship. He likewise alleged that he was unable to attend to the hearings in the Bureau of Fisheries and Aquatic Resources since he had suffered a stroke, which affected his mobility and speech.[12]

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[7] *Id*.

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

[9] *Id*. at 3.

[10] *Id*.

[11] *Id*. at 4.

[12] *Id*.

The Integrated Bar of the Philippines Commission on Bar Discipline, however, found respondent to have violated the Code of Professional Responsibility and initially recommended a six (6) month suspension from the practice of law. The Integrated Bar of the Philippines Board of Governors, on the other hand, recommended that the penalty of suspension be increased to two (2) years,[13] which the *ponencia* now adopts.[14]

With due respect, I must disagree. Respondent deserves no less than disbarment from the practice of law.

Our current geopolitical climate has placed the fishing industry under more scrutiny, especially in the Provinces of Palawan and Zambales, which are located near or around the West Philippine Sea. Our administrative agencies are also presently monitoring alleged poaching activities by foreign fishers over our waters.

Here, respondent received a total of ₱800,000.00 and US$50,000.00 from complainant, the owner of a fishing vessel with both Filipino and foreign crew members, to assist her in her legal troubles with the Bureau of Fisheries and Aquatic Resources, Bureau of Immigration, and various other courts and agencies. Despite respondent's receipt of inordinate amounts of money, he did not use these amounts for the purposes they were intended for. While respondent returned US$46,400.00 to complainant, he failed to account for or return the amounts of ₱800,000.00 and US$4,600.00 to complainant despite repeated demands.

Canon 16, Rules 16.01 and 16.03 of the Code of Professional Responsibility provide:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

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[13] *Id*.

[14] *Id*. at 5.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

. . . . . .

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

A lawyer-client relationship is fiduciary in nature and requires the lawyer to exercise fidelity and good faith in dealings with clients.[15] Thus, Rules 16.01 and 16.03 mandate that lawyers must account for any money or property collected from the client, and that any money or property held in trust for the client is deliverable upon the client's demand.[16] If a lawyer fails to return any of these amounts despite demand, the act may be considered a "gross violation of general morality, as well as professional ethics"[17] since it gives rise to the presumption that the lawyer violated the client's trust and appropriated the amounts for his or her own use.

Thus, in *Huang v. Zambrano*:[18]

Once money or property is received by a lawyer on behalf of his client, the former has the obligation to account for the said money or property and remit the same immediately to the latter. To ignore consecutive follow-ups and demands from the client without any

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[15] See *Spouses Lopez v. Limos*, 780 Phil. 113 (2016) [Per J. Perlas-Bernabe, *En Banc*].

[16] See CODE OF PROFESSIONAL RESPONSIBILITY, Canon 16, Rules 16.01 and 16.03.

[17] *Egger v. Duran*, 795 Phil. 9, 17 (2016) [Per J. Perlas-Bernabe, First Division].

[18] A.C. No. 12460, March 26, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65105> [*Per Curiam*, *En Banc*].

acceptable reason corrodes the client's trust and stains the legal profession.[19]

Canon 18 of the Code of Professional Responsibility, on the other hand, mandates that lawyers must serve their clients with competence and diligence. Rule 18.03 and Rule 18.04 provide:

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

. . . . . .

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Lawyers are not obligated to act as counsels for every member of the public that seek their services. However, when they do agree to take up a client's cause, they must not be neglectful of the legal matters entrusted to them and should always keep their clients updated as to the status of their cases. In *Santiago v. Fojas*:[20]

Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from

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[19] *Id*.

[20] 318 Phil. 79 (1995) [Per *J.* Davide, Jr., Second Division].

an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[21]

Here, cases before the Office of the Provincial Prosecutor of Zambales and the Bureau of Fisheries and Aquatic Resources had been filed against complainant's vessel FV/JVPHIL 5. Immigration cases had also been filed against complainant's Taiwanese crew members.

Respondent had the temerity to extort ₱400,000.00 from complainant by misleading her to believe that he could have the immigration cases against the Taiwanese crew members settled. Unsatisfied by this amount, he further demanded ₱400,000.00 and US$50,000.00 from complainant as "administrative fines" to be able to get her fishing vessel back.

Owing to the sensitive nature of these cases, respondent had the duty, as a member of the Philippine Bar, to serve with fidelity and to maintain his client's trust. He miserably failed to do so. He not only was unable to retrieve complainant's fishing vessel or have the immigration cases settled, complainant was also deprived of her day in court, having been declared in default due to respondent's gross negligence.

The imposition of the appropriate penalty for violation of Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility requires "sound judicial discretion based on the surrounding facts."[22] On the other hand, penalties for the violation of Canon 16, Rule 16.01 and 16.03 depends "on the amount involved and the severity of the lawyer's misconduct[.]"[23]

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[21] *Id*. at 86-87.

[22] *Sorensen v. Pozon*, A.C. No. 11334, January 7, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64926> [Per Acting *C.J.* Carpio, Second Division].

[23] *Tarog v. Ricarfort*, 660 Phil. 618, 635 (2011) [*Per Curiam*, *En Banc*].

This Court has long disbarred lawyers who, despite the receipt of their legal fees, did nothing to advance their clients' causes and refused to return the amounts paid despite demand.

In *Villanueva v. Sta. Ana*,[24] Atty. Teresita Sta. Ana was paid ₱144,000.00 to assist in securing a loan from a lending institution. When Atty. Sta. Ana asked for an additional amount of ₱109,000.00, complainant decided to forego Atty. Sta. Ana's services and demand the return of her money. This Court disbarred Atty. Sta. Ana for failing to return her client's money despite demand.

In *Busiños v. Ricafort*,[25] this Court disbarred a lawyer who misappropriated for his own use the amount of ₱30,000.00, representing money entrusted to him by his client, and the amount of ₱2,000.00, which he had demanded supposedly to answer for a bond.

In *Docena v. Limon*,[26] this Court disbarred a lawyer who demanded ₱10,000.00 from his clients to file a bond in court, only for the clients to later discover that no bond had been filed. This Court found that "[b]y extorting money from his client through deceit and misrepresentation, respondent Limon has reduced the law profession to a level so base, so low and dishonorable, and most contemptible."[27]

In *Overgaard v. Valdez*,[28] this Court disbarred a lawyer who accepted US$16,854.00 as legal fees for a foreign client but failed to enter his appearance in any of his client's cases. The Integrated Bar of the Philippines initially recommended a penalty of a three (3) year suspension from the practice of law. This Court found the recommended penalty insufficient and imposed the penalty of disbarment instead, since the lawyer's

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[24] 315 Phil. 795 (1995) [*Per Curiam, En Banc*].

[25] 347 Phil. 687 (1997) [*Per Curiam, En Banc*].

[26] 356 Phil. 570 (1998) [*Per Curiam, En Banc*].

[27] *Docena v. Limon*, 356 Phil. 570, 575 (1998) [*Per Curiam, En Banc*].

[28] 588 Phil. 422 (2008) [*Per Curiam, En Banc*].

"incompetence and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed in him as a member of the bar."[29]

In *Arellano University v. Mijares*,[30] this Court disbarred a lawyer who was paid ₱500,000.00 to assist in the titling of property, but failed to do so, and refused to return the fee upon demand.

In *Tarog v. Ricafort*,[31] this Court disbarred a lawyer for misappropriating the amounts of ₱65,000.00 and ₱15,000.00 from his clients and for betraying their trust.

In *Mariano v. Laki*,[32] this Court disbarred a lawyer who was paid ₱150,000.00 for the filing of a petition for annulment of marriage, only for the client to discover a year later that no such petition was ever filed.

In this case, if this Court were to include respondent's acceptance fee of ₱200,000.00, complainant had given respondent a total of ₱1 million and US$50,000.00 (or about ₱2.5 million) to assist her in the retrieval of her fishing vessel and the protection of her crew member's rights, which had included both Filipinos and foreigners. Respondent not only failed in performing his legal duties, but he failed to return the full amounts received despite complainant's demand as well.

This Court has disbarred lawyers for less odious behaviors in cases involving misappropriation of much lesser amounts. Respondent's behavior in this case was worse. The amounts extorted from his client were excessive.

By the totality of his acts, respondent has grossly transgressed upon the principles of professional ethics. He should not remain as a member of the Bar.

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[29] *Overgaard v. Valdez*, 588 Phil. 422, 434 (2008) [*Per Curiam, En Banc*].

[30] 620 Phil. 93 (2009) [*Per Curiam, En Banc*].

[31] 660 Phil. 618 (2011) [*Per Curiam, En Banc*].

[32] A.C. No. 11978, September 25, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64567> [*Per Curiam, En Banc*].

ACCORDINGLY, I vote to **DISBAR** Atty. Domingo A. Doctor, Jr. from the practice of law for violating Canon 16, Rules 16.01 and 16.03, Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility and to **RETURN** the amounts of ₱800,000.00 and US$4,600.00 to complainant.

EN BANC

[A.M. No. 2019-18-SC. January 28, 2020]

(RE: ALLEGED DISHONESTY AND FALSIFICATION OF CIVIL SERVICE ELIGIBILITY OF MR. SAMUEL R. RUNEZ, JR.,* CASHIER III, CHECKS DISBURSEMENT DIVISION, FINANCIAL MANAGEMENT OFFICE—OFFICE OF THE COURT ADMINISTRATOR)

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; FALSIFICATION OF OFFICIAL DOCUMENT AND SERIOUS DISHONESTY; USING A FALSIFIED CERTIFICATE OF CIVIL SERVICE PROFESSIONAL LEVEL ELIGIBILITY FOR THE PURPOSE OF SECURING EMPLOYMENT AND LATER SUPPORTING A BID FOR PROMOTION, A CASE OF; PENALTY. — There is no doubt x x x that Runez, Jr.'s Certificate of Civil Service Professional Level Eligibility dated May 31, 1999 is spurious. His act of using a falsified Certificate of Civil Service Professional Level Eligibility for the purpose of securing employment with the Court and later supporting his bid for promotion constitutes falsification of official document and serious dishonesty. In the absence of a satisfactory explanation, a person who has in his or her possession or control

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* Ruñez, Jr., is corrected to Runez, Jr.

a falsified document and who makes use of the same, is presumed to be the forger or the one who caused its forgery. Here, Runez, Jr. is presumed to have falsified his Certificate of Civil Service Professional Level Eligibility dated May 31, 1999. Notably, Runez, Jr. did not adduce any single piece of evidence to rebut this presumption. He is, thus, guilty of falsification of official document. On the charge of serious dishonesty, we reckon with the basic definition of dishonesty. It is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Although dishonesty covers a broad spectrum of conduct, CSC Resolution No. 06-0538 sets the criteria for determining the severity of dishonest acts. x x x [Runez, Jr.] employed fraud and/or falsification in falsely declaring under oath that he was a Civil Service Professional Level Eligible. He committed this act of dishonesty on various occasions. Last, his act of dishonesty involved the use of a fake Certificate of Civil Service Professional Level Eligibility. He, therefore, becomes liable for serious dishonesty. Section 50 of the Revised Rules on Administrative Cases in the Civil Service classifies both falsification of official document and serious dishonesty as grave offenses that warrant the penalty of dismissal from the service.

2. ID.; ID.; ID.; COURT PERSONNEL; MUST EXEMPLIFY THE HIGHEST SENSE OF HONESTY AND INTEGRITY IN ORDER TO PRESERVE THE GOOD NAME AND INTEGRITY OF THE COURTS OF JUSTICE. — [T]he image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. In truth, all court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity. Undoubtedly, Runez, Jr. has no place in the Judiciary, where only those possessing integrity, honesty, competence, and independence of mind are summoned to answer the clarion's call of public office. As a court employee, it was expected of Runez, Jr. to set a good example for other court employees in the standards of propriety, honesty, and fairness. It was expected of him to practice a high degree of work ethic and to abide by the exacting principles of ethical conduct and decorum. Indubitably, Runez, Jr. failed to meet these standards, having placed his personal interest over the

interest of the Court. Indeed, his infractions besmirched the public perception of the image of the Court and cast serious doubt as to the ability of the Court to effectively exercise its power of administrative supervision over its employees.

D E C I S I O N

PER CURIAM:

Antecedents

Samuel R. Runez, Jr. currently holds the position of Cashier III, Checks Disbursement Division, Financial Management Office, Office of the Court Administrator. He has worked with the Court in different capacities for almost thirty-five (35) years.

Acting on confidential reports that he did not actually pass the Civil Service Professional Examination, the Office of Administrative Services (OAS) discovered that his 201 file did not bear a Certificate of his Civil Service Professional Level Eligibility. What his 201 file contained was his Letter dated October 4, 1999 which he submitted to the Court's Selection and Promotion Board, claiming he had a Civil Service Professional Level Eligibility in support of his application for the position of Cashier II.[1] His 201 file also contained several Personal Data Sheets[2] which he submitted to the Court. In all these Personal Data Sheets, he declared that he obtained a rating of 80.51% in the May 16, 1999 Civil Service Professional Examination.

In response to the query of the OAS pertaining to the Civil Service Professional Level Eligibility of Runez, Jr., the Civil Service Commission (CSC), under Letter dated October 4, 2019, replied that based on its Master List of Passing/Failing Examinees

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[1] This position requires Civil Service Professional Level Eligibility. This requirement also applies to his current position that he was promoted to on June 12, 2003.

[2] Dated December 9, 2002, April 7, 2005, and April 26, 2017, as they appear in his 201 file.

in the May 16, 1999 Civil Service Professional Examination Runez, Jr. failed. He obtained a rating of 36.51%. The OAS, thus, required Runez, Jr. to explain why no administrative action should be taken against him for falsification of official document and serious dishonesty.

In his Explanation Letter dated October 24, 2019, Runez, Jr. stated that he already had a Civil Service Professional Level Eligibility since May 13, 1994. He obtained a passing mark of 80.51% in the May 16, 1999 Civil Service Professional Examination. The Certificate of Civil Service Professional Level Eligibility dated May 31, 1999 that was mailed to him indicated this rating. He attached photocopies of his Certificate of Civil Service Professional Level Eligibility to his Explanation Letter and signified his readiness to present its original copy, if needed. He maintained that he never had any reason to doubt the authenticity of his Certificate of Civil Service Professional Level Eligibility. In fact, when he got appointed as Cashier II on February 15, 2000 and subsequently promoted to Cashier III on June 12, 2003, his appointment papers showed "PINAGTIBAY" on its face above the signature of CSC Director Arturo S.J. Panaligan. If he were not qualified, the CSC would not have approved his appointments.

The OAS sought another confirmation from the CSC, this time, enclosing photocopies of Runez, Jr.'s Certificate of Civil Service Professional Level Eligibility dated May 31, 1999, including its mail envelope.

By Letter dated November 12, 2019, the CSC clarified that, while Runez, Jr. had a Civil Service Proofreader (Sub-Professional) Eligibility as of May 13, 1994, he did not pass the May 16, 1999 Civil Service Professional Examination where he obtained a fail rating of 36.51%. The records on file with the Integrated Management Office of the CSC Central Office, as well as the Regional Register of Eligibles of the CSC Examination Services Division, invariably yielded these results.

When afforded another opportunity to comment on the CSC Report, Runez, Jr. said he had nothing more to say, albeit he

emphasized that during his entire employment with the Court, he consistently received a "very satisfactory rating." He further asked that the charges against him be dismissed.

OAS Memorandum dated January 24, 2020

In its Memorandum dated January 24, 2020, the OAS found Runez, Jr. guilty of falsification of official document and serious dishonesty. It recommended that he be dismissed from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment with government.

Ruling

The Court adopts in full the findings and recommendation of the OAS in its Memorandum dated January 24, 2020.

The CSC consistently confirmed that Runez, Jr. obtained a fail rating of 36.51% in the May 16, 1999 Civil Service Professional Examination as shown by its Master List of Passing/ Failing Examinees in the May 16, 1999 Civil Service Professional Examination. More, Runez, Jr.'s name does not appear in its Regional Register of Eligibles. These official records bear the highest probative value. Every entry found therein is presumed genuine and accurate, unless proven otherwise.[3]

There is no doubt, therefore, that Runez, Jr.'s Certificate of Civil Service Professional Level Eligibility dated May 31, 1999 is spurious. His act of using a falsified Certificate of Civil Service Professional Level Eligibility for the purpose of securing employment with the Court and later supporting his bid for promotion constitutes falsification of official document and serious dishonesty.

In the absence of a satisfactory explanation, a person who has in his or her possession or control a falsified document and who makes use of the same, is presumed to be the forger or the one who caused its forgery.[4]

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[3] *Civil Service Commission v. Cayobit*, 457 Phil. 452, 460-461 (2003).

[4] *Pacasum v. People*, 603 Phil. 612, 636-637 (2009).

Here, Runez, Jr. is presumed to have falsified his Certificate of Civil Service Professional Level Eligibility dated May 31, 1999. Notably, Runez, Jr. did not adduce any single piece of evidence to rebut this presumption. He is, thus, guilty of falsification of official document.

On the charge of serious dishonesty, we reckon with the basic definition of dishonesty. It is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[5] Although dishonesty covers a broad spectrum of conduct, CSC Resolution No. 06-0538 sets the criteria for determining the severity of dishonest acts.[6]

According to Section 3 of CSC Resolution No. 06-0538, for dishonesty to be considered serious, any of the following circumstances must be present:

1. The dishonest act caused serious damage and grave prejudice to the government;
2. The respondent gravely abused his authority in order to commit the dishonest act;
3. Where the respondent is an accountable officer, the dishonest act directly involves property; accountable forms or money for which he is directly accountable; and respondent shows intent to commit material gain, graft and corruption;
4. The dishonest act exhibits moral depravity on the part of the respondent;
5. **The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;**
6. **The dishonest act was committed several times or on various occasions;**

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[5] *Committee on Security and Safety, Court of Appeals v. Dianco, et al.*, 760 Phil. 169, 188 (2015).

[6] *Id.*

7. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.

8. Other analogous circumstances. (Emphasis supplied)

Here, 5, 6, and 7 characterized Runez, Jr.'s act of dishonesty. He employed fraud and/or falsification in falsely declaring under oath that he was a Civil Service Professional Level Eligible. He committed this act of dishonesty on various occasions. Last, his act of dishonesty involved the use of a fake Certificate of Civil Service Professional Level Eligibility. He, therefore, becomes liable for serious dishonesty.

Section 50 of the Revised Rules on Administrative Cases in the Civil Service classifies both falsification of official document and serious dishonesty as grave offenses that warrant the penalty of dismissal from the service.

The Court has repeatedly held that the image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. In truth, all court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity.[7]

Undoubtedly, Runez, Jr. has no place in the Judiciary, where only those possessing integrity, honesty, competence, and independence of mind are summoned to answer the clarion's call of public office.[8] As a court employee, it was expected of Runez, Jr. to set a good example for other court employees in the standards of propriety, honesty, and fairness. It was expected of him to practice a high degree of work ethic and

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[7] *Floria v. Sunga,* 420 Phil. 637, 650 (2001).

[8] *Re: Spurious Certificate of Eligibility of Tessie G. Quires, Regional Trial Court, Office of the Clerk of Court, Quezon City,* 523 Phil. 21, 31 (2006).

to abide by the exacting principles of ethical conduct and decorum.[9] Indubitably, Runez, Jr. failed to meet these standards, having placed his personal interest over the interest of the Court. Indeed, his infractions besmirched the public perception of the image of the Court and cast serious doubt as to the ability of the Court to effectively exercise its power of administrative supervision over its employees.[10]

WHEREFORE, Samuel R. Runez, Jr., Cashier III, Checks Disbursement Division, Financial Management Office, Office of the Court Administrator, is **LIABLE** for the administrative offenses of **FALSIFICATION OF OFFICIAL DOCUMENT** and **SERIOUS DISHONESTY**. He is **DISMISSED** from the service. The Court **ORDERS** the **FORFEITURE** of all of his retirement benefits, except accrued leave credits. He is **PERPETUALLY BANNED** from re-employment in any branch or instrumentality of the government, including any government-owned or controlled corporations.

Let a copy of this Decision be furnished to the Civil Service Commission.

SO ORDERED.

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

Reyes, A. Jr. and *Hernando, JJ.,* on official leave.

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[9] *Supra* note 7.

[10] *Id.*

EN BANC

[A.M. No. P-14-3188. January 28, 2020]
(Formerly OCA I.P.I. No. 12-3879-P)

ARLENE L. AMBROSIO, *complainant, vs.* **SOLMINIO B. DELAS ARMAS, Sheriff IV, Branch 265, Regional Trial Court, Pasig City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT, DEFINED AND DISTINGUISHED FROM 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.

2. **ID.; ID.; ID.; GRAVE MISCONDUCT, COMMITTED; RESPONDENT'S ACTS, WHICH INCLUDE MAKING IT APPEAR THAT HE COULD INFLUENCE A JUDGE TO MODIFY OR CHANGE THE PREPARED ORDER IN EXCHANGE FOR MONEY CONSTITUTE GRAVE MISCONDUCT; PENALTY OF DISMISSAL FROM THE SERVICE, IMPOSED. —** [T]here are three acts where the respondent can be made liable for. First, communicating to a litigant who had a pending case in court where he was assigned; Second, showing a court order, which was not yet released to the parties, to persons who were not privy thereto, in violation of Section 1, Canon II of the New Code of Judicial Conduct; and Third, making it appear that he could influence a judge to modify or change the prepared order in exchange for money, which constitutes grave misconduct. The Court has always

emphasized that all members of the judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice be preserved. Court personnel cannot take advantage of the vulnerability of desperate party-litigants for monetary gain. Grave misconduct merits dismissal. In some cases, the court exercised its discretion to assess mitigating circumstances such as length of service or the fact that a transgression might be the first infraction of respondent. However, due to the gravity of the acts of respondent, no mitigating circumstances can be appreciated. Throughout the years this court has received many complaints from party-litigants against court employees extorting money from them. This court has already heard various reasons given by court employees for receiving money from party-litigants. However, there is no defense that could justify asking or receiving money from party litigants. The act itself makes court employees guilty of grave misconduct. They must bear the penalty of dismissal.

APPEARANCES OF COUNSEL

Julian F. Oliva, Jr. for complainant.
Romeo L. Telpo for respondent.

D E C I S I O N

***PER CURIAM*:**

This resolves the Complaint[1] filed on May 23, 2012 by Arlene L. Ambrosio (complainant) against Sheriff IV Solminio Delas Armas (Sheriff Delas Armas) of Branch 265, Regional Trial Court (RTC), Pasig City, for Oppression, Dishonesty, Grave Misconduct, Harassment, and Unethical Conduct in violation of Republic Act (R.A.) No. 6713 in relation to R.A. No. 3019.

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[1] *Rollo,* pp. 1-7.

Antecedents

Complainant filed a Motion to Declare Defendants in Default[2] in Civil Case No. 72902-PSG, entitled Arlene Ambrosio *v*. New RBW Marketing, Inc. and Kevin Manaloto pending before Branch 265, RTC, Pasig City in which Delas Armas was the branch sheriff. The said motion was denied in the Order[3] dated February 16, 2012, copies of which were sent to the parties and their respective counsel by registered mail on March 2, 2012, while complainant received her copy on March 8, 2012.[4]

However, prior to the Order being sent to the parties, in the afternoon of February 29, 2012, Sheriff Delas Armas, through his number +63918 951 3361, contacted complainant's husband, Cesar P. Ambrosio (Cesar) in his cellular phone number +63915 250 8859 regarding complainant's case, to wit :

Respondent Sheriff Delas Armas : "Pwede ba tayo mag usap ngayon? Punta ka d2 opis"

Cesar Ambrosio: "Morong pa sir bka mga 5 pa mkabalik bka pde tomorrow a.m. Pnthan kta"

Respondent Sheriff Delas Armas: Importante lang, regarding case mo

Cesar: Ok pre habol nlang ako pilitin ko before 5 mkabalik

Respondent: Tawag ka Muna

Cesar: Teka sir mag start npo hearing

Respondent: Cge

Cesar: Sherif kakatapos lng hearing mga 1 hour travel time frm morong to pasig. Trapik na coding pako. 2Mro a.m. Punta ko jan.Tnx

Respondent: D2 ka punta armal bowlingan. Agahan mo baka ma mail na yung order na denied, pinakiusapan ko lang si oic na wag munang I mail[5]

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[2] *Id.* at 16-17.

[3] *Id.* at 39-42.

[4] *Id.*

[5] *Id.* at 469.

Hearing the order of denial of the motion, Cesar immediately called Sheriff Delas Armas who told him that allegedly there were two orders prepared by the trial court and that it was the order denying the motion that was signed by the presiding judge. After which, they agreed to meet the next day.[6]

The next day, Cesar, with his friend Cyril Manaoag (Cyril), went to Branch 265, RTC of Pasig City to secure a copy of the order. They met Sheriff Delas Armas who showed them the order and its dispositive portion denying complainant's motion to declare defendants in default. Cesar told Sheriff Delas Armas that he will just accept the order although aggrieved. However, Sheriff Delas Armas retorted: "*Ha, Payag ka na dyan sa* order DENIED?" Thereafter, they went outside the office to talk privately, to wit:

Cesar: Pano to Sheriff?

Sheriff: Gusto kitang tulungan. Pakikiusapan ko si OIC at Judge kung papayag na i-Grant. Pero syempre meron konting gastos?

Cesar: Paanong gastos? Anong tinitingnan natin? Wala kasi akong ideya kung magkano?

Sheriff: Hindi naman gaano o ganoon kalaki ang kailanganin.

Cesar: Ano nga iyon? Magkano ang kakailanganin?

Sheriff: Pwede na siguro mga sampung libo or kaya lima lang.

Cesar: Ha! Kung limang libo, baka makagawa pa ako ng paraan. Pero kung sampu, mga ilang araw ang kakailanganin ko bago ako makabuo ng ganoong halaga.

Sheriff: Sige, subukan kong kausapin kung papayag sila, tawagan nalang kita o text kita.[7]

At 1:00 p.m. of the same day Sheriff Delas Armas texted Cesar saying that he was not able to convince the OIC and the

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[6] *Id.*

[7] *Id.* at 470.

Judge to change the order because the said order had already been made. The corresponding text messsages are as follows:

Sheriff: Di pumayag, dapat daw nung di pa nagawa order, saka naki usap, parang napasama pako at parang nag leak daw order

Cesar: Saan nagleak? Tayo lng magka-usap ah. Tsaka ikaw may sabe na dalawa order isang granted at isang denied gumagawa nko paraan para makalikom ng 10k.

Cesar: Gumagawa nko paraan balik ako jan b4 5pm kuhanin ko un order.[8]

Cesar and Cyril went back to Branch 265 at around 4:00 p.m. But Sheriff Delas Armas was no longer around. They requested for a copy of the order but the female staff who attended to him denied knowledge of the order. Cesar then texted Sheriff Delas Armas that he indeed went to Branch 265 and they agreed to just meet the next day.

On March 2, 2012, Cesar and Cyril returned to Branch 265 and met with respondent Sheriff Delas Armas at the 6th floor of the Hall of Justice where an argument ensued between Cesar and respondent, to wit:

Cesar: Sheriff, ano nangyari? Alam na alam mo na kami biktima dito, binibiktima nyo pa kami.

Sheriff Delas Armas: Tumutulong lang ako. Ako na napasama.

Cesar: Kung tumutulong ka, bakit mo kami hinihingan ng sampung libo. Eto si Jojo (Cyril) na testigo ko at narinig niya lahat ng pinag-usapan natin.

Sheriff Delas Armas: Wag ka masyadong maingay nag-hi-hearing si Judge baka marinig tayo.

Cesar: Eh ano kung marinig tayo. Gusto ko talaga kausapin ang Judge mo.

Sheriff Delas Armas: Bakit? Ano sasabihin mo?

Cesar: Eh di sasabihin ko ang totoo. Na hinihingan mo kami ng pera. At sasabihin ko na dalawa yun order na sinasabi mo. Granted at Denied.

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[8] *Id.*

Sheriff Delas Armas: Oo dalawa yun. Pero si Judge ang mamimili kung ano pipirmahan nya.

Cesar: Ngayon lang ako naka-encounter ng ganyan. Alam ko isa-isa lang order. Kung ganyan kayo ka-corrupt dadalhin ko na lang to sa OCAD doon na lang kayo magpaliwanag.[9]

Cyril heard the whole conversation as he was with Cesar the whole time he was conversing with Sheriff Delas Armas.[10]

Respondents Position

Respondent Sheriff Delas Armas vehemently denied the complainant's accusations against him contending that the allegations against him are purely fabricated coming from a litigant who obtained an unfavorable order from the court.

Respondent denied to have ever represented to Cesar that he could, in any way, influence the decision of the Honorable Judge. Moreover, respondent denied having asked Cesar money or otherwise in exchange for influencing the Court to change its unfavorable order to the complainant.

Respondent also stated that he does not know Cesar nor the complainant personally.[11]

In a Resolution dated February 10, 2014, the instant administrative matter was referred to the Executive Judge of RTC Pasig City for investigation, report and recommendation.[12]

Report and Recommendation

In his Report and Recommendation,[13] Investigating Judge Danilo S. Cruz (Judge Cruz) recommended that respondent Sheriff Solminio B. Delas Armas be meted the penalty of

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[9] *Id.* at 471.

[10] *Id.*

[11] *Id.* at. 49-52.

[12] *Id.* at 472.

[13] *Id.* at 454-464.

suspension for one (1) month without salary with stern warning that repetition of the same or similar act of misconduct shall be dealt with more severely, and we quote:

> Sheriff Solminio B. Delas Armas is guilty of simple misconduct. The undersigned notes that respondent has been in the service for twenty four (24) years and this is his first offense. He should be meted the penalty of suspension for one (1) month without salary with STERN WARNING that repetition of the same or similar act of misconduct shall be dealt with more severely.[14]

On February 28, 2017, a Memorandum[15] was passed by the Office of the Court Administrator finding respondent Delas Armas guilty of grave misconduct, we quote:

> **RECOMMENDATION:** It is respectfully recommended for the consideration of the Honorable [C]ourt that: respondent Delas Armas be found **GUILTY** of grave misconduct and be ordered **DISMISSED** from the service with **FORFEITURE** of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations.[16]

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

The Court's Ruling

We agree and adopt the recommendation of the OCA in imposing on Sheriff Delas Armas the ultimate penalty of dismissal from the service for 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.[17] It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior

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[14] *Id.* at 464.

[15] *Id.* at 468-477.

[16] *Id.* at 476-477.

[17] *Duque v. Calpo,* A.M. No. P-16-3505, January 22, 2019.

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.[18] 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.[19]

In a long line of cases, this Court has held that solicitation or receiving money from litigants by court personnel constitutes grave misconduct.[20] Under Section 46 (A) of Revised Rules on Administrative Cases in the Civil Service, this is punishable by dismissal from service even for the first offense. While there are cases in which the Court has mitigated the imposable penalty for humanitarian reasons and other considerations such as length of service, acknowledgment of infractions, feelings of remorse, and family circumstances,[21] none of these is applicable to the case at hand. Hence, respondent's dismissal is proper.

After a judicious study of the case, the Court finds no reason to depart from the findings and recommendation of the Office of the Court Administrator that the evidence on record sufficiently demonstrate respondent Sheriff Delas Armas' culpability for grave misconduct. This being an administrative proceeding, the quantum of proof necessary for a finding of guilt is only substantial evidence, or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[22] This requirement has been met in this case.

In the instant case, it is clear that in the afternoon of February 29, 2012, respondent Sheriff Delas Armas contacted Cesar through a series of text messages regarding Arlene's Motion

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[18] *Judge Tolentino-Genilo v. Pineda,* 817 Phil. 588, 594 (2017).

[19] *Id.*

[20] *Villahermosa, Sr. v. Sarcia,* 726 Phil. 408, 416 (2014).

[21] *Judge Marquez, et al. v. Pacariem,* 589 Phil. 72, 89 (2008).

[22] Rules of Court, Rule 133, Sec. 5; *Pamintuan v. Comuyog, Jr.,* 766 Phil. 566, 574-575 (2015).

to Declare Defendants in Default in Civil Case No. 72902-PSG then pending before Branch 265, RTC of Pasig City. The series of text messages are as follows:

Respondent Sheriff Delas Armas: "Pwede ba tayo mag usap ngayon? Punta ka d2 opis"

Cesar Ambrosio: "Morong pa sir bka mga 5 pa mkabalik bka pde tomorrow a.m. Pnthan kta"

Respondent Sheriff Delas Armas: **Importante lang, regarding case mo**

Cesar: Ok pre habol nlang ako pilitin ko before 5 mkabalik

Respondent: Tawag ka Muna

Cesar: Teka sir mag start npo hearing

Respondent: Cge. (Emphasis supplied).

Consequently, when Cesar and respondent Delas Armas met the next day, it was there that respondent intimated to Cesar that they can have the Order in Civil Case No. 72902-PSG reversed in favor of the complainant for a fee, to wit:

Cesar: Pano to Sheriff?

Sheriff: **Gusto kitang tulungan. Pakikiusapan ko si OIC at Judge kung papayag na i-Grant. Pero syempre meron konting gastos**.

Cesar: Paanong gastos? Anong tinitingnan natin? Wala kasi akong ideya kung magkano?

Sheriff: Hindi naman gaano o ganoon kalaki ang kailanganin.

Cesar: Ano nga iyon? Magkano ang kakailanganin?

Sheriff: **Pwede na siguro mga sampung libo or kaya lima lang**.

Cesar: Ha! Kung limang libo, baka makagawa pa ako ng paraan. Pero kung sampu, mga ilang araw ang kakailanganin ko bago ako makabuo ng ganoong halaga.

Sheriff: Sige, subukan kong kausapin kung papayag sila, tawagan nalang kita o text kita. (Emphases Supplied)

Cyril, who accompanied Cesar at that time, confirmed that respondent Sheriff Delas Armas extorted money from Cesar in

his testimony during cross examination after showing the order denying the motion of complainant, particularly:

Q: Now in paragraph 5 of the same affidavit, you mentioned that you were able to read the paper shown to you by the respondent, Solminio Delas Armas, am I correct, Mr. Witness?

A: Yes, Sir.

Q: What exactly did you read, Mr. Witness?

A: The word denied, Sir.

Q: So only the word denied, Mr. Witness?

A: Yes. Sir.

x x x x x x x x x

Q: Now in paragraph 7 of your affidavit, you mentioned the conversation between Mr. Ambrosio and respondent, am I correct, Mr. witness?

A: Yes, Sir.

Q: And in the last statement made by Mr. Ambrosio, he mentioned there and I quote[:]Kung limang libo magagawan ko pa ng paraan. Pero kung sampu, mga ilang araw pa bago ako makabuo ng ganun halaga", am I correct?

A: Yes, sir.

Q: Do you know, Mr. Witness, what the money is for?

A: **In their conversation parang may hinihinging pera, Sir.**

Q: Who requested for the money, Mr. Witness?

A: **Sir, Sol po, Sir**.[23] (Emphases supplied)

The above-mentioned conversation jived with the text messages between Cesar and respondent which proves that the latter tried to extort money from Cesar in exchange for a favorable ruling regarding complainant Arlene's motion, to wit:

Sheriff: **Di pumayag, dapat daw nung di pa nagawa order, saka naki usap, parang napasama pako at parang nag leak daw order**

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[23] *Rollo,* p. 474.

Cesar: Saan nagleak? Tayo lng magka-usap ah. Tsaka ikaw may sabe na dalawa order isang granted at isang denied gumagawa nko paraan para makalikom ng 10k.

Cesar: Gumagawa nko paraan balik ako jan b4 5pm kuhanin ko un order.[24] (Emphasis supplied)

On the other hand, a reading of the respondent's Comment shows that he vehemently denies all the allegtions hurled against him stating that no one in Branch 265 has the courage to even talk to the Judge regarding any of the pending cases. Aside from that, he avers that, as sheriff, his position does not authorize him to influence the court proceedings and that his only participation in the proceedings is to implement the orders of the court against its litigants.

In sum, there are three acts where the respondent can be made liable for. First, communicating to a litigant who had a pending case in court where he was assigned; Second, showing a court order, which was not yet released to the parties, to persons who were not privy thereto, in violation of Section 1, Canon II of the New Code of Judicial Conduct; and Third, making it appear that he could influence a judge to modify or change the prepared order in exchange for money, which constitutes grave misconduct.

The Court has always emphasized that all members of the judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice be preserved.[25] Court personnel cannot take advantage of the vulnerability of desperate party-litigants for monetary gain.

Grave misconduct merits dismissal.[26] In some cases, the court exercised its discretion to assess mitigating circumstances such

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[24] *Id.* at 475.

[25] *Anonymous Letter-Complaint against Atty. Miguel Morales, Clerk of Court, MTC, Manila,* 592 Phil. 102, 118 (2008).

[26] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Sec. 46, par. A, 3.

as length of service or the fact that a transgression might be the first infraction of respondent. However, due to the gravity of the acts of respondent, no mitigating circumstances can be appreciated.

Throughout the years this court has received many complaints from party-litigants against court employees extorting money from them. This court has already heard various reasons given by court employees for receiving money from party-litigants. However, there is no defense that could justify asking or receiving money from party litigants. The act itself makes court employees guilty of grave misconduct. They must bear the penalty of dismissal.[27]

Employees of the judiciary should be guided to be circumspect in the way they conduct themselves both inside and outside the office. Any scandalous behavior or any act that may erode the people's esteem for the judiciary is unbecoming of an employee and may not be countenanced. Any transgression or deviation from established norm of conduct, work related or not, amounts to a misconduct.[28]

WHEREFORE, respondent Solminio B. Delas Armas, Sheriff IV of Branch 265, RTC, Pasig City, is found **GUILTY** of grave misconduct, and is **DISMISSED** from the service immediately, with **FORFEITURE** of all retirement benefits, except accrued leave credits, and with prejudice to his re-employment in any branch or agency of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Reyes, A. Jr. and *Hernando, JJ.,* on official leave.

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[27] *Supra* 15 at 417.

[28] *Tauro v. Arce*, A.M. No. P-17-3731, Nov. 8, 2017 (formerly OCA I.P.I. No. 12-3871-P).

EN BANC

[A.M. No. 19-02-11-SC. January 28, 2020]

RE: REQUEST FOR TRAVEL AUTHORITY ON OFFICIAL TIME/OFFICIAL BUSINESS FOR PHILIPPINE JUDGES PARTICIPATING IN TRAINING AT THE HAGUE UNIVERSITY FROM MARCH 9 TO 16, 2019.

R E S O L U T I O N

INTING, *J.*:

This refers to the expenses incurred by the 10 participants from the Supreme Court of the Philippines to the judicial training on the Rome Statute of the International Criminal Court (ICC) conducted by The Hague University of Applied Sciences (The Hague University) from March 9 to 16, 2019.

The following Court official and judges were given travel authorities to visit and attend, on official business, the training conducted by The Hague University in the Netherlands per Resolution of the Court dated February 19, 2019:

(1) Deputy Court Administrator Raul Bautista Villanueva;

(2) Judge Cecilyn B. Villavert;

(3) Judge Mary Charlene V. Hernandez-Azura;

(4) Judge Caesar C. Buenagua;

(5) Judge Wilhelmina J. Wagan;

(6) Judge Jonel S. Mercado;

(7) Judge Macaundas M. Hadjirasul:

(8) Judge Mercedita G. Dadole-Ygnacio;

(9) Judge Wenida M. Papandayan; and

(10) Judge Peter V. Eisma

In the same Resolution, it was stated that the subject training is organized and hosted by The Hague University in cooperation with the Philippine Judicial Academy (PHILJA) and will focus on the Rome Statute and the ICC. Furthermore, it indicated that travel expenses, including accommodations, of the above-named participants would be shouldered by The Hague University.

After the training, the delegation submitted a Report about the activities undertaken during the event.

However, billings in the amount of €37,651 were thereafter sent by The Hague University for the payment of the share of the Philippine Judiciary in the expenses incurred for the subject judicial training. Apparently, the PHILJA and the Office of the Court Administrator (OCA) were of the impression that the training for the Philippine Judiciary was "for free" or at "no expense" when in fact the expenses incurred for travel and accommodation costs relative to the training program were only advanced by The Hague University.

Confronted with this scenario, the PHILJA, through Chancellor Adolfo S. Azcuna (Chancellor Azcuna), and Court Administrator Jose Midas P. Marquez, in a Memorandum dated October 9, 2019, justified the settlement of the amount for the following reasons:

1. The judicial training was the first of its kind that The Hague University organized and hosted with the cooperation of the PHILJA so that this partnership should continue as there are future programs or training options where we can further collaborate on for our mutual benefit. Evidently, the goodwill generated from this first collaboration between The Hague University and the PHILJA should not be put to waste but, rather, be nurtured and further enriched;

2. The amount spent for the judicial training, and now shouldered by the PHILJA, went to very good use. In a letter dated April 24, 2019, The Hague University expressed its genuine interest "to continue our fruitful collaboration in the future" and, more importantly, it assessed that the "training was successful" and declared that "(i)t would not be an exaggeration to state that the ten participants were

the best ambassadors of the Philippines to the (ICC)" so much so that "they demonstrated that the Philippine Judiciary subscribes to the highest standards of judicial professionalism" and "left the best possible impressions to everyone"; and,

3. The PHILJA has sufficient funds to shoulder the amount being collected from it as its share for the holding of the "successful program" that The Hague University organized and hosted in The Hague, The Netherlands.

Thus, PHILJA recommended that it be authorized to pay the amount of €37,651, or its peso equivalent of ₱2,141,588.06 (based on an exchange rate of ₱56.88 for every €1), to defray the travel and accommodation costs incurred by the Court official and judges who participated in the judicial training.

Thereafter, PHILJA Chancellor Azcuna, through a letter dated October 14, 2019, transmitted Board of Trustees' (BOT) Resolution No. 19-34 dated October 10, 2019, wherein the PHILJA agreed to pay €37,651 or ₱2,141,588.06 to The Hague University as it had sufficient funds to shoulder the amount, and recommended the approval thereof by the Court *En Banc*.

In the Agenda of November 12, 2019, the Court resolved to direct PHILJA to coordinate with The Hague University to produce a breakdown of the invoice/billing covering the 10 delegates to the training program and submit a report thereon within 30 days from notice thereof.

In compliance therewith, PHILJA submitted a Manifestation and Compliance with the following breakdown as received by email from The Hague University:

Table Cost

Air Fare	12,000	Based on Airfare of €1,200 per person
Accommodation	7,800	€130,-p/n/p x 6 nights (including breakfast)

Meals & Receptions	5,300	Including lunch and daily allowance for dinner
Transportation Costs (including to and from the airport)	1,200	Airport - hotel and daily transport hotel - venue
Administration Costs, Materials Program Management & Expert Fees	11,200	
Total	**37,500 Euros/3.750-p/p**	

Finding the Manifestation and Compliance to be in order, the Court **APPROVES** the Philippine Judicial Academy Board of Trustees' Resolution No. 19-34 dated October 14, 2019 as to the payment to The Hague University of the total amount of €37,651 or ₱2,141,588.06.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Carandang, Lazaro-Javier, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

EN BANC

[A.M. No. P-20-4035. January 28, 2020]
(Formerly OCA I.P.I. No. 17- 4777-P)

RACQUEL O. ARCE, Clerk III, Branch 122, Regional Trial Court, Caloocan City, *complainant, vs.* **FERDINAND E. TAURO, former Court Interpreter, Branch 122, Regional Trial Court, Caloocan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; GROSS NEGLECT OF DUTY; RESPONDENT'S REPEATED CARELESSNESS AND INEFFICIENCY IN THE PERFORMANCE OF HIS ASSIGNED TASK HAD CAUSED GREAT INCONVENIENCE TO THE JUDGE AND THE LITIGANTS WARRANTING A FINDING OF GUILT FOR GROSS NEGLECT OF DUTY. — It cannot be gainsaid that the duty of a court interpreter to keep complete and accurate minutes is vital to the efficient administration of justice. x x x As the OCA aptly noted, Tauro had repeatedly failed to prepare complete and accurate minutes in various cases. This often resulted in mistakes in the calendaring of cases and inconsistencies in the court records. Even taking into account that his neglect might not have been willful or deliberate, the sheer frequency of his lapses had caused great inconvenience to the judge and the litigants appearing before the court as Tauro's errors had to be remedied in subsequent orders and proceedings. To aggravate matters, he continued to commit the same mistakes over and over despite the presiding judge's directives and his co-employees' reminders. Tauro's well-documented carelessness and inefficiency in the performance of his assigned tasks indeed warranted a finding of guilt for gross neglect of duty.

2. ID.; ID.; ID.; ID.; WHERE THE PENALTY OF DISMISSAL FROM THE SERVICE COULD NOT BE IMPLEMENTED IN VIEW OF THE FACT THAT RESPONDENT HAD LONG BEEN DROPPED FROM THE ROLLS, THE COURT DEEMED IT SUFFICIENT TO IMPOSE THE

PENALTY OF FORFEITURE OF RETIREMENT BENEFITS EXCEPT ACCRUED LEAVE CREDITS, AND PERPETUAL DISQUALIFICATION FROM RE-EMPLOYMENT IN ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT. — Based on the evidence on record, the Court is not surprised that Tauro had long since been dropped from the rolls for his unsatisfactory performance ratings for four (4) consecutive rating periods as there is no place for such delinquency in honorable public service. This means, however, that the imposition of the penalty of dismissal can no longer be implemented. The penalty of dismissal from the service includes the accessory penalties of forfeiture of all his retirement benefits, except accrued leave credits, and prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. On the other hand, the dropping of a government employee from the rolls is not disciplinary in nature and does not result in the forfeiture of any benefit of the official or employee concerned nor in said official or employee's disqualification from reemployment in the government. In several cases, where the proper penalty was dismissal but it could not be imposed since the respondent had been previously dropped from the rolls, the Court deemed it sufficient to impose the accessory penalties of forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. We, therefore, find the OCA's recommendation as to the penalty to be appropriate.

D E C I S I O N

***PER CURIAM*:**

Antecedents

The present administrative matter is an offshoot of A.M. No. P-17-3731[1] which pertained to the complaint-affidavit of

[1] Formerly OCA IPI No. 12-3871-P.

Ferdinand E. Tauro charging Racquel O. Arce with serious misconduct. The contents of Tauro's complaint-affidavit were summed in the Court's Resolution dated November 8, 2017 in A.M. No. P-17-3731, *viz*.:

> [Tauro] narrated that on May 3, 2012, he was heckled by [Arce] who was at that time looking for missing records which were supposedly under [Arce's] custody. [Arce] allegedly shouted at [Tauro], "*Ikaw ang kumuha, ikaw ang gumalaw ng mga* records, *sinungaling, sinungaling ka! Dapat sa iyo mag*-resign." [Tauro] kept his cool but [Arce] continued berating him for the missing records.
>
> Despite the intervention of other court personnel, [Arce] allegedly continued to throw slanderous and threatening remarks against [Tauro]. When [Tauro] denied the accusations, [Arce] became furious and, seemingly determined to kill [Tauro], attacked him with a kitchen knife. However, the attack was timely prevented by their fellow court employees.

In her Comment/Compliance,[2] Arce narrated that on May 3, 2012 and in the course of her work, *i.e.*, releasing court orders and processes, she noticed that two (2) case folders were missing from her desk. She needed these case folders for the purpose of preparing the subpoenas for the following week's hearings. She was convinced that Tauro was the one who took those folders as he used to take case records from her table without permission supposedly for the purpose of preparing the court calendar. When she asked him about the missing folders, he gave evasive and unresponsive answers.

An argument ensued between them. Because Tauro kept on provoking her instead of giving straight answers, she got prompted to say "*pinatutunayan mo lang talaga na sinungaling ka*" and "*tumigil ka na, tinatanong lang kita sa dalawang* records, *kung [anu-ano] na sinasabi mo*."[3] But, because Tauro did not stop, she angrily said "*pag hindi ka pa tumigil sa kadadaldal ng wala namang kinalaman sa tanong ko sa [iyo], sasaksakin*

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

[3] *Id.* at 2.

na kita." Although she admitted she was holding a knife at that time, she denied ever aiming it at Tauro. It was only out of frustration that she uttered those heated words because that was not the first time Tauro took records from her table without permission and lied about it. She attached Affidavits[4] from their workmates who corroborated her version of the incident.

She was also spurred by fear that she would get mixed up in Tauro's blunders and her job would be jeopardized. His dishonesty and inefficiency were well-known to everyone in their office. In fact, the case records that were missing and for which she was unable to issue subpoenas were later found in his possession. She did not have the capacity to harm anyone. If Tauro were truly scared for his life, why would he continue staying in the office as late as she did, as shown by the logbook entries? Besides, it was absurd that a man of his built (5'8") would be threatened by a diminutive lady (5'2") like her.

She believed that if what she did was gross misconduct then fairness demanded that her accuser be charged with gross inefficiency. As a court interpreter, Tauro was so inept with his work that lawyers often complained to the judge and interpreted their own questions for accuracy. He regularly made errors or missed out items on the court calendar. Cases that should be listed in the agenda were not included and those that should not be in the agenda were included. She enumerated other instances of Tauro's mistakes, *viz.*:

(a) As an example of Tauro's inefficiency in preparing the court calendar, a land registration case was dismissed due to absence of petitioner and counsel during the hearing but it turned out petitioner and counsel were informed that the case was scheduled for another date according to the minutes Tauro prepared.

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[4] Annexes "C" to "C-2" of the Comment/Compliance were the affidavits of Jocelyn Norberte Lucas (Court Stenographer), Dinah M. Guitering (Legal Researcher), and Myrna Madduma Valencia (Court Stenographer).

(b) In a civil case, the testimony of a witness was stricken off from the record for non-appearance of the witness and counsel when the case was called in open court. The minutes of the previous hearing, however, showed that the case should not have been called in open court as the party was supposed to present evidence *ex parte* before the branch clerk of court. The judge had to recall the open court order and issue a new one.

(c) A lawyer in another civil case had to explain why he failed to move for correction of the stipulation of facts in the pre-trial order within the period given as he relied on the entries in the minutes of the pre-trial conference that were not reflected in the pre-trial order that was subsequently issued.

(d) In one case, counsel made an oral formal offer of exhibits but these exhibits were not listed by Tauro in the minutes although they were listed and admitted in evidence in the order issued by the judge in open court.

(e) He received exhibits from lawyers in defiance of the presiding judge's directive that the staff should not receive evidence that had not been formally offered.

(f) He let the parties sign the minutes for the next scheduled hearing but he would fail to enter the schedules in the calendar book. His minutes also often needed to be corrected because he entered the wrong dates which made the minutes inconsistent with court orders.

(g) He calendared a criminal case for hearing on a demurrer to the evidence when no such demurrer was filed. Worse, he erased the minutes and placed thereon "demurrer resolved."

(h) Another civil case was dismissed for Tauro's failure to inform the judge that the plaintiff asked permission from him [Tauro] to call his lawyer and the case was called while the plaintiff was still outside talking to counsel.

(i) There was no day that their court calendar was perfectly done despite the hours that Tauro spent working on it and the quantity of bond paper he used up to print and reprint just a one-day calendar. Mistakes in the calendar were still discovered in open court because Tauro did not seem to understand what was stated in the court order.

She substantiated the foregoing charges with photocopies of minutes, orders, pleadings, and transcripts of stenographic notes (TSNs) from the subject cases.

In closing, she admitted her lapse in judgment for her outburst and hoped for clemency as this was the first time she committed such a lapse. At the very least, she believed she and Tauro were both at fault. She urged the Court to take action on Tauro's dishonesty, gross neglect of duty, and gross inefficiency, and prayed that her Comment/Compliance be considered as her administrative complaint against Tauro.

The Office of the Court Administrator (OCA) repeatedly required Tauro to submit his own Comment on Arce's Comment/Compliance, but he failed to comply despite due notice.

Meanwhile, two (2) important developments occurred in this case. ***First***, in an *En Banc* Resolution dated October 7, 2014 in A.M. No. 14-09-307-RTC, **Tauro was dropped from the rolls** for his unsatisfactory performance ratings for the periods July-December 2011, January-June 2012, July-December 2012, and January-June 2013. ***Second***, in the Resolution dated November 8, 2017 in A.M. No. P-17-3731 involving the same altercation incident that took place on May 3, 2012, the Court's Second Division found **both Tauro and Arce guilty of conduct unbecoming of a court employee and imposed a fine of Php5,000.00** on each of them. Hence, this Resolution only refers to the remaining administrative case against Tauro for dishonesty, gross neglect of duty and gross inefficiency.

The OCA Report and Recommendation dated August 27, 2019

The OCA found that Arce was able to substantiate most of her allegations against Tauro. Although there were some charges that the OCA found unmeritorious, there was adequate evidence that cases had been dismissed or erroneous actions thereon were taken by the court or the parties due to the mistakes that Tauro made in the minutes and the court calendar. Tauro had also been clearly negligent in the preparation of minutes and court calendars that were incomplete or inaccurate and riddled with erasures and corrections. It was also proven that he received exhibits from counsel in one case before these exhibits were formally offered in violation of the strict directive of the presiding judge to the court staff. Worse, he kept them inside the vault instead of attaching them to the case records. Hearings had to be rescheduled when it was discovered that they were not supposed to be included in the calendar for the day. It was also duly shown in the portions of the TSNs Arce offered that Tauro committed numerous lapses during court proceedings, for which the judge had to call his attention.

The OCA opined that Tauro's infractions amounted to gross neglect of duty which would have been punishable by dismissal even on the first offense had he not been previously dropped from the rolls. Hence, the OCA recommended that:

1. the instant administrative complaint against respondent Ferdinand E. Tauro, former Court Interpreter, Branch [122], Regional Trial Court, Caloocan City, be **RE-DOCKETED** as a regular administrative matter; and

2. respondent Tauro be found **GUILTY** of gross neglect of duty and be penalized with dismissal from the service; but considering that he has been dropped from the rolls, making dismissal no longer feasible, that he be penalized instead with forfeiture of retirement benefits, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Court's Ruling

We fully adopt the OCA's factual findings and recommendations.

Jurisprudence teaches that:

[G]ross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, in so far as other persons may be affected. x x x In cases involving public officials, [there is gross negligence] when a breach of duty is *flagrant and palpable*."

It is important to stress, however, that the term "gross neglect of duty" does **not** necessarily include willful neglect or intentional wrongdoing. It can also arise from situations where "such neglect which, from *the gravity of the case or the frequency of instances*, becomes so serious in its character" that it ends up endangering or threatening the public welfare.[5] (Underscoring supplied.)

It cannot be gainsaid that the duty of a court interpreter to keep complete and accurate minutes is vital to the efficient administration of justice. The Court observed in ***Atty. Bandong v. Ching***:[6]

Among the duties of court interpreters is to prepare and sign "all Minutes of the session." (Manual for Clerks of Court, 32). After every session they must prepare the Minutes and attach it to the record. It will not take an hour to prepare it. **The Minutes is a very important document because it gives a brief summary of the events that took place at the session or hearing of a case. It is in fact a capsulized history of the case at a given session or hearing, for it states the date and time of the session; the names of the judge, clerk of court, court stenographer, and court interpreter who were present; the names of the counsel for the parties who appeared; the party presenting evidence; the names of witnesses who testified; the documentary evidence marked; and the date**

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[5] *Re: Report on the Preliminary Results of the Spot Audit in the Regional Trial Court*, Branch 170, Malabon City, 817 Phil. 724, 772 (2017).

[6] 329 Phil. 714, 719 (1996); cited in *RE: Report on the Judicial and Financial Audit of RTC, Br. 4, Panabo, Davao del Norte*, 351 Phil. 1, 17 (1998).

of the next hearing (*Id.,* 543). In criminal cases, the Minutes also includes data concerning the number of pages of the stenographic notes (*Id.*, 589).[7] (Emphasis supplied.)

As the OCA aptly noted, Tauro had repeatedly failed to prepare complete and accurate minutes in various cases. This often resulted in mistakes in the calendaring of cases and inconsistencies in the court records. Even taking into account that his neglect might not have been willful or deliberate, the sheer frequency of his lapses had caused great inconvenience to the judge and the litigants appearing before the court as Tauro's errors had to be remedied in subsequent orders and proceedings. To aggravate matters, he continued to commit the same mistakes over and over despite the presiding judge's directives and his co-employees' reminders. Tauro's well-documented carelessness and inefficiency in the performance of his assigned tasks indeed warranted a finding of guilt for gross neglect of duty.

In this regard, the *Revised Uniform Rules on Administrative Cases in the Civil Service* pertinently provide:

RULE 10

Schedule of Penalties

SECTION 46. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

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

1. Serious Dishonesty;

2. **Gross Neglect of Duty**;

x x x x x x x x x (Emphases supplied.)

We do not hesitate to impose the supreme penalty of dismissal on Tauro. Time and again, we held that:

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[7] *RE: Report on the Judicial and Financial Audit of RTC, Br. 4, Panabo, Davao del Norte, supra.*

The Constitution mandates that a public office is a public trust and that all **public officers must be accountable to the people and must serve them with responsibility, integrity, loyalty, and efficiency**. The demand for moral uprightness is more pronounced for members and personnel of the judiciary who are involved in the dispensation of justice. **As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity** in the public service, and in this light, are always expected to act in a manner free from reproach. Thus, **any conduct, act, or omission that may diminish the people's faith in the Judiciary should not be tolerated**.[8] (Emphasis supplied.)

Based on the evidence on record, the Court is not surprised that Tauro had long since been dropped from the rolls for his unsatisfactory performance ratings for four (4) consecutive rating periods as there is no place for such delinquency in honorable public service.

This means, however, that the imposition of the penalty of dismissal can no longer be implemented. The penalty of dismissal from the service includes the accessory penalties of forfeiture of all his retirement benefits, except accrued leave credits, and prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.[9] On the other hand, the dropping of a government employee from the rolls is not disciplinary in nature and does not result in the forfeiture of any benefit of the official or employee concerned nor in said official or employee's disqualification from reemployment in the government.[10] In several cases, where the proper penalty was dismissal but it could not be imposed since the respondent had been previously dropped from the rolls, the Court deemed it sufficient to impose the accessory penalties of forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in any branch or instrumentality of the government,

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[8] *Office of the Court Administrator v. Dequito*, 799 Phil. 607, 620 (2016).

[9] *Guerrero-Boylon v. Boyles*, 674 Phil. 565, 576 (2011).

[10] *Civil Service Commission v. Plopinio*, 808 Phil. 318, 339 (2017).

including government-owned or controlled corporations.[11] We, therefore, find the OCA's recommendation as to the penalty to be appropriate.

WHEREFORE, the Court resolves to:

1) **RE-DOCKET** the administrative complaint as a regular administrative matter against Ferdinand E. Tauro, former Court Interpreter, Branch 122, Regional Trial Court, Caloocan City; and

2) **FIND** Ferdinand E. Tauro **GUILTY** of gross neglect of duty. The Court would have **DISMISSED** him from the service had he not been earlier dropped from the rolls. Accordingly, his retirement and other benefits, except accrued leave credits, are hereby ordered **FORFEITED**. He is **PERPETUALLY DISQUALIFIED** from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

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

Hernando, J., on official leave but left no vote.

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[11] See, for example, *Noces-De Leon v. Florendo*, 781 Phil. 334, 340-341 (2016); *Judge Lagado v. Leonido*, 741 Phil. 102, 107-108 (2014); and *Llamasares v. Pablico*, 607 Phil. 100, 103-104 (2009).

EN BANC

[A.M. No. P-20-4042. January 28, 2020]
(Formerly OCA IPI No. 16-4624-P)

MARIA IRISH B. VALDEZ,[*] *complainant, vs.* **ANDREW B. ALVIAR, SHERIFF IV and RICARDO P. TAPAN, Stenographer III, both of the Regional Trial Court, Branch 76, Quezon City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; THE ISSUE IN ADMINISTRATIVE CASES IS NOT WHETHER THE COMPLAINANT HAS A CAUSE OF ACTION, BUT WHETHER THE EMPLOYEE CONCERNED HAS BREACHED THE NORMS AND STANDARDS OF THE JUDICIARY. — [T]he procedural issue raised by both Tapan and Alviar— that the person who filed the complaint, Valdez's mother, was not a real party-in-interest in this case and had no personal knowledge of the facts and circumstances surrounding Valdez's complaint — is unmeritorious. For one, Valdez had affirmed and confirmed the contents of her Letter of Complaint during the hearing conducted by Executive Judge Villavert, thus, the allegations therein were no longer hearsay. Moreover, as correctly pointed out by the OCA, jurisprudence dictates that the issue in administrative cases is not whether the complainant has a cause of action against the respondent, but whether the employee concerned has breached the norms and standards of the judiciary. Thus, the fact that Valdez was not the one who filed the complaint is irrelevant in the case at bar.

2. ID.; ID.; ID.; GRAVE MISCONDUCT; CASE AT BAR. — [T]he evidence shows that Alviar had asked and received money from Valdez and made her believe that he could finish the annulment process within six (6) months to one (1) year. Alviar had also used his previous assignment with the Family Court to convince Valdez and even dropped the name of his wife,

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[*] "Maria Irish Valdez Sy" in some parts of the *rollo.*

Fiscal Alviar, who would supposedly help them speed up the process. It is apparent that Valdez would not have parted with her money if not for these misrepresentations. x x x [T]he Court finds that the act of Alviar in asking and receiving money from Valdez as some sort of a package deal for the purported speedy processing of the annulment proceedings constitutes grave misconduct.

3. ID.; ID.; ID.; ID.; UNDER THE 2011 REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2011 RRACCS), GRAVE MISCONDUCT IS PUNISHABLE BY DISMISSAL FROM SERVICE FOR THE FIRST OFFENSE. — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. Under the 2011 Revised Rules on Administrative Cases in the Civil Service (2011 RRACCS), grave misconduct is punishable by dismissal from service for the first offense.

4. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTY UNDER THE 2011 RRACCS IS SUSPENSION FOR SIX (6) MONTHS AND ONE (1) DAY TO ONE (1) YEAR FOR THE FIRST OFFENSE; CASE AT BAR. — Conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish, or tend to diminish, the people's faith in the Judiciary. Tapan cannot extricate himself from liability by claiming that he merely accommodated Valdez's request. From the facts, it is apparent that his acts and representations led to the negotiations between Valdez and Alviar. By getting personally involved, Tapan had transgressed the strict norm of conduct prescribed for court employees, that is, to avoid any impression of impropriety, misdeed, or misdemeanor, not only in the performance of his duty, but also in conducting himself outside or beyond his duties. It bears stressing that he must still maintain a hands-off attitude in dealing with party-litigants as an employee of the judiciary. Because his acts had, in effect, compromised the integrity of the service and jeopardized the public's faith in the impartiality

of the courts, he should be held administratively liable for conduct prejudicial to the best interest of the service, which is punishable under the 2011 RRACCS by suspension of six (6) months and one (1) day to one (1) year for the first offense. As the OCA correctly pointed out, several circumstances should be appreciated in favor of Tapan, x x x Section 49(a) of the 2011 RRACCS states that the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present. Because there are only mitigating circumstances in favor of Tapan, the minimum of the penalty, *i.e.*, suspension of six (6) months and one (1) day should be imposed.

APPEARANCES OF COUNSEL

Manuel Abrogar III for respondent Tapan.

R E S O L U T I O N

***PER CURIAM*:**

In a Letter-Complaint[1] dated July 12, 2016, complainant Maria Irish B. Valdez (Valdez) made the following averments: sometime in 2012, Valdez wanted to annul her marriage so she sought advice from a close friend of her sister , respondent Ricardo P. Tapan[2] (Tapan), Stenographer III, Branch 76, Regional Trial Court (RTC), Quezon City, who told Valdez that he knew someone who could help her; since Valdez and her sister were based in Singapore, they went to the Philippines to meet with Tapan and his contact; Valdez and her sister met with Tapan on June 18, 2012 at a bar and restaurant, and he introduced them to respondent Andrew B. Alviar (Alviar), Sheriff IV of the same court; in said bar, they discussed the process of annulment and the respondents initially gave the amount of ₱200,000.00 for speedy processing but eventually agreed to the amount of ₱150,000.00 after bargaining; since the respondents wanted the amount handed to them personally, instead of transferring or depositing to their bank accounts, Valdez gave

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[1] *Rollo,* pp. 1-14.

[2] Also referred to as "Ojie Tapan" in some parts of the *rollo.*

the ₱150,000.00 wrapped in a black plastic bag to Tapan who immediately handed it to Alviar; Alviar told them that the processing of annulment would take six (6) months to one (1) year, and claimed that his wife was a prosecutor who could help them speed up the process; Alviar also told Valdez that she had to undergo a psychological test and this was scheduled on June 20, 2012; after the test, Alviar had asked for Valdez's contact details so he could send Valdez the documents; when Valdez asked for Alviar's contact number, Alviar told her to communicate with Tapan and he promised that he would file the case within two weeks; thereafter, Valdez went back to Singapore and waited for updates; Valdez repeatedly contacted Tapan, but it was only after three months that Tapan replied that the annulment proceedings were ongoing and that he would try to contact Alviar; months and years passed without any updates from Alviar, so Valdez asked her mother to follow-up with Alviar, but Alviar claimed that he was still getting/waiting for the required documents; at one point, when Valdez's mother was already contemplating to bring the matter to the authorities, Tapan had advised her to meet first with Alviar's wife, Fiscal Elenita Alviar (Fiscal Alviar); Valdez's mother met with Fiscal Alviar and requested the latter to return the money so she could start the annulment proceedings on her own, but Fiscal Alviar claimed that she had no money of that amount and told Valdez's mother that they could work this issue out; the annulment case was eventually filed a year later, but it was dismissed for lack of interest to prosecute because Fiscal Alviar had never contacted them or informed them about what happened to the annulment case.[3]

On September 7, 2016, the OCA sent a 1st Indorsement to Alviar[4] and Tapan[5] directing them to submit a comment on Valdez's complaint against them for grave misconduct. After filing a joint request for extension,[6] the respondents filed their

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[3] *Rollo,* pp. 87-88.

[4] *Id.* at 17.

[5] *Id.* at 18.

[6] *Id.* at 19-20.

respective comments. In a Comment (*Ad Cautelam*)[7] dated October 28, 2016, Tapan argued, among others, that: the acts alleged by Valdez were not work-related since they had nothing to do with his performance as a court stenographer; the allegations in the complaint were mere hearsay because the complaint was signed not by Valdez, but by her mother; out of his desire to help Valdez, he merely introduced the latter to Alviar, who was knowledgeable on annulment proceedings, and said act did not constitute grave misconduct. Alviar, on the other hand, filed an undated Comment[8] which reproduced almost verbatim the contents of Tapan's Comment (*Ad Cautelam*) save for certain modifications appropriate to Alviar, such as changing the position from "court stenographer" to "court sheriff' and removing statements that were inapplicable to him.

On July 19, 2017, the Court referred[9] the administrative case against Tapan and Alviar to the Executive Judge of the RTC, Quezon City, for investigation, report, and recommendation within sixty (60) days from receipt of the records. On July 19, 2019, Executive Judge Cecilyn E . Burgos-Villavert (Executive Judge Villavert) submitted her Report,[10] which recommended that Alviar be found guilty of grave misconduct, be made to return the amount of ₱150,000.00 to Valdez, and accordingly be dismissed from the service. As to Tapan, the Report pointed out that there was no clear showing that he had received any share of the money given by Valdez and it recommended that Tapan be found guilty of simple misconduct punishable with suspension for a period of one (1) month and one (1) day without pay, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

In a Memorandum[11] dated September 25, 2019, the OCA adopted the findings of fact in the Report of Executive Judge

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[7] *Id.* at 21-24.

[8] *Id.* at 25-28.

[9] *Id.* at 32.

[10] *Id.* at 69-77.

[11] *Id.* at 175-186.

Villavert and recommended that (i) Alviar be found administratively liable for grave misconduct punishable by dismissal, and (ii) Tapan be found administratively liable for conduct prejudicial to the best interest of the service punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense. However, after noting several circumstances that should be appreciated in favor of Tapan, the OCA recommended that his penalty be reduced to one (1) month suspension instead.

The Court adopts and affirms the findings of fact and recommendations of the OCA with modification as to the penalties imposed.

At the outset, the procedural issue raised by both Tapan and Alviar — that the person who filed the complaint, Valdez's mother, was not a real party-in-interest in this case and had no personal knowledge of the facts and circumstances surrounding Valdez's complaint — is unmeritorious. For one, Valdez had affirmed and confirmed the contents of her Letter-Complaint during the hearing conducted by Executive Judge Villavert, thus, the allegations therein were no longer hearsay. Moreover, as correctly pointed out by the OCA, jurisprudence[12] dictates that the issue in administrative cases is not whether the complainant has a cause of action against the respondent , but whether the employee concerned has breached the norms and standards of the judiciary. Thus, the fact that Valdez was not the one who filed the complaint is irrelevant in the case at bar.

Moving on to the substantial issues, the Court finds that Alviar is guilty of 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.[13] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by

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[12] *Faelden v. Lagura,* 561 Phil. 368, 373-374 (2007).

[13] *Judge Agloro v. Burgos,* 804 Phil. 621, 634 (2017).

substantial evidence.[14] Under the 2011 Revised Rules on Administrative Cases in the Civil Service (2011 RRACCS), grave misconduct is punishable by dismissal from service for the first offense.[15]

In *Pinlac v. Llamas*[16] *(Pinlac)*, the Court found the respondent therein guilty of grave misconduct for offering assistance and introducing the complainant to the surveyor to facilitate the titling of the property. The discussion on why the said respondent was held liable for grave misconduct is instructive, *viz*.:

> Under these circumstances, we consider it shortsighted to simply conclude, as the OCA did, that the respondent rendered a simple assistance and did not act as an active middleman in the transaction. The facts before us relate to realities that we find often enough among the offenses that the Court addresses in its constitutional role of supervising judicial officials and employees — **the offense that in common lay terms is referred to as "fixing." Fixing may range from the patently corrupt act of serving as middleman between a litigant and the decision maker, to rendering illegal and out-of-the-way assistance such as providing referral service to lawyers and other participants in court cases, or providing information such as the identity of the *ponente,* all *for a fee,* or, likewise *for a fee,* intervening to facilitate court processes such as the release of court papers or providing advance and illegitimate copies of drafts or final but unpromulgated decisions.** To be sure, these are not newly-heard activities as invariably in many courts, *even in this Court*, there are officials and employees who can never seem to resist these kinds of tempting activities.

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[14] *Id.* at 634.

[15] RULE 10. **SCHEDULE OF PENALTIES**

Section 46. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

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[.]

[16] 650 Phil. 360 (2010).

x x x x x x x x x

Nor can we agree with the OCA's recommendation that the respondent be found guilty of violating reasonable office rules and regulations, as no particular office rule or regulation was shown to have been violated by him. **We instead find the respondent liable for grave misconduct.** Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. The misconduct is grave if it involves the additional elements of corruption, willful intent to violate the law or disregard of established rules. Otherwise, the misconduct is only simple.

In the present case, the respondent's act, more than anything else, is closer to the direct solicitation or acceptance of money in connection with an operation directly being acted upon by the court of which he was an employee, which the Civil Service Rules penalize as a grave offense. As the complaint states (and this was never disputed), the respondent offered assistance to the complainant, but the offer was for a fee that was in fact paid, although the fee was ostensibly handed over to the surveyor with whom a meeting had to be arranged by the respondent. In this role, the respondent acted as an active intermediary in a fee transaction between the surveyor and the complainant who was not even a friend, relative nor an acquaintance to whom, under unique Filipino cultural practices, one may understandably be beholden to render some assistance.

The respondent's acts would have squarely fallen under Section 52(A)(ll), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (CSC Memorandum Circular No. 19, series of 1999), were it not for the proven turnover of the initially demanded ₱2,000.00 to the surveyor. Other than on the basis of this provision, however the respondent is liable under Section 52(A)(3) for ***grave misconduct***.

It is a *misconduct* because the respondent acted as an active and willing intermediary who had demanded and received money in relation to a case pending before the court where he worked. It is *grave* because the offer to help for a fee shows his willingness and intent to commit acts of unacceptable behavior, transgressing established and serious rules of conduct for public officers and employees. In short, the respondent undertook acts amounting to fixing, that the Court must necessarily recognize and penalize, as they were made under circumstances that unavoidably leave a heavy and adverse taint on the image of the Judiciary.

x x x x x x x x x

We particularly invite attention to this deplorable act to draw the attention of all concerned that between **the act of beneficial and legitimate assistance and illegal fixing is a thin red line that judicial officials and employees must never cross;** assistance should only be to the extent of what one can legitimately deliver, given as part of the duties as public servants, and with the best of motives; **it can never go beyond the extent allowed us by law, and never for a fee, a gift, or for the promise of personal benefit to the assisting official or employee**.

When that line is crossed, this Court will not hesitate to call the act for what it truly is — an illegality that must be condemned and for which the erring Judge, official or employee shall be severely penalized as a retribution for the harm done and as an example of how this Court acts to maintain public trust, by ensuring that the image and integrity of the Judiciary are not compromised.[17] (Additional emphasis and underscoring supplied)

Here, the evidence shows that Alviar had asked and received money from Valdez and made her believe that he could finish the annulment process within six (6) months to one (1) year. Alviar had also used his previous assignment with the Family Court to convince Valdez and even dropped the name of his wife, Fiscal Alviar, who would supposedly help them speed up the process. It is apparent that Valdez would not have parted with her money if not for these misrepresentations. Considering that the circumstances herein are analogous to *Pinlac,* and the acts herein are even more unscrupulous than the acts in said case, the Court finds that the act of Alviar in asking and receiving money from Valdez as some sort of a package deal for the purported speedy processing of the annulment proceedings constitutes grave misconduct.

On the other hand, as correctly highlighted by Executive Judge Villavert, there was no clear showing that Tapan had received any share from the money given by Valdez. While Tapan's acts may not squarely fall under the definition of "fixing"

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[17] *Id.* at 367-371.

tantamount to grave misconduct since his participation did not involve the acceptance of fees, the Court finds that Tapan should still be held administratively liable.

Conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish, or tend to diminish, the people's faith in the Judiciary.[18] Tapan cannot extricate himself from liability by claiming that he merely accommodated Valdez's request. From the facts, it is apparent that his acts and representations led to the negotiations between Valdez and Alviar. By getting personally involved, Tapan had transgressed the strict norm of conduct prescribed for court employees, that is, to avoid any impression of impropriety, misdeed, or misdemeanor, not only in the performance of his duty, but also in conducting himself outside or beyond his duties. It bears stressing that he must still maintain a hands-off attitude in dealing with party-litigants as an employee of the judiciary. Because his acts had, in effect, compromised the integrity of the service and jeopardized the public's faith in the impartiality of the courts, he should be held administratively liable for conduct prejudicial to the best interest of the service, which is punishable under the 2011 RRACCS by suspension of six (6) months and one (1) day to one (1) year for the first offense.[19]

As the OCA correctly pointed out, several circumstances should be appreciated in favor of Tapan, namely: the length of his service, the lack of clear showing that he had received any

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[18] *Judge Agloro v. Burgos, supra* note 13, at 634.

[19] RULE 10. **SCHEDULE OF PENALTIES**

Section 46. ***Classification of Offenses.*** — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x x x x x x

8. Conduct prejudicial to the best interest of the service[.]

share from the money given by Valdez, and the lack of showing that he had taken advantage of his position.[20] There is no basis, however, for the OCA to further reduce his penalty to one (1) month. Section 49(a) of the 2011 RRACCS states that the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present. Because there are only mitigating circumstances in favor of Tapan, the minimum of the penalty, *i.e.*, suspension of six (6) months and one (1) day should be imposed.

WHEREFORE, the Court hereby resolves that:

1. Respondent **ANDREW B. ALVIAR**, Sheriff IV, Regional Trial Court, Branch 76, Quezon City, is **GUILTY** of grave misconduct punishable with **DISMISSAL** from the service with forfeiture of all his pretirement and other benefits, except accrued leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations; and

2. Respondent **RICARDO P. TAPAN**, Stenographer III, Regional Trial Court, Branch 76, Quezon City, is **GUILTY** of conduct prejudicial to the best interest of the service and is hereby **SUSPENDED** for a period of six (6) months and one (1) day from notice.

Respondent **ANDREW B. ALVIAR** is further **DIRECTED to IMMEDIATELY RESTITUTE** the money given to him by complainant Maria Irish B. Valdez amounting to ₱150,000.00, which shall be subject to the interest rate of six percent (6%) *per annum* from the finality of this Resolution until full payment.

SO ORDERED.

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

Reyes, A. Jr. and *Hernando, JJ.,* on official leave.

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[20] *Rollo,* pp. 183-184.

EN BANC

[A.M. No. RTJ-20-2578. January 28, 2020]
(Formerly A.M. No. 19-11-268-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **PRESIDING JUDGE JOSELITO C. VILLAROSA, formerly of Branch 66, Regional Trial Court, Makati City,** *respondent.*

SYLLABUS

LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW AND VIOLATION OF SUPREME COURT RULES, DIRECTIVES, AND CIRCULARS; COMMITTED IN CASE AT BAR; PENALTY. — [T]he Court finds Judge Villarosa liable for: (1) violation of A.M. No. 03-3-03-SC dated July 8, 2014 when he deliberately failed to transfer eight commercial cases to Branch 137; and (2) four counts of gross ignorance of the law and procedure when he (a) transferred cases for JDR to Branch 149 without conducting the first stage of judicial proceedings, including JDR, in violation of the Consolidated and Revised Guidelines to Implement the Expanded Coverage of CAM and JDR; (b) ordered the consolidation of Civil Case No. 09-524 pending in his court with Civil Case No. CEB-34790 pending in Branch 10, RTC, Cebu City, in violation of Section 1, Rule 31 of the Rules of Court; (c) issued a TRO that was effective beyond the 20-day period prescribed in Section 5, Rule 58 of the Rules of Court and Administrative Circular No. 20-95 in Civil Case No. 11-1059; and (d) issued a TRO against the DOTC in SP M-7574, in violation of Section 3 of R.A. No. 8975. x x x Anent the imposition of the proper penalty on Judge Villarosa, Section 11(A), Rule 140 of the Rules of Court provides that a serious charge, such as Gross Ignorance of the Law, may be punishable by: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than

three, but not exceeding six months; or (c) a fine of more than ₱20,000.00, but not exceeding ₱40,000.00. On the other hand, Section 11(B) of the same Rule provides that a less serious charge, such as Violation of Supreme Court Rules, Directives, and Circulars, may be punishable by: (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not exceeding ₱20,000.00. x x x [A]s penalty for the first count of Gross Ignorance of the Law and in view of his supervening retirement (which obviates the implementation of the penalty of dismissal from service), the Court deems it proper to **forfeit all of Judge Villarosa's retirement benefits except accrued leave credits** and likewise impose **the accessory penalty of disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations.** In addition, the Court imposes the following: (a) for the other three counts of Gross Ignorance of the Law, fines in the amount of ₱40,000.00 each; and (b) for his violation of A.M. No. 03-3-03-SC dated July 8, 2014, a fine in the amount of ₱20,000, **Judge Villarosa is therefore fined a total of ₱140,000.00**, which amount is to be deducted from his accrued leave credits. In case his leave credits are insufficient, the OCA is directed to order Judge Villarosa to pay within 10 days from notice, the said amount.

D E C I S I O N

***PER CURIAM*:**

This resolves the administrative case against Presiding Judge Joselito C. Villarosa (Judge Villarosa) of Branch 66, Regional Trial Court (RTC), Makati City brought about by the article of Ramon Tulfo (Tulfo) involving three Makati judges entitled "What's Happening to Makati Judges?" printed in the July 7, 2015 issue of the *Philippine Daily Inquirer*.

Facts of the Case

On July 7, 2015, the *Philippine Daily Inquirer* published an article written by Tulfo, one of its columnists, entitled "What's Happening to Makati Judges?" Allegedly, three Makati judges

committed certain irregularities in the discharge of their judicial functions. Among the three judges is Judge Villarosa of Branch 66, RTC, Makati City. According to the said article, Judge Villarosa favored moneyed litigants in commercial cases, even if their cases are unmeritorious. Tulfo further claimed that Judge Villarosa is part of a syndicate composed of Makati judges who decide big commercial cases based on money and not on the merits. In his article entitled "Controversial Decisions" published on April 28, 2015, Tulfo described Judge Villarosa as having a "history of issuing decisions which were eventually reversed or revoked by the Court of Appeals." Aside from that, Tulfo revealed a number of other irregularities by Judge Villarosa including the issuance of a temporary restraining order (TRO) against the Department of Transportation and Communications (DOTC) in the procurement of 48 train cars amounting to ₱3.77 Billion on motion of a'losing bidder.

In view of the foregoing, the Office of the Court Administrator (OCA) issued a Memorandum dated July 8, 2015 directing Atty. Rullyn S. Garcia (Atty. Garcia), Judicial Supervisor, to investigate the circumstances of the cases referred to in Tulfo's article. Atty. Garcia was specifically tasked to confer with the judges to get their reaction to the said article, examine the records of the subject cases, and bring the case records to the OCA if necessary.

Atty. Garcia, however, did not confer with Judge Villarosa since at that time, there was an ongoing judicial audit being conducted in Judge Villarosa's court from May 14 to May 20, 2015.[1]

In the Judicial Audit Report dated June 2, 2015, the judicial team headed by Atty. Garcia released its findings against Judge Villarosa, to wit:

1. The court failed to transfer the following commercial cases, which have not yet reached the trial stage, to Branch 137, Regional Trial Court, Makati City, after Branch 66 was relieved of its designation

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

as a Special Commercial Court, in violation of the Court's Resolution dated 08 July 2014 in A.M. No. 03-3-03-SC, which was received by the court on 18 July 2014, directing Branch 66 to transfer all commercial cases to Branch 137, except those cases in the trial stage and those already submitted for decision:

	Case No.	Title	Nature	Date Filed	Last Action Taken/ Remarks
1	11-1059	Pinoycare Health Systems, Inc., et al. vs. Rex Redentor Berdes, et al.	Intra-Corporate Controversies under RA 8799	25 Oct. 2011	Order dated 13 March 2015 requiring the plaintiffs to file comment/opposition to the: (a) court-appointed rehabilitation receiver'smotion to confirm the engagement of the auditing firm Salvio-Leonida Panganiban & Co.; and (b) defendants' motion to terminate the JDR proceedings[.]
2	2 12-189	Optimax Int'l. Corp. vs.Beccomax Property and Development Corp., et. al.	Derivative Suit of a Stockholder	05 March 2012	Order dated 12 May 2015 resetting the JDR proceedings to 23 June 2015[.]
3	12-851	Asia Special Situations M3 P2 (SPV-MC) vs. John Huang, et al.	Derivative Suit	13 [Sept.] 2012	Order dated 07 May 2015 resetting the JDR proceedings to 08 June 2015. Based on the Notice of Hearing dated 06 [Sept.] 2013 of Atty. John Ivan B. Tablizo, Clerk of Court, Branch 66, this case was transferred to Branch 149 for JDR proceedings. However, in [the] Order dated 11 Oct. 2013 of Judge Cesar O. Untalan, this case was returned to Branch 66 stating that the "JDR proceeding of the instant case should be conducted by the court where the same was raffled."

	Case No.	Title	Nature	Date Filed	Last Action Taken/ Remarks
4	13-245	Franklin Financial Consultancy Phils., Inc. vs. Borough Financing Corp.	Infringement under the Intellectual Property Code	08 March 2013	Order dated 28 April 2015 submitting the motion for summary judgment for resolution[.] On 14 Aug. 2014, a Notice was issued for the continuation of marking of exhibits before the Branch Clerk of Court on 01 [Sept.] 2014[.]
5	13-538	Planters Environmental Solutions, Inc. vs. Compliant Solutions Corp., et al.	Unfair Competition	09 May2013	Order dated 13 May 2015 of Judge Cesar Untalan of Branch 149 resetting the JDR proceedings to 22 July 2015[.]
6	13-951	Burgundy Corporate Tower Office Owners Association vs. Wilfredo Serafica, et al.	Intra-Corporate Controversies	06 Aug. 2013	Order dated 24 June 2015 of Judge Untalan resetting the JDR proceedings to 05 Aug. 2015[.]
7	13-1202	Angping & Associates Securities, Inc. vs. Peak Condominium Corp., et al.	Declaration of Nullity of Resolution for Capital Call Contribution for Peak Rehabilitation Project	10 Oct. 2013	Receipt on 03 March 2015 of the Mediator's Report returning the case to the court for failure of the parties to arrive at an amicable settlement.
8	14-324	Victoria Murphy, et al. vs. Greenbelt Park Place Condominium[,] et al.	Declaration of Nullity of General Assembly Annual Meeting	21 March 2014	Order dated 4 Nov. 2014 denying the: (a) motion, for reconsideration of the Order dated 12 May 2014 granting petitioners' motion to admit the amended petition; and (b) motion to cite respondent Liza Villavicencio in contempt of court[.] The case has not yet been referred to the PMC for mediation[.]

2. The court transferred cases to Branch 149 for Judicial Dispute Resolution (JDR) proceedings in violation of the *Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court-Annexes Mediation (CAM) and Judicial Dispute Resolution (JDR),*[2] which provides that "the judge to whom the case has been originally raffled, or the JDR judge, shall preside over the first stage of the judicial proceedings, [*i.e.*], from the filing of a complaint to the conduct of CAM and JDR during the pre-trial stage."[3] For example:

	Case No.	Title	Nature	Date Filed	Date of Notice of Setting the JDR Before Judge Cesar O. Untalan of Branch 149, RTC, Makati City	Date of Termination of JDR
1	09-216	Pioneer Insurance & Surety Corp. vs. Sulpicio Lines, Inc., et al.	Damages	14 April 2009	11 Nov. 2009	03 Dec. 2009
2	09-264	Philam Insurance Co., Inc. vs. RCL Container Lines, et al.	Damages	24 March 2009	05 Feb. 2010	11 Nov. 2010
3	09-524	Pioneer Insurance & Surety Corp. vs. Albert Y. Pingoy, et al.	Damages	17 June 2009	10 March 2010	08 April 2010
4	13-245	Franklin Financial Consultancy Phils., Inc. vs. Borough Financial Corp.	Infringement under the Intellectual Property Code	08 March 2013	07 Oct. 2013	14 Nov. 2013

[2] Approved by the Court *En banc* in its Resolution dated January 11, 2011 in A.M. No. 11-1-6-SC-PHILJA.

[3] Unless otherwise agreed upon as provided by law, the JDR proceedings in areas where only one court is designated as commercial/intellectual property/ environmental court shall be conducted by another judge through raffle and not by the judge of the special court.

5	13-538	Planters Environmental Solutions, Inc. vs. Compliant Solutions Corp., et al.	Unfair Competition	09 May 2013	02 June 2014	(Still ongoing - Order dated 13 May 2015 of Judge Untalan, resetting the JDR proceedings to 22 July 2015[.])
6	13-951	Burgundy Corporate Tower Office Owners Association vs. Wilfredo Serafica, et al.	Intra-Corporate Controversies	06 Aug. 2013	Order dated 18 June 2014 of Judge Joselito C. Villarosa, referring the case for JDR to Branch 149 pursuant to par. IV of A.M. No. 04-01-12-SC-PHILJA - stating that "the JDR of commercial disputes shall be conducted by the pairing judge of the commercial court[.]"	(Still ongoing - Order dated 24 April 2015 resetting the JDR to 5 Aug. 2015[.])

3. In Civil Case No. 13-792, titled *M.D.M Logistics Phils., Inc. vs. Unli Logistics, Inc.*, for Breach of Contract, etc., the court rendered a Decision on 18 May 2015 without ruling on the Formal Offer of Exhibits of the plaintiffs filed on 11 December 2014, in violation of Section 5(g), Ru1e 30 of the Rules of Court, which essentially provides that "(u)pon admission of the evidence that the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleading." In essence, the admission of evidence is a condition *sine qua non* for submitting the case for decision.

4. In Civil Case No. 09-524, titled *Pioneer Insurance & Surety Corp. vs. Albert Y. Pingoy, et al.*, for Damages, the court issued an Order dated 30 November 2010 granting plaintiff's motion for consolidation of the case with Civil Case No. CEB-34790 *(Mactan Aviation Technology Center, Inc. vs. Capt. Lyubert Laguda, et al)*, which was

pending before Branch 10, Regional Trial Court, Cebu City. Defendant Pingoy filed a motion for reconsideration of the 30 November 2010 Order, but the court did not take any action thereon. Subsequent events in the case show that the consolidation was never effected owing probably to its impracticality, if not impropriety. Section 1, Rule 31, of the Ru1es of Court provides that "**(w)hen actions** involving questions of law or fact **are pending before the court,** it may order a joint hearing or trial of any or all the matters in issue in the actions; it **may order all actions consolidated;** and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Obviously, this provision contemplates a situation where two or more actions are pending before the same court, which may be the subject of consolidation, and does not apply to actions which are pending in separate jurisdictions. Thus, the 30 November 2010 Order consolidating Civil Case No. 09-524, which is pending in Branch 66, RTC, Makati City, with a case pending in Branch 10, RTC, Cebu City contravenes said procedural rule.

5. In Civil Case No. 11-1059, titled *Pinoycare Health Systems, Inc., et al. vs. Rex Redentor Berdes, et al.*, after submitting the application for Temporary Restraining Order (TRO) for resolution on 15 December 2011, the court issued an Order dated 05 January 2012 resolving the application for TRO and enjoining defendants from dissolving Pinoycare Health Systems, Inc. "until further orders" in order to maintain the status quo, prevent irreparable injury to plaintiff, and so as not to render nugatory the proceedings before the court. In the same Order, the court set the hearing on the application for a writ of preliminary injunction on 16 January 2012. By using the phrase "until further orders" to indicate the period of effectivity of the TRO, the court caused such period to become indefinite, thereby violating Section 5, Rule 58, Rules of Court and Administrative Circular No. 20-95, which provide that in no case shall the total period of effectivity of the TRO exceed twenty (20) days.

6. In SP M-7574, titled *Metro Rail Transit Corp., et al. vs. Department of Transportation and Communications (DOTC),* the court issued [*ex parte*] an Order on 30 January 2014, barely two (2) hours after it received the case record from the Office of the Clerk of Court, restraining for a period of twenty (20) days the DOTC, its officials, employees, agents or any person acting on their behalf, from performing any and all acts related in any manner to its procurement of additional

Light Rail Vehicles (LRVs) for the MRT3, in violation of Republic Act (R.A.) No. 8975.[4] Section 3 of R.A. No. 8975 provides:

> **No court**, except the Supreme Court, **shall issue any temporary restraining order**, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:
>
> [x x x x x x x x x]
>
> (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof[.]
>
> x x x x x x x x x
>
> Section 2 defines national government projects as all current and future national government infrastructure, engineering works, and service contracts, including projects undertaken by government-owned and-controlled corporations, all projects covered by R.A. No. 6957, amended by R.A. No. 7718, otherwise known as *Build-Operate-and-Transfer Law,* and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair, and rehabilitation, regardless of the source of funding.
>
> Undeniably, the act, which was the subject of the 30 January 2014 TRO involved a government project covered by the prohibition under R.A. No. 8975 imposed upon all courts, except the Supreme Court, against the issuance of TRO and preliminary injunction.[5] (Emphases in the original)

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[4] An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for other Purposes.

[5] *Rollo,* pp. 3-9.

Explanation of Judge Villarosa

After being directed by Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino, through a Memorandum dated June 2, 2015, Judge Villarosa offered the following explanations:

1. As to the failure to transfer commercial cases, which have not yet reached the trial stage, to Branch 137, RTC, Makati City — Judge Villarosa did not deny knowing about A.M. No. 03-3-03-SC which ordered his court to transfer all its commercial court cases to Branch 137. He justified the delay in the transfer, however, in this wise:

> (a) [T]he agreement between Judge Ethel Mercado Gutay of Branch 137 and Judge Selma P. Alaras in the presence of Atty. John Ivan B. Tablizo and Atty. Neil Duenas that all commercial cases which commenced trial in whatever stage [including conduct of hearing on TRO/Injunction] shall remain in Branch 66;
>
> (b) [T]he pagination of numerous volumes of case folders is a tedious process and takes time to accomplish. [He claimed that], it takes about two (2) to three (3) days to paginate a four (4)-volume case before it can be forwarded to the Office of the Clerk of Court for re-raffle; and
>
> (c) [T]he failure of the Executive Judge and the OCA to react to his letter informing them of the agreement mentioned above. [He pointed out] that had he been informed [about] any infirmity in the retention of the cases, he would have acted accordingly [with the order of the OCA. Moreover,] except for Case Nos. 13-538 and 13-951 which were undergoing JDR before Branch 149, the six (6) other commercial cases subject of this administrative matter were transferred to Branch 137 on 27 and 28 May 2015, or after the conduct of the judicial audit, pursuant to A.M. No. 03-3-03-SC.[6]

2. As to the transfer of cases for judicial dispute resolution (JDR) to Branch 149 —

Judge Villarosa averred that the transfer of cases to Branch 149 was brought about because Branch 149 was the lone commercial

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[6] *Id.* at 10.

court that has jurisdiction over the said cases and that it has been a practice to refer commercial cases to Branch 149 whenever JDR failed. Because of this, it was not entirely his fault to follow such practice.[7]

3. As to the failure to rule on the formal offer of evidence before rendering a Decision in Civil Case No. 13-792—

Judge Villarosa reasoned that said ruling regarding the formal offer of evidence was already included as part of the Decision dated May 18, 2015. Hence, according to him, it is not true that he did not rule on the formal offer of evidence.[8]

4. As to the consolidation of a case pending in Branch 66 with a case pending in Branch 10, RTC, Cebu City —

Judge Villarosa offered no viable excuse. It should be noted that he still proceeded in hearing Case No. 09-524 despite the order granting plaintiff's motion for consolidation joining the aforementioned case with Civil Case No. CEB-34790, pending before Branch 10, RTC, Cebu City. However, counsel for both parties updated him from time to time regarding the proceedings in Cebu.[9]

5. On the issuance of a TRO, the effectivity of which was "until further orders," in violation of Section 5, Rule 58 of the Rules of Court and Administrative Circular No. 20-95, which provide that in no case shall the total period of effectivity of the TRO exceed 20 days —

Judge Villarosa explained that the parties were in the process of arriving at an amicable settlement which were manifested during the conciliation proceedings. Therefore, it did not affect the pending cases.[10]

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

[8] *Id.* at 11.

[9] *Id.*

[10] *Id.*

6. As to the issuance of an order restraining the DOTC for a period of 20 days from performing any and all acts related in any manner to its procurement of additional light rail vehicles for the MRT-3, in violation of Republic Act (R.A.) No. 8975—

Judge Villarosa averred that he issued a protection order which is akin to a restraining order. He insisted that the issuance of an *ex parte* protection order was in accord with the Alternative Dispute Resolution (ADR) Rules as, based on the pleadings, there were allegations which warranted the issuance of a protection order. This was an available remedy under the ADR Rules, which was a necessary relief to those who are entitled thereto.[11]

Report and Recommendation

In its Report and Recommendation[12] dated November 8, 2019, the OCA found Judge Villarosa guilty of violation of a Supreme Court directive and four counts of gross ignorance of the law and procedure and recommended the forfeiture of all his retirement benefits, except accrued leave credits, and disqualification from reemployment in any branch or instrumentality of the government.

The OCA noted that judges, like Judge Villarosa, should always be reminded to be extra prudent and circumspect in the performance of their duties. Moreover, holding such an exalted position requires utmost proficiency in the law.[13]

The Issue

Whether Judge Villarosa is guilty of gross ignorance of the law and of violation of Supreme Court rules, directives, and circulars.

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[11] *Id.* at. 11-12.

[12] *Id.* at 1-17.

[13] *Id.* at 15, citing *Recto v. Hon. Trocino*, A.M. No. RTJ-17-2508, November 7, 2017, 844 SCRA 157, 179.

The Court's Ruling

We adopt the recommendation of the OCA which found Judge Villarosa guilty of four counts of gross ignorance of the law under Section 8, paragraph 9, Rule 140 of the Rules of Court and of violation of a Supreme Court directive under Section 11(B), Rule 140 of the Rules of Court. However, we deem it proper to modify the penalty to conform to recent jurisprudence.

The reasons offered by Judge Villarosa as to the delay in the transfer of the subject commercial cases to Branch 137 cannot be countenanced. Judge Villarosa was well aware of the Resolution in A.M. No. 03-3-03-SC, a copy of which was received by his court on July 18, 2014, 10 months prior to the conduct of the judicial audit in May 2015. However, he disregarded the said Resolution based on his purported agreement between Judge Ethel Mercado Gutay and Judge Selma P. Alaras that all commercial cases which have commenced trial shall remain with Branch 66.

Moreover, he never presented his letter to the OCA, which allegedly informed the OCA about the agreement, and even passed the blame on said office for not acting on the purported letter. Such kind of reasoning is unacceptable as the Resolution is categorical in ordering the transfer of all commercial cases in his *sala* to Branch 137. Resolutions of the Supreme Court cannot be overturned by mere agreement among judges.

Likewise, Judge Villarosa raised the issue of pagination of numerous volumes of case records as a reason for the delay. However, a delay of one or two days is not substantial enough to bring about a delay of about 10 months. To highlight the point that the pagination was not the proximate cause of the delay, immediately after the judical audit was conducted and completed, all commercial cases were transferred to Branch 137 except for one case. This shows that if sufficient effort was exerted, the cases can be transferred in a short amount of time.

As to the transfer of cases for JDR to Branch 149, the Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation (CAM) and JDR provides that the judge to whom the case has been originally raffled, or the JDR Judge, shall preside over the first stage of the judicial proceedings, *i.e.*, from the filing of a complaint to the conduct of CAM and JDR during the pre-trial stage. Furthermore, in a multiple *sala* court, "if the case is not resolved during JDR, it shall be raffled to another branch for the pre-trial proper up to judgment." Thus, the court to which the case was originally raffled is mandated to preside over the first stage of the proceedings, including the JDR, and it is only upon the failure of the JDR that the said case should be raffled to another branch. Here, Judge Villarosa hastily transferred the cases to Branch 149 without the first stage of the proceedings, which includes JDR, in clear violation of the abovementioned guidelines.

Regarding his failure to rule on the formal offer of evidence before rendering a Decision in Civil Case No. 13-792, Judge Villarosa explained that the ruling on the formal offer of evidence was already included in the Decision. Regarding this issue, we are inclined to give him the benefit of the doubt although he was not able to present a copy of the said Decision as it seems to be an isolated case which we could excuse.

Regarding his consolidation of cases pending before Branch 66 and Branch 10, RTC, Cebu City, Judge Villarosa admitted to granting the motion for consolidation although the latter has no bearing with the case pending in his *sala* and still proceeded with hearing the case pending with his *sala* independently. This clearly violated Section 1, Rule 31 of the Rules of Court, to wit:

> SEC. 1. *Consolidation.* — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Furthermore, we are left at a quandary as to why Judge Villarosa granted the motion for consolidation if he will eventually hear the case pending in his *sala* independently.

Regarding the issuance of a TRO which remained effective "until further notice" in violation of the 20-day period prescribed in Section 5, Rule 58 of the Rules of Court and Administrative Circular No. 20-95, Judge Villarosa did not offer any valid explanation, as he merely said that the parties, at that time, were in the process of amicably settling the case.

As to his issuance of a TRO against the DOTC in violation of R.A. No. 8975, he claimed that he issued a "protection order akin to a restraining order" in accordance with the ADR Rules. This, however, cannot excuse Judge Villarosa from administrative liability. First, a close perusal of the Order dated January 30, 2014, which was issued *ex parte* in SP M-7574, shows that it is clearly a TRO as it prevented the DOTC from performing any and all acts related in any manner to its procurement of additional light rail vehicles for the MRT-3 for a period of 20 days. Second, the ADR Rules cited as basis by Judge Villarosa is not applicable in the instant case because this is not an arbitration proceeding. This case involves a judicial process where a judge is called to adjudicate and settle the issues of the parties.

In sum, the Court finds Judge Villarosa liable for: (1) violation of A.M. No. 03-3-03-SC dated July 8, 2014 when he deliberately failed to transfer eight commercial cases to Branch 137; and (2) four counts of gross ignorance of the law and procedure when he (a) transferred cases for JDR to Branch 149 without conducting the first stage of judicial proceedings, including JDR, in violation of the Consolidated and Revised Guidelines to Implement the Expanded Coverage of CAM and JDR; (b) ordered the consolidation of Civil Case No. 09-524 pending in his court with Civil Case No. CEB-34790 pending in Branch 10, RTC, Cebu City, in violation of Section 1, Rule 31 of the Rules of Court; (c) issued a TRO that was effective beyond the 20-day period prescribed in Section 5, Rule 58 of the Rules of Court and Administrative Circular No. 20-95 in Civil Case

No. 11-1059; and (d) issued a TRO against the DOTC in SP M-7574, in violation of Section 3 of R.A. No. 8975.

It is important to note that previously, Judge Villarosa was found guilty in two other administrative cases. In A.M. No. RTJ-14-2410, a Resolution was issued on March 11, 2015 which found him guilty of gross ignorance of the law, gross inefficiency and serious misconduct, for which he was fined ₱10,000.00. Likewise, in a Resolution dated September 14, 2016 in A.M. No. RTJ-16-2474, he was found guilty of undue delay in resolving a motion in violation of the Code of Judicial Conduct and was fined ₱20,000.00 with a stern warning that repetition of the same or similar act shall be dealt with more severely.[14]

Over and above that, Judge Villarosa has nine pending administrative cases. These are: (1) QCA IPI No. 18-4860-RTJ, entitled *"[Reynaldo C Mallari] v. Judge Villarosa,"* for gross ignorace of the law, grave abuse of discretion, and manifest partiality; (2) OCA IPI No. 18-4800-RTJ, entitled *"Alexander F. Balutan, General Manager, PCSO v. Judge Villarosa,"* for gross ignorance of the law, grave abuse of authority, gross neglect of duty, willful violation of the New Code of Judicial Conduct; (3) OCA IPI No. 18-4789-RTJ, entitled *"[Stig] Mats Thomas Hillerstam v. Judge Villarosa,"* for gross ignorance of the law; (4) OCA IPI No. 16-4642-RTJ, entitled *"Bangko Sentral ng Pilipinas v. Judge Villarosa,"* for gross misconduct and gross ignorance of the law; (5) OCA IPI No. 16-4594-RTJ, entitled *"Lourdes H. Castillo v. Judge Villarosa,"* for violation of the Code of Judicial Conduct; (6) OCA IPI No. 15-4480-RTJ, entitled *"DPWH v. Judge Villarosa,"* for gross ignorance of the law and gross misconduct constituting violation of the Code of Judicial Conduct; (7) A.M. No. 15-4385-RTJ, entitled *"[Laurentius Theodorus] Peters [v. Judge Villarosa],"* for partiality, grave abuse of discretion and gross ignorance of the law; (8) UDK No. Anonymous No. 020141114-01, for gross ignorance of the law and misconduct, filed by a concerned citizen;

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[14] *Rollo,* p. 15.

and (9) UDK No. Anonymous No. A20091016-01, for immorality, filed anonymously.[15]

In *Department of Justice v. Judge Mislang*,[16] the Court explained the nature of gross ignorance of the law as an administrative offense, to wit:

> Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Mislang. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.
>
> For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they

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[15] *Id.*

[16] 791 Phil. 219, 227-228 (2016).

must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.

Anent the imposition of the proper penalty on Judge Villarosa, Section 11(A), Rule 140 of the Rules of Court provides that a serious charge, such as Gross Ignorance of the Law, may be punishable by: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three, but not exceeding six months; or (c) a fine of more than ₱20,000.00, but not exceeding ₱40,000.00.

On the other hand, Section 11(B) of the same Rule provides that a less serious charge, such as Violation of Supreme Court Rules, Directives, and Circulars, may be punishable by: (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not exceeding ₱20,000.00.

As aptly observed by Senior Associate Justice Estela M. Perlas-Bernabe during the deliberations on this case, the Court, in *Boston Finance and Investment Corp. v. Gonzales*,[17] has held that "[i]f the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation."

Accordingly, as penalty for the first count of Gross Ignorance of the Law and in view of his supervening retirement (which

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[17] A.M. No. RTJ-18-2520, October 9, 2018.

obviates the implementation of the penalty of dismissal from service),[18] the Court deems it proper to **forfeit all of Judge Villarosa's retirement benefits except accrued leave credits** and likewise impose the **accessory penalty of disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations.**

In addition, the Court imposes the following: (a) for the other three counts of Gross Ignorance of the Law, fines in the amount of ₱40,000.00 each; and (b) for his violation of A.M. No. 03-3-03-SC dated July 8, 2014, a fine in the amount of ₱20,000, **Judge Villarosa is therefore fined a total of ₱140,000.00**, which amount is to be deducted from his accrued leave credits. In case his leave credits are insufficient, the OCA is directed to order Judge Villarosa to pay within 10 days from notice, the said amount.

WHEREFORE, former Judge Joselito C. Villarosa is hereby found **GUILTY** of four (4) counts of Gross Ignorance of the Law, as well as of violation of A.M. No. 03-3-03-SC dated July 8, 2014. Accordingly, as explained above, all his retirement benefits except accrued leave credits, are **FORFEITED**, and he is further meted with the accessory penalty of **DISQUALIFICATION** from reinstatement or appointment to any public office, including government-owned and controlled corporations. In addition, he is **FINED** the total amount of ₱140,000.00, which amount is to be deducted from his accrued leave credits. In case his leave credits are insufficient, the Office of the Court Administrator is **DIRECTED** to order Judge Villarosa to pay within ten (10) days from notice, the said amount.

SO ORDERED.

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

Reyes, A. Jr. and *Hernando, JJ.*, on official leave.

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[18] *Report on the Financial Audit Conducted in the Municipal Trial Court in Cities in Tagum City, Davao del Norte,* 720 Phil. 23, 55 (2013).

FIRST DIVISION

[A.C. No. 12018. January 29, 2020]

ZENAIDA MARTIN-ORTEGA, *complainant, vs.* **ATTY. ANGELYN A. TADENA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; COMPLAINANTS BEAR THE BURDEN OF PROVING THE ALLEGATIONS IN THEIR COMPLAINTS BY SUBSTANTIAL EVIDENCE OR THAT AMOUNT OF RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION. — [W]hile we have, in the past, suspended lawyers who wrongfully asserted their clients' rights outside the bounds of the law, we cannot do so if the allegations against them are not satisfactorily proven by the complainants. Time and again, the Court has ruled that in administrative proceedings, complainants bear the burden of proving the allegations in their complaints by substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In the present case, it cannot be denied that complainant Zenaida failed to discharge that burden. x x x [H]er bodyguard and witness curiously failed to declare Atty. Tadena's alleged misconduct in his police reports. Neither did he explain the reason for his omission. A part from this, what cast more doubt on Zenaida's claims are the photographs she presented, supposedly showing Atty. Tadena in the act of breaking into her condominium unit. But these photographs are, at best, mere abstract illustrations that are extremely blurred. There is, therefore, an undeniable uncertainty surrounding the issues of whether Atty. Tadena, indeed, threatened Zenaida's bodyguard and whether she actually participated in the forceful opening of the subject condominium unit. The Court is, however, one with the findings of the Investigating Commissioner that Atty. Tadena must, nonetheless, be admonished with warning that a repetition of the same acts will be dealt with more severely.

2. LEGAL ETHICS; ATTORNEYS; WHILE LAWYERS OWE THEIR ENTIRE DEVOTION TO THE INTEREST OF THEIR CLIENTS AND ZEAL IN THE DEFENSE OF THEIR CLIENT'S RIGHT, THEY SHOULD NOT FORGET THAT THEY ARE, FIRST AND FOREMOST, OFFICERS OF THE COURT, BOUND TO EXERT EVERY EFFORT TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE. — [W]hile a lawyer owes fidelity to the cause of his client, it should not be at the expense of truth and the administration of justice. Under the Code of Professional Responsibility, a lawyer has the duty to assist in the speedy and efficient administration of justice, and is enjoined from unduly delaying a case by impeding execution of a judgment or by misusing court processes. While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are, first and foremost, officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice. Their office does not permit violation of the law or any manner of fraud or chicanery. A lawyer's responsibility to protect and advance the interests of his client does not warrant a course of action propelled by ill motives and malicious intentions against the other party. Mandated to maintain the dignity of the legal profession, they must conduct themselves honorably and fairly. They advance the honor of their profession and the best interests of their clients when they render service or give advice that meets the strictest principles of moral law.

APPEARANCES OF COUNSEL

Ulysses L. Gallego for complainant.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court is a Complaint[1] for disbarment, dated July 12, 2012, filed by complainant Zenaida Martin-Ortega against

[1] *Rollo*, pp. 17-26.

respondent Atty. Angelyn A. Tadena for her alleged gross misconduct in the representation of her client and husband of Zenaida, Leonardo G. Ortega, Jr., with respect to the legal battle of the spouses.

The antecedent facts are as follows:

In her complaint, Zenaida narrated that she was married to Leonardo but has been separated from him since January 2011. From then on, she lived in a condominium unit located at 202A Centro Plaza, Scout Torillo, South Triangle, Quezon City, while Leonardo lived at 15-B Palawan Tower, Bay Gardens, Macapagal Avenue, Pasay City. Around 2:00p.m. on December 7, 2011, and while in Davao City, she received a frantic phone call from Mr. Michael Fral, the building administrator of Centro Plaza, informing her that her estranged husband, Leonardo, was at the lobby intimidating him and the building's security guards to gain entry to her unit. She immediately called her personal bodyguard, Mr. Allan A. Afable, to prevent Leonardo from entering said unit. Upon seeing Afable, Leonardo angrily scolded him and asked, "*Ikaw ba yung bodyguard ng asawa ko? Gusto ko pumasok sa unit kasi maliligo ako. Asan na ang susi?*" Afable apologized and said that he was specifically instructed by Zenaida not to allow him to enter. Then, about five (5) to seven (7) armed men came and asked him, "*Ano bang problema dito pare? Bakit ayaw mong papasukin ang Bro namin? Sya naman ang may-ari ng unit. Asan pala ang amo mo? Gusto mo bang masaktan?*" The men, however, left him alone as soon as responding policemen arrived.[2]

Not long after, Atty. Tadena arrived and introduced herself as Leonardo's counsel. She talked to the policemen and when they left, she scolded Afable saying, "*Walanghiya naman! Bakit ayaw mong papasukin ang may-ari? Asan na ang susi? Idedemanda kita kapag di mo ibinigay ang susi!*" But Afable stood his ground. Atty. Tadena then called a locksmith to open the unit. When Afable tried to stop them, she angrily shouted

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[2] *Id.* at 18-19.

at him, "*Sige, pipigilan mo kami? Gusto mo talagang mademanda?*" Feeling intimidated, Afable had no choice but to follow them to the unit as they forcibly opened its door. He, however, took photographs of the incident. Upon gaining entry of the unit, Leonardo and Atty. Tadena took pictures of the same, rummaged through Zenaida's personal belongings, and, thereafter, padlocked the door. Zenaida then instructed Afable to report the incident at the nearest police station. Subsequently, when Zenaida arrived at the unit from Davao City, she was surprised to discover that missing therefrom were her laptop computer and twelve (12) assorted ladies' luxury bags. She immediately summoned the security guard on duty who said that he saw Leonardo carrying some items when the latter left the building. This incident prompted Zenaida to file a robbery case against Leonardo and Atty. Tadena, as well as the instant administrative complaint against Atty. Tadena.[3]

In her Answer,[4] Atty. Tadena vehemently denied the accusations against her. She challenged the pieces of evidence presented by Zenaida and insisted that she never threatened Afable. Neither did she forcefully break into the subject condominium unit. Atty. Tadena argued that contrary to the claims of Zenaida, Leonardo owned the unit and had previous access to it. That is why he felt violated, embarrassed, and publicly humiliated when he waited at the lobby for more than seven (7) hours just to gain entry to his own property. The acts of Zenaida, through Afable, as well as the building administrator, in intimidating and preventing him from entering his own unit were clear violations of his civil and constitutional rights. Thus, she merely fulfilled her duty to defend Leonardo's rights. She also pointed out that Zenaida's accusation of robbery against her and Leonardo was a mere fabrication so she can use it as one of her defenses in the adultery case they filed against her. There, she relied on the argument that Leonardo's evidence, consisting of video recordings, is inadmissible because it was

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[3] *Id.* at 19-20.

[4] *Id.* at 37-52.

illegally obtained during the robbery. Moreover, Atty. Tadena refuted the insinuation that the Louis Vuitton bag she was seen holding in her Facebook account was stolen from Zenaida, stating that she purchased the same in a secondhand store. As to the alleged missing Louis Vuitton bag of Zenaida, Leonardo countered that he cannot be charged of any unlawful taking because he is the owner of the missing bag.[5]

In a Report and Recommendation[6] dated November 8, 2014, the Investigating Commissioner of the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended that Atty. Tadena be admonished, with a stern warning that a repetition of the same or equivalent acts shall be dealt with more severely in the future.

In addition, on the basis of the new allegation of collusion made by Zenaida in her Supplemental Affidavit[7] and Rejoinder[8] against Atty. Tadena, Atty. Eric Reginaldo, and Atty. Neil P. Cariaga, the Investigating Commissioner further recommended that the Board of Governors (*BOG*) of the IBP *motu proprio* initiate administrative proceedings against said parties by requiring them to explain why they should not be held administratively liable for violation of the Lawyer's Oath and Code of Professional Responsibility for an apparent collusion in the filing of the petition for annulment of marriage of spouses Zenaida and Leonardo and/or for bribery.[9]

In her Rejoinder,[10] Zenaida charged Atty. Tadena for colluding with Atty. Reginaldo and Atty. Cariaga, then counsels of Zenaida, in the filing of the petition for annulment. She alleged that in a meeting where said counsels, as well as Leonardo and herself,

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[5] *Id.* at 292.

[6] *Id.* at 288-295.

[7] *Id.* at 212.

[8] *Id.* at 227-231.

[9] *Id.* at 294-295.

[10] *Id.* at 227-231.

were present, the counsels were discussing their plan of action on the petition. In support of her allegation, Zenaida presented Atty. Tadena's e-mail message addressed to Atty. Cariaga, sent on November 16, 2011, which goes as follows:

> Dear Niel;
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> Yes, we will furnish you a copy of our draft petition within this week. Regarding the fees, our client will shoulder the half of Php300,000 as agreed upon. As to the decision, just like we said, the process will go through the regular procedure, but, certainly[,] it will not take [a] year or so. Rest assured, same as Zeny, our client wants this to be settled soonest, too.
>
> Thank you and keep in touch.
>
> A. A. Tadena
>
> Senior Legal Officer[11]

In a Resolution[12] dated January 31, 2015, the BOG of the IBP approved, with modification, the Report and Recommendation of the Investigating Commissioner suspending Atty. Tadena from the practice of law for a period of three (3) months. The BOG further issued a Show Cause Order against Attys. Tadena, Reginaldo and Cariaga to explain why they should not be held administratively liable for violation of the Lawyer's Oath and the Code of Professional Responsibility for an apparent collusion among them.

On October 26, 2015, Atty. Tadena filed a Motion for Reconsideration[13] praying that the BOG reconsider its resolution to suspend her for three (3) months. *First*, she reiterated that she merely fulfilled her duty as counsel of Leonardo in defending his rights and the same does not constitute gross misconduct amounting to her suspension. This is due to the fact that there was no legal (such as a restraining order) nor even reasonable

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[11] *Id.* at 228.

[12] *Id.* at 287-287A.

[13] *Id.* at 296-304.

ground why Leonardo was being prevented from gaining entry into the conjugal property he co-owned. *Second*, she argued that the challenged rulings were anchored on hearsay allegations because Zenaida was not present during the December 7, 2011 incident, her basis being merely derived from phone calls with the building administrator and from her bodyguard who executed an affidavit. But said bodyguard was never presented in any of the other proceedings against Leonardo, such as an application for the issuance of a temporary restraining order/permanent protection order. *Third*, Atty. Tadena invited attention to the propensity of Zenaida and her new lawyer, Atty. Ulysses Gallego, to file unfounded and frivolous suits against her and her client Leonardo, such as: (1) a robbery case that was dismissed for lack of merit by the Quezon City prosecutor; (2) a complaint for marital rape against Leonardo that was dismissed for lack of merit by the Pasay City prosecutor; and (3) an administrative complaint against Judge Tingaraan U. Guiling of the Regional Trial Court (*RTC*) of Pasay City who granted support *pendente lite* in favor of Leonardo in the main annulment case of the spouses. On appeal, the Court sustained the ruling of Judge Guiling and held that the support was valid. *Fourth*, Atty. Tadena further invited attention to the fact that on the contrary, the following cases she and Leonardo filed against Zenaida were all meritorious and sustained: (1) an adultery case against Zenaida, supported by video clips of Zenaida and her paramour kissing, as well as an affidavit of their helper who saw them having sexual intercourse which was found to have probable cause by the Quezon City prosecutor who subsequently filed an information and is now undergoing trial; (2) a libel case against Zenaida which was found to have probable cause by the Pasay City prosecutor who subsequently filed an information and is now undergoing trial; and (3) the annulment of marriage case where the video clips were presented and which had already attained finality.

As for the allegation of collusion, Atty. Tadena argued that the same was merely an attempt of Zenaida and her new counsel to save their plight. She countered that the prohibition of collusion essentially pertains to the agreement on any of the legal grounds

for annulment. But the agreement in the instant case as to who will file the petition and as to sharing in the legal expenses is not a ground for annulment and, hence, collusion cannot be inferred therefrom. In fact, legal expenses for annulment are necessary expenses that may be taken from the conjugal asset. In effect, there is actually sharing in expenses by the spouses in any annulment case.[14]

Subsequently, in another Resolution[15] dated May 27, 2017, the BOG granted Atty. Tadena's Motion for Reconsideration and restored the earlier recommendation of the Investigating Commissioner to impose on Atty. Tadena the penalty of admonition with stern warning, including the show cause order against Attys. Tadena, Reginaldo, and Cariaga.

The Court's Ruling

After a judicious review of the instant case, we affirm the recommendation of the Investigating Commissioner and admonish Atty. Tadena, with a stern warning that a repetition of the same or equivalent acts shall be dealt with more severely in the future.

Prefatorily, it must be noted that the complaint against Atty. Tadena is essentially predicated on the allegation that she violated the Code of Professional Responsibility when she gravely intimidated and hurled expletives at Zenaida's bodyguard, Afable, and, subsequently, led the forceful opening of Zenaida's condominium unit. In support of said contention, Zenaida presented an affidavit executed by Afable, as well as Police Reports dated December 7, 2011[16] and December 21, 2011,[17] certifying that Afable personally appeared at the Kamuning Police Station to report the incident. The Police Reports provide as follows:

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[14] *Id.* at 301.

[15] *Id.* at 320-321.

[16] *Id.* at 31.

[17] *Id.* at 32.

At this time and date[,] reportee one ALLAN AFABLE y ANACTA, 37 years old, security guard (Dasia Davao Security and Investigation Agency) native of Samar and residing at No. 38[,] Amparo Subd.[,] Baco St.[,] Novaliches, Quezon City, personally appeared before this Station and requested an incident be put on record. That on or about 2:00PM, December 7, 2011[,] he arrived at Centro Plaza located at Scout Madrinian St. corner Scout Torillo St.[,] Brgy. South Triangle, Quezon City and saw Dr. Leo Ortega[,] the husband of his VIP Dra. Zenaida D. Martin[;] that on or about 4:00pm of same date[,] three policem[e]n arrived (SPO2 San Jose, SPO1 Ticobay and PO2 Balisi) and approached Dr. Leo Ortega and the latter introduce[d] that he is the husband of Dra. Zenaida Martin[,] the BPSO also arrived[,] however[,] **Dr. Leo Ortega instructed his man to destroy the padlock (doorlock) and entered the house.**

When inside[,] reportee followed and took pictures [of] the appliances and other valuable items and **Dr. Leo Ortega also took pictures and left the unit and padlocked it with another key door lock.**

x x x x x x x x x

At this time and date, one Allan Afable y Anacta, 37 years old, married[,] close-in security[,] personally appeared before this Station and reported that at about 3:00PM[,] December 21, 2011[,] his employer Dra[.] Zenaida D. Martin discovered that her twelve (12) pcs. of assorted handbags in different brands composed of Louis Vitton, Prada, Coach and Michael [Kors], worth One (1) Million Pesos were discovered missing[,] **allegedly [taken] by her Ex-Husband Dr. Leo Ortega sometime on December 7, 2011.**

Noteworthy to mention that Teddy and Sally Ortega[,] with a certain Maribel[,] entered x x x Unit 201-B JJB Centro Plaza without the consent and permission from Dra[.] Zenaida Martin. Hence this report.[18] (Emphases supplied)

As can be gleaned from the above excerpts, however, and as duly pointed out by Atty. Tadena, Afable made no declaration as to the alleged intimidation and participation of Atty. Tadena in the forceful opening of the condominium unit. In fact, nowhere in the aforequoted police reports, made on two (2) separate

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

days, was Atty. Tadena's name even stated. In both accounts, Afable merely identified Dr. Leo Ortega as the perpetrator of the break-in, with the help of "his man." He even mentioned the names of Teddy, Sally Ortega, and Maribel, as those who accompanied Dr. Leo Ortega inside the subject premises. But again, he made no statement as to the participation, if any, of Atty. Tadena therein. As such, the Court finds it rather difficult to reasonably admit as true Afable's allegations in his affidavit on Atty. Tadena's alleged indiscretions of threats and breaking into private property. If, indeed, Atty. Tadena scolded Afable and forcefully opened Zenaida's unit, he should have, at least, mentioned her name in the police reports he made on two separate days — on the day of the alleged incident on December 7, 2011 and on the day Zenaida arrived from Davao City on December 21, 2011 — and not merely on the Affidavit[19] he executed on January 25, 2012, almost two (2) months after the event.

Thus, while we have, in the past, suspended lawyers who wrongfully asserted their clients' rights outside the bounds of the law,[20] we cannot do so if the allegations against them are not satisfactorily proven by the complainants. Time and again, the Court has ruled that in administrative proceedings, complainants bear the burden of proving the allegations in their complaints by substantial evidence[21] or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[22] In the present case, it cannot be denied that complainant Zenaida failed to discharge that burden. As previously discussed, her bodyguard and witness curiously failed to declare Atty. Tadena's alleged misconduct in his police reports.

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

[20] *Espanto v. Belleza*, A.C. No. 10756, February 21, 2018, 856 SCRA 163; *Rural Bank of Calape, Inc. (RBCI) Bohol v. Atty. Florido*, 635 Phil. 176 (2010); and *Ramos v. Atty. Pallugna*, 484 Phil. 184 (2004).

[21] *Re: Letter of Lucena Ofendoreyes Alleging Illicit Activities of a certain Atty. Cajayon involving cases in the Court of Appeals, Cagayan de Oro City*, 810 Phil. 369, 374 (2017).

[22] *Tumbaga v. Teoxon*, A.C. No. 5573, November 21, 2017, 845 SCRA 415, 429.

Neither did he explain the reason for his omission. Apart from this, what cast more doubt on Zenaida's claims are the photographs she presented, supposedly showing Atty. Tadena in the act of breaking into her condominium unit.[23] But these photographs are, at best, mere abstract illustrations that are extremely blurred. There is, therefore, an undeniable uncertainty surrounding the issues of whether Atty. Tadena, indeed, threatened Zenaida's bodyguard and whether she actually participated in the forceful opening of the subject condominium unit.

The Court is, however, one with the finding of the Investigating Commissioner that Atty. Tadena must, nonetheless, be admonished with warning that a repetition of the same acts will be dealt with more severely. What have been established by the records are the facts that Leonardo has been living separately from Zenaida since January 2011 and that he has, in fact, filed a petition for declaration of nullity of marriage in November 2011. These show that the parties have already submitted to the jurisdiction of the court where the petition was pending. Verily, said court had jurisdiction to consider and rule upon the property relations of the spouses which necessarily include the subject condominium unit. All questions, therefore, pertaining to the administration, possession, and ownership thereof had to be addressed before said court by way of filing a pleading and/or arguing before the judge and certainly not before the building administrator, police officer, or personal bodyguard in a condominium lobby. Accordingly, while it cannot be ruled with certainty that Atty. Tadena truly engaged in threats, intimidation, and the forcible entry into the subject property, the Court agrees with the Investigating Commissioner when he held that at the very least, Atty. Tadena could have advised her client to file and make the proper representation before the court, instead of surreptitiously entering the premises.[24]

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[23] *Rollo*, p. 30.

[24] *Id.* at 329-330.

Indeed, while a lawyer owes fidelity to the cause of his client, it should not be at the expense of truth and the administration of justice. Under the Code of Professional Responsibility, a lawyer has the duty to assist in the speedy and efficient administration of justice, and is enjoined from unduly delaying a case by impeding execution of a judgment or by misusing court processes. While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are, first and foremost, officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice. Their office does not permit violation of the law or any manner of fraud or chicanery. A lawyer's responsibility to protect and advance the interests of his client does not warrant a course of action propelled by ill motives and malicious intentions against the other party. Mandated to maintain the dignity of the legal profession, they must conduct themselves honorably and fairly. They advance the honor of their profession and the best interests of their clients when they render service or give advice that meets the strictest principles of moral law.[25]

In response to the Show Cause Resolution,[26] dated March 25, 2019, against Attys. Tadena, Reginaldo and Cariaga requiring them to explain why they should not be held administratively liable for an apparent collusion, Atty. Tadena reiterated that the charge of collusion, that is prohibited by law, must relate to the grounds of annulment that the parties agree to use in the petition for nullity of marriage. But the subject e-mail communication between her and the counsels involved cannot constitute collusion because it was merely about a split of legal expenses duly allowed under the law. Atty. Tadena went on to add that the annulment case they filed, which has now attained finality, was duly approved by the Public Prosecutor to have no collusion and had, subsequently, gone through the rigorous trial in the RTC of Pasay City. Hence, she insists that she cannot

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[25] *Ramos v. Atty. Pallugna*, *supra* note 20, at 191-192.

[26] *Rollo*, pp. 346-347.

be held administratively liable for collusion.[27] The same arguments were interposed by Atty. Reginaldo in his response,[28] while Atty. Cariaga has yet to comply with the Show Cause Resolution.

WHEREFORE, the Court **ADOPTS** and **APPROVES** the Resolution of the Board of Governors of the Integrated Bar of the Philippines dated May 27, 2017. Thus, Atty. Angelyn A. Tadena is hereby **ADMONISHED** with a **STERN WARNING** that a repetition of the same or equivalent acts shall be dealt with more severely in the future.

Further, the Office of the Bar Confidant is **DIRECTED** to **INITIATE** administrative proceedings against Atty. Angelyn A. Tadena, Atty. Eric Reginaldo and Atty. Neil F. Cariaga for their apparent collusion in the filing of the petition for annulment of marriage of spouses Leonardo Ortega, Jr. and Zenaida Martin-Ortega.

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

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[27] *Id.* at 354-356.

[28] *Id.* at 359-361.

FIRST DIVISION

[A.M. No. RTJ-20-2576. January 29, 2020]
(Formerly OCA IPI No. 18-4864-RTJ)

SAMSON B. SINDON, *complainant*, *vs.* **PRESIDING JUDGE RAPHIEL F. ALZATE, Regional Trial Court, Branch 1, Bangued, Abra**, *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; IN AN ADMINISTRATIVE PROCEEDING, THE COMPLAINANT IS A MERE WITNESS AND NOT INDISPENSABLE TO THE PROCEEDING FOR THERE ARE NO PRIVATE INTERESTS INVOLVED. — Sindon's motion to withdraw the complaint against Judge Alzate and Atty. Querrer cannot deprive the Court of its authority to ascertain their culpability. The main thrust of a disciplinary proceeding against a member of the bar is to determine whether he or she is fit to continue holding the privileges of being an officer of the court. In an administrative proceeding, therefore, a complainant is a mere witness. He or she is not indispensable to the proceedings because there are no private interests involved. Here, Sindon's desistance does not warrant the dismissal of administrative cases against Judge Alzate and Atty. Querrer. For the Court has a constitutional mandate to supervise the conduct and behavior of all officials and employees of the judiciary in ensuring the prompt and efficient delivery of justice at all times. This mandate cannot be frustrated by any private arrangement of the parties because the issue in an administrative case is not whether the complainant has a cause of action against the respondent, but whether the latter breached the norms and standards of the courts.

2. REMEDIAL LAW; RULES OF COURT; DISQUALIFICATION OF JUDICIAL OFFICERS; COMPULSORY DISQUALIFICATION; THE SUMMARY AND NON-ADVERSARIAL NATURE OF A PETITION FOR NOTARIAL COMMISSION DOES NOT REMOVE IT

FROM THE AMBIT OF THE RULE ON COMPULSORY DISQUALIFICATION. — Here, what is involved is the application of Judge Alzate's wife for notarial commission and Judge Alzate's action thereon. Section 4, Rule III of the 2004 Rules on Notarial Practice requires the judge in whose sala an application for notarial commission is filed to conduct a summary hearing to determine whether a petition for notarial commission is sufficient in form and substance; whether the allegations contained in the petition are true; and whether the applicant has read and fully understood the Notarial Rules. Here, Judge Alzate's wife had to personally appear before him in court and prove she was qualified for a notarial commission. Judge Alzate, however, was disqualified and should have inhibited himself from "sitting in the case" involving his wife pursuant to Rule 137 of the Rules of Court and Section 5, Canon III of the New Code of Judicial Conduct. The case pertained to his wife's petition for notarial commission requiring him to ascertain first whether the petition was sufficient in form and substance; whether the allegations therein were true; and whether his wife had read and fully understood the Notarial Rules. Surely, these matters required Judge Alzate to exercise his discretion in passing upon whether or not his wife's compliance with the rules and qualifications to be commissioned as notary public. The fact that a petition for notarial commission is summary and non-adversarial in nature does not remove it from the ambit of Section 1, Rule 137 of the Rules of Court.

3. LEGAL ETHICS; JUDGES; SHOULD MAKE SURE THAT THEIR ACTS ARE CIRCUMSPECT AND DO NOT AROUSE SUSPICION IN THE MINDS OF THE PUBLIC. — We emphasize that judges, as officers of the court, have the duty to see to it that justice is dispensed with evenly and fairly. Not only must they be honest and impartial, but they must also ***appear*** to be honest and impartial in the dispensation of justice. Judges should make sure that their acts are circumspect and do not arouse suspicion in the minds of the public. This Judge Alzate failed to do.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Antecedents

Complainant Samson Sindon charged respondent Raphiel Alzate, Presiding Judge of the Regional Trial Court (RTC)-Branch 1, Bangued, Abra and Atty. Janice Siganay Querrer, Clerk of Court of the same court with violation of Section 3 (e) of Republic Act No. 3019 (RA 3019), [1] Section 5 of Republic Act No. 6713 (RA 6713)[2] and Section 1 of Rule 137 of the Rules of Court.[3]

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[1] Anti-Graft and Corrupt Practices Act.

Section 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

xxx xxx xxx

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

Section 5. *Duties of Public Officials and Employees*. — In the performance of their duties, all public officials and employees are under obligation to:

(a) Act promptly on letters and requests. — All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

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[3] **Section 1**. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested

In his Complaint dated October 12, 2017, Sindon essentially alleged:

On September 6, 2017, he requested, through his counsel Atty. Jean Phebie De Mesa of the Reynaldo Cortes Law Office, a copy of Judge Alzate's order granting a notarial commission to his wife Atty. Ma. Saniata Liwliwa Gonzales-Alzate. The letter-request was filed in the Office of the Clerk of Court (OCC) before Atty. Querrer. The latter, however, denied the request and suppressed the record.

Judge Alzate and Atty. Querrer conspired in giving unwarranted benefit to a private party, *i.e.*, Atty. Gonzales-Alzate, in violation of Section 3 (e) of RA 3019. Atty. Querrer herself prepared the order granting Atty. Gonzales-Alzate's application for notarial commission and handed it to Judge Alzate for approval. They also violated Section 5 of RA 6713 for failure to promptly act on Sindon's request within fifteen (15) days from receipt thereof.

Finally, Judge Alzate violated Section 1 of Rule 137 of the Rules of Court for not recusing himself and sitting on a case or proceeding involving his wife.

In his Comment dated September 5, 2018, Judge Alzate countered:

Sindon's letter-request, through his counsel, was dubious because the name indicated therein as requesting party was Samson Vista, not Samson Sindon; there was no indicated address

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as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has been presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

for the Reynaldo Cortes Law Office; and there was no stated purpose for the request.[4]

The complaint against him was pure harassment. Sindon was an ally of Mayor Jendricks Luna of Lagayan, Abra, a complainant in another administrative case against him (OCA IPI No. 17-4775-RTJ). In fact, on the same day that Atty. De Mesa filed Sindon's letter-request with the OCC, Atty. Gonzales-Alzate asked her for the purpose of the request. Atty. De Mesa admitted she was following Mayor Luna's orders.[5]

Besides, he granted his wife's petition for notarial commission after she had submitted and complied with the requirements therefor. There was nothing in the notarial rules which prohibited the grant of notarial commission to the spouse of the Executive Judge or any relative within any degree of consanguinity or affinity. For this reason, there was also no reason to conceal the records of Atty. Gonzales-Alzate's petition for notarial commission which in any case was part of the public records.[6]

Clerk of Court Atty. Querrer submitted her separate Comment dated September 5, 2018. She stated, in the main:

On September 6, 2017, Atty. De Mesa, an Associate of the Reynaldo Cortes Law Office and Fremelinda Galinada requested the Office of the Clerk of Court for a copy of the order granting a notarial commission to Atty. Gonzales-Alzate. Since Judge Alzate was the Executive Judge, she deemed it prudent to inform him of the request.

Judge Alzate instructed her to ask Atty. De Mesa for the purpose of the request. The latter merely said "*napag-utusan*." Judge Alzate then told her he wanted to see the request before releasing the order. Judge Alzate was then in his other station in RTC, Cabugao, Ilocos Sur where he served as acting presiding judge.

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[4] *Rollo*, pp. 12-13.

[5] *Id.* at 12-15.

[6] *Id.* at 11-12.

On September 8, 2017, or two (2) days later, Judge Alzate read the request and directed her to send through mail a copy of the order granting Atty. Gonzales-Alzate's notarial commission. As instructed, she sent the order through mail to the Reynaldo Cortes Law Office.

In her Affidavit[7] dated September 5, 2018, Atty. Gonzales-Alzate corroborated Judge Alzate's statements. She also averred that Sindon was merely forced by Mayor Luna to file the instant administrative complaint against her husband. Mayor Luna had an axe to grind against her because she represented Leonard Donato, a known enemy of Mayor Luna and accused of killing Sindon's wife.

On September 10, 2018, Sindon filed a motion to withdraw the complaint. He claimed that no one explained to him the allegations in the complaint. He was merely coaxed into signing it under the impression that it would help the case he filed against the suspected killers of his wife.

Report and Recommendation of the Office of the Court Administrator (OCA)

In its Report and Recommendation, the OCA, through Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva, emphasized that the complaint hinged on the alleged failure of Judge Alzate and Atty. Querrer to promptly act on his request for copy of Judge Alzate's order granting a notarial commission to his wife Atty. Gonzales-Alzate. The OCA noted that the OCC, RTC, Abra received the letter-request on September 6, 2017. On September 11, 2017, or five (5) days later, the OCC mailed the requested order to the Reynaldo Cortes Law Office. Evidently, the request was promptly acted upon within the prescribed fifteen (15)-day period. While Atty. De Mesa was not able to secure copy of the order on the same day she made the request, it did

[7] *Id.* at 45-50.

not necessarily mean that there was inaction on the part of respondents, more so, a concealment of the record.

As for the alleged conspiracy to give unwarranted benefit to Atty. Gonzales-Alzate, the OCA found that the same was not sufficiently proved. The Order dated June 30, 2017, granting Atty. Gonzales-Alzate's petition for notarial commission was prepared by a certain "Maal," a stenographer of the RTC-Branch 1, Bangued, Abra. Besides, respondent clerk of court herself had no authority to grant or deny the petition.

With respect to Judge Alzate, however, the OCA found him liable for acting on the petition for notarial commission of his wife Atty. Gonzales-Alzate in violation of Section 1, Rule 137 of the Rules of Court. The OCA, therefore, recommended:

1) the instant administrative complaint against Presiding Judge Raphiel F. Alzate, Branch 1, Regional Trial Court, Bangued, Abra, be RE-DOCKETED as a regular administrative matter;

2) Judge Raphiel F. Alzate be found GUILTY of VIOLATION OF SECTION 1, RULE 137 OF THE RULES OF COURT, and accordingly be FINED the amount of Eleven Thousand Pesos (₱11,000.00), with a STERN WARNING that a repetition of the same or any similar act shall be dealt with more severely; and

3) the charges against Atty. Janice Siganay-Querrer, Clerk of Court VI, Office of the Clerk of Court, Regional Trial Court, Bangued, Abra, be DISMISSED for lack of merit.[8]

Core Issues

1) What is the effect of Sindon's motion to withdraw the complaint to the present case?

2) Can Judge Alzate and Atty. Querrer be held administratively liable for their purported inaction on Sindon's letter-request and for allegedly giving unwarranted benefit to a third party?

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[8] *Id.* at 75.

3) Is Judge Alzate liable for hearing and granting his wife's petition for notarial commission?

Ruling

Sindon's motion to withdraw does not deprive the Court of its jurisdiction over case and respondent

At the outset, Sindon's motion to withdraw the complaint against Judge Alzate and Atty. Querrer cannot deprive the Court of its authority to ascertain their culpability. The main thrust of a disciplinary proceeding against a member of the bar is to determine whether he or she is fit to continue holding the privileges of being an officer of the court. In an administrative proceeding, therefore, a complainant is a mere witness. He or she is not indispensable to the proceedings because there are no private interests involved.[9]

Here, Sindon's desistance does not warrant the dismissal of administrative cases against Judge Alzate and Atty. Querrer. For the Court has a constitutional mandate to supervise the conduct and behavior of all officials and employees of the judiciary in ensuring the prompt and efficient delivery of justice at all times. This mandate cannot be frustrated by any private arrangement of the parties because the issue in an administrative case is not whether the complainant has a cause of action against the respondent, but whether the latter breached the norms and standards of the courts.[10]

On the merits, we adopt in full the OCA's factual findings.

Judge Alzate and Atty. Querrer cannot be held liable for their purported inaction on Sindon's letter-request

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[9] *Ricafort v. Atty. Medina*, 785 Phil. 911, 921 (2016).

[10] *Lim, Jr. v. Judge Magallanes*, 548 Phil. 566, 572 (2007).

First, we address Sindon's accusation that Judge Alzate and Atty. Querrer failed to promptly act on his letter request. The OCA correctly noted that contrary to Sindon's accusation, the request of Sindon's lawyer for copy of the order granting notarial commission to Judge Alzate's wife was actually sent to him by mail five (5) days after he made the request. This complied with Section 5 (a) of RA 6713,[11] *viz.*:

> SEC. 5. Duties of Public Officials and Employees. — In the performance of their duties, all public officials and employees are under obligation to:
>
> (a) Act promptly on letters and requests. — All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain, the action taken on the request.
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> x x x x x x x x x

Atty. Querrer was not shown to have engaged in any conspiracy to give unwarranted benefit to Judge Alzate's wife

Second, on Sindon's accusation that Judge Alzate and Atty. Querrer conspired to give unwarranted benefit to Judge Alzate's wife by granting her application for notarial commission, we are in accord with the OCA's finding that Atty. Querrer was not clothed with any discretion to grant or deny the application for notarial commission of Judge Alzate's wife. The fact alone that she was the clerk of court assigned to the sala of Judge Alzate does not make her a co-conspirator of Judge Alzate on matters pending before the latter. *Non sequitur*. Besides, there is no evidence whatsoever showing that Judge Alzate exerted influence or instructed Atty. Querrer in any way for the purpose of ensuring a favorable action on the application of his wife. Too, the fact that Atty. Querrer may have received all the documents submitted by Judge Alzate's wife to the court in

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

connection with her application for notarial commission, is hardly a suspicious, nay irregular action. It was, in fact, done in the performance of Atty. Querrer's duty as clerk of court of the branch presided by Judge Alzate.

Judge Alzate violated Section 1, Rule 137 of the Rules of Court

As for Judge Alzate, did he violate Section 1, Rule 137 of the Rules of Court when he did not inhibit himself from acting on his wife's application for notarial commission? The provision reads:

> Section 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has been presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Section 5, Canon III of the New Code of Judicial Conduct further provides:

> SECTION 5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to instances where:
>
> (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
>
> (b) The judge previously served as a lawyer or was a material witness in the matter in controversy;

(c) The judge or a member of his or her family, has an economic interest in the outcome of the matter in controversy;

(d) The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;

(e) The judge's ruling in a lower court is the subject of review;

(f) The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or

(g) The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings.

Mayor Sales v. Judge Calvan,[12] citing ***Re: Inhibition of Judge Eddie R. Rojas***[13] held:

x x x [T]o "sit" in a case means "to hold court; to do any act of a judicial nature. To hold a session, as of a court, grand jury, legislative body, etc. To be formally organized and proceeding with the transaction of business." The prohibition is thus not limited to cases in which a judge *hears* the evidence of the parties but includes as well cases where he *acts* by resolving motions, issuing orders and the like. x x x

In ***Calvan***, the Court declared that while conducting preliminary investigation may not be construed strictly as "sitting in a case," the underlying reason behind the disqualification under the Code of Judicial Conduct and Rule 137 equally applies to the conduct of preliminary investigation.

Here, what is involved is the application of Judge Alzate's wife for notarial commission and Judge Alzate's action thereon.

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[12] 428 Phil. 1, 9 (2002).

[13] 358 Phil. 790, 795 (1998).

Section 4, Rule III of the 2004 Rules on Notarial Practice [14] requires the judge in whose sala an application for notarial commission is filed to conduct a summary hearing to determine whether a petition for notarial commission is sufficient in form and substance; whether the allegations contained in the petition are true; and whether the applicant has read and fully understood the Notarial Rules. Here, Judge Alzate's wife had to personally appear before him in court and prove she was qualified for a notarial commission.

Judge Alzate, however, was disqualified and should have inhibited himself from "sitting in the case" involving his wife pursuant to Rule 137 of the Rules of Court and Section 5, Canon III of the New Code of Judicial Conduct. The case pertained to his wife's petition for notarial commission requiring him to ascertain first whether the petition was sufficient in form and substance; whether the allegations therein were true; and whether his wife had read and fully understood the Notarial Rules. Surely, these matters required Judge Alzate to exercise his discretion in passing upon whether or not his wife's compliance with the rules and qualifications to be commissioned as notary public.

The fact that a petition for notarial commission is summary and non-adversarial in nature does not remove it from the ambit of Section 1, Rule 137 of the Rules of Court. In ***Villaluz v. Judge Mijares***, [15] the Court found Judge Mijares to have violated Section 1, Rule 137 of the Rules of Court when she failed to

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[14] SEC. 4. Summary Hearing on the Petition. — The Executive Judge shall conduct a summary hearing on the petition and shall grant the same if:

a) the petition is sufficient in form and substance;

b) the petitioner proves the allegations contained in the petition; and

c) the petitioner establishes to the satisfaction of the Executive Judge that he has read and fully understood these Rules.

xxx xxx xxx

[15] 351 Phil. 836, 852 (1998).

recuse herself from hearing her grandson's petition for correction of entry, albeit it was a non-adversarial proceeding:

> Even on the assumption that the petition for correction of entry of respondent's grandson is not controversial in nature, this does not detract from the fact that she cannot be free from bias or partiality in resolving the case by reason of her close blood relationship to him. In fact, bias was clearly demonstrated when she waived the requirement of publication of the petition on the dubious ground of enabling the parents of the minor (her daughter and son-in-law) to save the publication fee as they were then just "starting to have a family."

We emphasize that judges, as officers of the court, have the duty to see to it that justice is dispensed with evenly and fairly. Not only must they be honest and impartial, but they must also ***appear*** to be honest and impartial in the dispensation of justice. Judges should make sure that their acts are circumspect and do not arouse suspicion in the minds of the public. This Judge Alzate failed to do.[16]

All told, Judge Alzate is guilty of violating the rule on compulsory disqualification. Considering, however, that this is his first offense,[17] reprimand with warning is deemed appropriate under the circumstances.

WHEREFORE, Presiding Judge Raphiel F. Alzate of the Regional Trial Court (RTC)-Branch 1, Bangued, Abra is **REPRIMANDED** with **WARNING** that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

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[16] *De la Cruz v. Judge Bersamira,* 402 Phil. 671, 683 (2001).

[17] OCA IPI No. 18-4879-RTJ (*Judge Corpus B. Alzate v. Judge Raphiel F. Alzate*) for gross misconduct and dishonesty and A.M. No. 19-01-15-RTC *(Re: Report on the Judicial Audit conducted in Branch 24, RTC, Cabugao, Ilocos Sur)* are still under review and evaluation.

THIRD DIVISION

[G.R. No. 219062. January 29, 2020]

OFFICE OF THE DEPUTY OMBUDSMAN FOR MINDANAO, *petitioner, vs.* **ANTONIETA A. LLAUDER,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE CIVIL REGISTRAR GENERAL; ADMINISTRATIVE ORDER NO. 1; LAID OUT THE PROPER PROCEDURES FOR REGISTRATION OF ONE'S LIFE EVENTS, INCLUDING HIS OR HER BIRTH, MARRIAGE, AND DEATH; CASE AT BAR. — Administrative Order No. 1 of the Office of the Civil Registrar General states that the civil registrar is the person or body charged by law for the recording of vital events and other documents affecting a person's civil status. The Administrative Order takes pains in laying out the proper procedures for the registration of one's life events, including his or her birth, marriage, and death. x x x As seen in [the] provisions [of Administrative Order No. 1 of the Office of the Civil Registrar General], an application for the delayed registration of a marriage certificate is required to be posted on the city bulletin board for 10 days to afford the public an opportunity to oppose it. Only after the 10-day posting period can the civil registrar evaluate the application, along with its supporting documents, and ascertain if there are any anomalies in the solemnization of the marriage or invalidities between the parties. After investigation, the findings shall be forwarded to the Registrar General who may, after review and proper evaluation, deny or authorize the registration. Aside from this, the person reporting the marriage must also submit an affidavit containing the date and place of the marriage, the fact surrounding the ceremony, and the reason behind its late registration. The marriage license should likewise be attached, or in its absence, an affidavit proving that the couple is exempt from acquiring one. Yet, despite these clear instructions, both Aranton and respondent failed to review the application for registration of the marriage certificate submitted by Chu and merely relied

on the Prosecutor's recommendation. To begin with, they were wrong to immediately forward the application to the Office of the City Prosecutor; they should have suspected that it was bogus from the start, given the doubtful notarization and the absolute absence of any other proof that the ceremony had happened. Moreover, there was no indication that they ensured that the posting requirements of a pending application had been met.

2. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DISCRETIONARY FUNCTIONS DISTINGUISHED FROM MINISTERIAL FUNCTIONS; CASE AT BAR. — This Court distinguished discretionary functions from ministerial duties in *Sanson v. Barrios*: Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. Thus, although respondent's function as an assistant registration officer is indeed ministerial, this does not mean that she must blindly approve all applications submitted to her office. It is ministerial in that when a properly accomplished application is presented before her accompanied by all the necessary documents, she has no choice but to approve and process the registration. Conversely, if the application filed is invalid or missing the required attachments, such as an affidavit of the contracting parties or a marriage license, her duty is to deny the registration. Even if respondent was not tasked with determining if fraud was committed in the application for marriage certificate, it was her duty to demand that the supporting documents be present upon submission as a precaution to the registration of a spurious document.

3. ID.; ID.; ID.; GROSS NEGLECT OF DUTY DIFFERENTIATED FROM SIMPLE NEGLECT OF DUTY; CASE AT BAR. — In *Civil Service Commission v. Catacutan*, gross neglect of duty was differentiated from simple neglect of duty in this wise: On one hand, gross neglect of duty is understood as the failure to give proper attention to a required task or to discharge a duty, characterized by want of even the slightest care, or by conscious indifference to the consequences insofar as other persons may be affected, or by flagrant and palpable breach of duty. It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. Under the law, this offense warrants the supreme penalty of dismissal from service. Simple neglect of duty, on the other hand, is characterized by 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. This warrants the penalty of mere suspension from office without pay. Here, it is evident that respondent was grossly negligent in discharging her functions and unmindful of the consequences of her actions. Although there is no proof that she acted with willful intent to register a spurious marriage, she consciously chose to violate the procedure in Administrative Order No. 1, which was meant to standardize the civil registration system and ensure its accuracy, completeness, and efficiency. Though her failure may not have involved a deliberate act to inflict harm on others, this is not necessary to constitute gross negligence. Her failure to act like a reasonably prudent and careful person would have is enough.

4. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; CONSTITUTES ACTS THAT TARNISH THE IMAGE AND INTEGRITY OF HIS/HER PUBLIC OFFICE; CASE AT BAR. — In *Pia v. Gervacio, Jr.*, it was explained that "acts may constitute Conduct Prejudicial to the Best Interest of the Service as long as they tarnish the image and integrity of his/her public office." Contrary to the Court of Appeals ruling, respondent's actions were detrimental to the reputation of the Office of the Civil Registrar and the civil service in general. It must be emphasized that Edmilao was forced to initiate annulment proceedings before the Regional Trial Court and see it to fruition only to correct

> respondent's and Aranton's mistakes. Edmilao may have had a hand in it by signing a piece of paper as "game play," but the spurious marriage certificate would never have existed if not for Aranton and respondent's gross negligence and indifference in processing the application. This sort of behavior is not what is expected of our government employees and is definitely not worthy of the trust reposed onto them by the people. It is imperative for any employee, most especially those of the government, to exercise their duties with the utmost care and responsibility. This is especially true for registration officers of the Civil Registry. A single mistake may entail a change in one's civil status and lead to unnecessary litigation, which is precisely what happened in this case.

APPEARANCES OF COUNSEL

Cancio Nicanor Guibone Law Offices for respondent.
Office of the Solicitor General for petitioner.

D E C I S I O N

LEONEN, *J.*:

Government employees must perform their duties with utmost care and responsibility, and must be held accountable for their actions at all times. There is gross neglect of duty when one's actions, even if not willfully or intentionally done to cause harm, are characterized by want of even slight care and a blatant indifference to the consequences of one's actions to other persons.[1]

This Court resolves a Petition for Review on *Certiorari*[2] filed by the Office of the Deputy Ombudsman for Mindanao (Office of the Deputy Ombudsman). It assails the Decision[3] and

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[1] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013) [Per *J.* Bersamin, First Division].

[2] *Rollo*, pp. 14-31.

[3] *Id.* at 33-44. The December 8, 2014 Decision in CA-G.R. SP No. 03269-MIN was penned by Associate Justice Edward B. Contreras and concurred

Resolution[4] of the Court of Appeals, which modified its findings by lowering the administrative offenses committed by Antonieta Llauder (Llauder) from gross neglect of duty and conduct prejudicial to the best interest of the service, with a suspension of six (6) months, to just simple neglect of duty, with three (3) months' suspension.

Llauder worked at the Office of the Civil Registrar in Iligan City as an assistant registration officer, alongside Georgette Dacup (Dacup), the City Civil Registrar, and Norma Aranton (Aranton), the officer-in-charge of the Marriage License Registration Division.[5]

On February 6, 2006, Benjamin K. Edmilao II (Edmilao) filed a Complaint[6] against all three of them before the Office of the Deputy Ombudsman. They were accused of dishonesty and conduct prejudicial to the best interest of the service for willfully and maliciously assisting and conspiring to register a spurious marriage certificate between Edmilao and one Mylain S. Chu (Chu).[7]

Edmilao alleged that sometime in 2002, his aunt, Mary Ann Busico (Busico), requested him to sign an application for marriage license for "game play" so that Chu, her travel agency's client, could go abroad. Edmilao acceded to Busico's request since she allegedly promised that the application would not be registered with the City Registrar's Office.[8]

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in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[4] *Id.* at 46. The Resolution dated June 8, 2015 was penned by Associate Justice Edward B. Contreras, and concurred in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos of the Twenty-Third Division, Court of Appeals, Cagayan de Oro.

[5] *Id.* at 67-69.

[6] *Id.* at 48-58.

[7] *Id.* at 49.

[8] *Id.* at 50.

Only later would he discover that a marriage certificate had indeed been registered with the Civil Registry of Iligan City.[9]

Edmilao pointed out how under the marriage certificate, he and Chu got married on July 30, 1997 before Reverend Father Gervacio Flores at the Holy Child Parish Philippine Independent Church in Iligan City. It was stated at the back of the certificate that the solemnizing officer's oath appeared to have been notarized by one Atty. Alfredo R. Busico (Atty. Alfredo) on June 11, 1997, 49 days before the supposed ceremony took place.[10]

On August 8, 2002, Edmilao further alleged that Aranton transmitted the application for delayed registration of marriage certificate to the City Prosecutor of Iligan City. Later, on August 15, 2002, Llauder, on behalf of Mylain C. Edmilao, signed the application requesting the City Civil Registrar to indorse the newly registered documents to the Office of the Civil Registrar General of Manila for the issuance of its security papers and authentication. The marriage contract was subsequently registered with the Civil Registry of Iligan City.[11]

Later, in Civil Case No. 6541, the Iligan City Regional Trial Court, Branch 1, declared the spurious marriage between Edmilao and Chu to be nonexistent and void.[12]

In his Complaint now, Edmilao alleged that Llauder, Dacup, and Aranton acted in bad faith for conspiring with Busico and her husband, Atty. Alfredo—whom Edmilao claimed was related to Llauder—in falsifying the marriage certificate. As the City Civil Registrar, Dacup was impleaded under the principle of command responsibility,[13] while Llauder and Aranton were

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[9] *Id.* at 34.

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

[11] *Id.* at 52-53 and 67.

[12] *Id.* at 50.

[13] *Id.* at 51.

impleaded for receiving and processing the registration of the marriage certificate.[14]

All three (3) accused denied the charges against them.

In her Counter-Affidavit, Dacup stated that applications for delayed registration of marriages do not require her office's approval and are instead processed in the Marriage Division.[15] For her part, Aranton averred that it is her ministerial function as a registration officer of the Civil Registry of Iligan City to accept the marriage certificate and its supporting documents presented for registration without determining their intrinsic validity.[16]

Meanwhile, in her Counter-Affidavit/Answer,[17] Llauder denied having anything to do with the falsification or forgery since she did not participate in any act related to the alleged marriage, save for receiving and placing a registry number on the marriage certificate. As to the discrepancy in the dates, she also claimed that she had nothing to do with it.[18]

Llauder added that there was nothing irregular with her signing on behalf of Chu for the issuance of the security paper on delayed registration, as this was common practice at their office.[19]

In his Comment, Edmilao claimed that Dacup, Llauder, and Aranton were at fault for receiving and processing a marriage certificate without requiring affidavits showing that: (a) the parties have lived for at least five (5) years; and (b) at least one (1) of them belongs to the religious sect of the solemnizing officer. Their acts, he alleged, violated Administrative Order No. 1, series of 1993, of the Office of the Civil Registrar General.

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[14] *Id.* at 52 and 55.

[15] *Id.* at 68.

[16] *Id.* at 69.

[17] *Id.* at 59-65.

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

[19] *Id.* at 62.

Moreover, Edmilao insisted that Llauder failed to notice the discrepancies between the date of solemnization and notarization of the document.[20]

On March 19, 2007, the Office of the Deputy Ombudsman issued a Decision[21] finding Llauder and Aranton guilty of gross neglect of duty and conduct prejudicial to the best interest of the service for their failure to observe compliance with Administrative Order No. 1 of the Office of the Civil Registrar General.

However, the Office of the Deputy Ombudsman stated that Edmilao was not completely blameless as he consented to the "game play" designed by his aunt. Accordingly, it stated that Llauder and Aranton should not be made to suffer the full force of law.[22]

Meanwhile, the Office of the Deputy Ombudsman absolved Dacup of liability, finding that "she had nothing to do"[23] with the registration of the marriage certificate.[24] The dispositive portion of the Decision read:

> **WHEREFORE**, this Office finds herein respondents Aranton and Llauder guilty of the administrative charges of Gross Neglect of Duty and Conduct Prejudicial To The Best Interest of Public Service, and are hereby meted the penalty of Six (6) months Suspension.
>
> The charge against respondent Dacup is hereby dismissed for lack of evidence.
>
> Moreover, to prevent a similar case in the future the Office of the Civil Registrar General, Manila is hereby ordered to also look into this matter being a part of their regulatory power.
>
> The Honorable Mayor of Iligan City is hereby directed to implement the aforementioned sanction against respondents Norma Aranton and Antonieta Llauder. A report on the implementation of the said sanction

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[20] *Id.* at 70-72.

[21] *Id.* at 66-77.

[22] *Id.* at 75.

[23] *Id.* at 74.

[24] *Id.* at 75.

against herein respondents should be submitted to this Office within ten (10) days after the implementation thereof.

SO DECIDED.[25]

Both Llauder and Aranton moved for reconsideration.[26]

In her Motion for Reconsideration, Llauder reiterated that since the City Prosecutor had recommended the application's approval, she had no choice but to indorse the application for the issuance and authentication of its security papers.[27]

On July 28, 2008, a Notice of Suspension was issued by Iligan City Mayor Lawrence Cruz, suspending Llauder and Aranton from office from July 29, 2008 until January 31, 2009.[28]

On August 18, 2008, Edmilao filed an Affidavit of Desistance, asking that his Complaint against Llauder, Aranton, and Dacup be withdrawn. He stated that he was remorseful for filing the case when there was no proof of any malice on their part. In light of this, Llauder filed a Motion to Dismiss the administrative case on August 20, 2008.[29]

Nevertheless, Llauder's Motion to dismiss the case, along with her and Aranton's Motions for Reconsideration, was denied by the Office of the Deputy Ombudsman in its October 16, 2008 Order.[30]

Only Llauder filed a Petition for Review[31] before the Court of Appeals. She reiterated that she did not go beyond her duties and functions. When the marriage certificate was presented by

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[25] *Id.* at 75-76.

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

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

[28] *Id.* at 38.

[29] *Id.*

[30] *Id.* at 78-88.

[31] *Id.* at 98-116.

an unidentified woman for delayed registration, she indorsed it to Aranton. Aranton then indorsed it to the City Prosecutor, who then returned it with a favorable review.[32]

Llauder emphasized that she only entered the marriage certificate in the books and assigned it its registry number after the City Prosecutor's favorable review and evaluation. She further contended that her duty as an assistant registration officer is ministerial and that she had no authority to overturn a prosecutor's favorable recommendation.[33]

Besides, Llauder claimed, Edmilao's Affidavit of Desistance should have had the effect of withdrawing, superseding, and reversing the factual averments in the Complaint, and should have caused the dismissal of the administrative case against her.[34]

On December 8, 2014, the Court of Appeals issued a Decision[35] affirming with modification the Office of the Deputy Ombudsman's Decision.

The Court of Appeals first rejected Llauder's claim that Edmilao's Affidavit of Desistance should have warranted the case's dismissal, noting that administrative complaints are imbued with public interest and "should not be made to depend on the whims and caprices of the complainants."[36]

The Court of Appeals then pointed out that while a spurious marriage certificate was registered, Llauder was only liable for simple neglect of duty, since the Office of the Deputy Ombudsman failed to show that her breach of duty was flagrant and palpable. It also held that Llauder was not liable for conduct prejudicial to the best interest of the service, finding that her

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[32] *Id.* at 101 and 106.

[33] *Id.*

[34] *Id.* at 104.

[35] *Id.* at 33-44.

[36] *Id.* at 39.

acts did not cause undue prejudice to the government or the Civil Registry of Iligan City.[37]

The dispositive portion of the Court of Appeals Decision read:

> WHEREFORE, premises considered, the assailed decision and order of the Ombudsman are hereby AFFIRMED with MODIFICATION in that Llauder is found guilty of simple neglect of duty only and meted the penalty of suspension for three months without pay since this is her first offense in her thirty-six years of service in the Government.
>
> SO ORDERED.[38]

The Office of the Deputy Ombudsman moved for partial reconsideration, but the Motion was denied for lack of merit in the Court of Appeals' June 8, 2015 Resolution.[39]

On August 20, 2015, the Office of the Deputy Ombudsman filed this Petition for Review on *Certiorari*[40] against Llauder.

On November 23, 2015, this Court required respondent to comment on the Petition.[41] However, no comment was filed.

On June 22, 2016, this Court required Atty. Cancio Nicanor M. Guibone (Atty. Guibone), respondent's counsel, to comply with the November 23, 2015 Resolution and to show cause why he should not be disciplinarily dealt with or held in contempt for his failure to comply in the first place.[42]

On September 30, 2016, Atty. Guibone filed a Compliance,[43] stating that he repeatedly attempted to contact respondent through

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

[38] *Id.* at 44.

[39] *Id.* at 46-47.

[40] *Id.* at 14-31.

[41] *Id.* at 90.

[42] *Id.* at 92.

[43] *Id.* at 93-97.

text messages and calls, but failed. He stated that upon receiving the show cause order, he again attempted to contact her, to no avail. Atty. Guibone instead attached to his Compliance the pleadings previously filed by respondent, so as to apprise this Court of her previous defenses.[44]

In a November 21, 2016 Resolution,[45] this Court found Atty. Guibone's Compliance unsatisfactory, requiring him to exert more effort in contacting respondent and to submit her conformity within 10 days from notice.

On June 29, 2017, Atty. Guibone filed a second Compliance[46] stating that he once again exerted earnest efforts to communicate with respondent through text messages and calls, but to no avail. As a last resort, his staff went to respondent's last known office address at the Civil Registry of Iligan City, from which he found out that respondent had already retired from government service in the middle of 2016.[47]

On October 2, 2017, this Court noted and accepted the second Compliance filed by Atty. Guibone and dispensed with the filing of respondent's comment on this petition.[48]

In its Petition, petitioner argues that the Court of Appeals erred in downgrading the offenses against respondent. It pointed out that she violated Administrative Order No. 1 of the Office of the Civil Registrar General when she received and accepted the application for delayed marriage registration and assigned it a registry number despite the lack of supporting documents. It maintains that respondent's disregard of the Administrative Order, coupled with her failure to notice the discrepancies on

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

[45] *Id.* at 137-138.

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

[47] *Id.* at 140.

[48] *Id.* at 153-154.

the marriage certificate submitted by Chu, cannot be regarded as simple neglect of duty.[49]

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in lowering the offense committed by respondent Antonieta A. Llauder from gross neglect of duty and conduct prejudicial to the best interest of the service to simple neglect of duty, and downgrading her penalty of suspension from six (6) months to three (3) months.

The Petition is meritorious.

Although respondent is no longer in the public service, having retired in 2016, the propriety of the Court of Appeals Decision, which lowered the offense she committed and the penalty meted, must be discussed. It must be determined if respondent is entitled to a reimbursement of salaries and emoluments not paid to her during her six-month suspension, as provided under Rule III, Section 7 of the Rules of Procedure of the Office of the Ombudsman, as amended.[50] Section 7 provides:

> Section 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 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.
>
> An appeal shall not stop the decision from being executory. *In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.*

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[49] *Id.* at 21.

[50] Amended by Administrative Order No. 17 (2003).

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis supplied)

In its assailed Decision, the Court of Appeals lowered the offenses and penalty meted out to respondent. Justifying its modification of the Office of the Deputy Ombudsman's Decision, it stated:

In this case, the acts complained of cannot be legally considered as gross neglect of duty. While it is true that Llauder proceeded with the registration of the spurious marriage without observing the applicable rules, however, We hold that the Ombudsman failed to show sufficient basis for concluding that such acts displayed by Llauder and the breach of duty she committed were not of such nature and degree so as to be considered flagrant and palpable. Neither can Llauder be held liable for the offense of conduct prejudicial to the best interest of service for the same acts did not cause undue prejudice to the government or expose the system of the Local Civil Registry of Iligan City to immediate risk.

Although We do not find Llauder guilty of gross neglect of duty, she is, however, held liable for simple neglect of duty. Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. Here, Llauder failed to give proper attention to the task she was expected to do when she failed to comply with the applicable rules. Be it as it may, she cannot excuse her lapses for non-compliance by the fact that she relied on the prosecutor's prior recommendation to give due course to the application for late registration. Apart from the recommendation, Llauder could have further checked the documents on hand before proceeding with registration, thereby avoiding the present predicament, but she failed to do so.[51]

This Court disagrees with the Court of Appeals that respondent was only liable for simple neglect of duty. The records and the

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[51] *Rollo,* p. 43.

duly constituted rules of the Office of the Civil Registrar show that petitioner was correct in finding respondent guilty of gross neglect of duty and conduct prejudicial to the best interest of the service.

Administrative Order No. 1 of the Office of the Civil Registrar General states that the civil registrar is the person or body charged by law for the recording of vital events and other documents affecting a person's civil status.[52] The Administrative Order takes pains in laying out the proper procedures for the registration of one's life events, including his or her birth, marriage, and death. The pertinent sections on delayed registration of marriages provide:

> Rule 13. *Posting of the Pending Application.* - (1) A notice to the public on the pending application for delayed registration shall be posted in the bulletin board of the city/municipality for a period of not less than ten (10) days.
>
> (2) If after ten (10) days, no one opposes the registration, the civil registrar shall evaluate the veracity of the statements made in the required documents submitted.
>
> (3) If after proper evaluation of all documents presented and investigation of the allegations contained therein, the civil registrar is convinced that the event really occurred within the jurisdiction of the civil registry office, and finding out that said event was not registered, he shall register the delayed report thereof.
>
> (4) The Civil Registrar, in all cases of delayed registration of birth, death and marriage, shall conduct an investigation whenever an opposition is filed against its registration by taking the testimonies of the parties concerned and witnesses in the form of questions and answers. After investigation, the civil registrar shall forward his findings and recommendations to the Office of the Civil Registrar-General for appropriate action.
>
> (5) The Civil Registrar-General may, after review and proper evaluation, deny or authorize the registration.
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> . . . . . .

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[52] Administrative Order No. 1 (1993), Preliminary Statement.

Rule 15. *Duty to File a Complaint with the Prosecutor's Office*. — In every case of delayed registration, the civil registrar shall file a complaint with the city provincial prosecutor's office for appropriate action under section 17 of Act No. 3753. The action filed in court by the prosecutor against the party for failure to register shall not suspend or stop the registration, neither should it be a ground for refusal by the civil registrar to register the delayed report of birth, death or marriage or any registrable document.

. . . . . .

Rule 46. *Delayed Registration of Marriage*. - (1) In delayed registration of marriage, the solemnizing officer or the person reporting or presenting the marriage certificate for registration shall be required to execute and file an affidavit in support thereof, stating the exact place and date of marriage, the facts and circumstances surrounding the marriage and the reason or cause of the delay.

(2) The submission of the application for marriage license bearing the date when the marriage license was issued except for marriage exempt from marriage licenses shall be required.

(3) Where the original or duplicate copy of the certificate of Marriage could not be presented either because it was burned, lost or destroyed, a certification issued in lieu thereof, by the church or solemnizing officer indicating date of said marriage based on their record or log book shall be sufficient proof of marriage and the civil registrar may accept the same for registration.

(4) In case of doubt, the civil registrar may verify the authenticity of the marriage certification by checking from the church record/ log book and the solemnizing officer who performed the marriage and the church official who issued the certification.

As seen in these provisions, an application for the delayed registration of a marriage certificate is required to be posted on the city bulletin board for 10 days to afford the public an opportunity to oppose it. Only after the 10-day posting period can the civil registrar evaluate the application, along with its supporting documents, and ascertain if there are any anomalies in the solemnization of the marriage or invalidities between the parties.

After investigation, the findings shall be forwarded to the Registrar General who may, after review and proper evaluation, deny or authorize the registration. Aside from this, the person reporting the marriage must also submit an affidavit containing the date and place of the marriage, the fact surrounding the ceremony, and the reason behind its late registration. The marriage license should likewise be attached, or in its absence, an affidavit proving that the couple is exempt from acquiring one.

Yet, despite these clear instructions, both Aranton and respondent failed to review the application for registration of the marriage certificate submitted by Chu and merely relied on the Prosecutor's recommendation. To begin with, they were wrong to immediately forward the application to the Office of the City Prosecutor; they should have suspected that it was bogus from the start, given the doubtful notarization and the absolute absence of any other proof that the ceremony had happened. Moreover, there was no indication that they ensured that the posting requirements of a pending application had been met.

Respondent cannot hide behind the pretext that Aranton was the one in charge of applications for delayed registration. It does not excuse her own negligence in assigning a registration number to Edmilao and Chu's marriage certificate without asking for the submission of the required documents. As an assistant registration officer at the Civil Registry's Marriage Division, she had the duty to evaluate and check the application and its supporting documents before assigning it a registration number. There had been numerous opportunities to for her to require the submission of the required documents, but she failed to do so.

Worse, respondent even signed the application for marriage registration on Chu's behalf to expedite the release of the certificate and security papers, despite the glaring lack of supporting documents. This was an active disregard of the duly instituted rules of her office.

In her defense, respondent argues that the registration of the marriage certificate is a ministerial duty, claiming that she had no choice but to do it given the City Prosecutor's approval.

It seems that respondent has an erroneous interpretation of what a ministerial duty entails. This Court distinguished discretionary functions from ministerial duties in *Sanson v. Barrios*:[53]

> Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.[54] (Citation omitted)

Thus, although respondent's function as an assistant registration officer is indeed ministerial, this does not mean that she must blindly approve all applications submitted to her office. It is ministerial in that when a properly accomplished application is presented before her accompanied by all the necessary documents, she has no choice but to approve and process the registration. Conversely, if the application filed is invalid or missing the required attachments, such as an affidavit of the contracting parties or a marriage license, her duty is to deny the registration.

Even if respondent was not tasked with determining if fraud was committed in the application for marriage certificate, it

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[53] 63 Phil. 198 (1936) [Per *J.* Recto, *En Banc*].

[54] *Id.* at 203.

was her duty to demand that the supporting documents be present upon submission as a precaution to the registration of a spurious document.

In her Counter-Affidavit/Answer, respondent herself admitted that a piecemeal submission of the required documents was allowed in Circular No. 98-1 dated September 8, 1998.[55] Accordingly, she should have requested the submission of documents for the registration of the marriage certificate. Otherwise, she should have verified the marriage with the solemnizing officer or the church where the ceremony was purportedly held, as provided in Rule 46(4) of Administrative Order No. 1:

> (4) In case of doubt, the civil registrar may verify the authenticity of the marriage certification by checking from the church record/ log book and the solemnizing officer who performed the marriage and the church official who issued the certification.

Yet, respondent made no attempt to comply with the prescribed procedure or requirements.

As an assistant registration officer, respondent does not merely release identification cards or certifications. It is her duty to evaluate the records and marriage registrations that would have the effect of changing one's civil status, carrying with it a multitude of repercussions. Knowing these, she should have exercised more diligence in the performance of her duties.

In *Civil Service Commission v. Catacutan*,[56] gross neglect of duty was differentiated from simple neglect of duty in this wise:

> On one hand, gross neglect of duty is understood as the failure to give proper attention to a required task or to discharge a duty, characterized by want of even the slightest care, or by conscious indifference to the consequences insofar as other persons may be

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[55] *Rollo*, p. 63.

[56] G.R. Nos. 224651 and 224656, July 3, 2019, <http://elibrary. judiciary. gov.ph/thebookshelf/showdocs/1/65521> [Per *J.* Reyes, Jr., Second Division].

affected, or by flagrant and palpable breach of duty. It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. Under the law, this offense warrants the supreme penalty of dismissal from service. Simple neglect of duty, on the other hand, is characterized by 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. This warrants the penalty of mere suspension from office without pay.[57] (Citations omitted)

Here, it is evident that respondent was grossly negligent in discharging her functions and unmindful of the consequences of her actions. Although there is no proof that she acted with willful intent to register a spurious marriage, she consciously chose to violate the procedure in Administrative Order No. 1, which was meant to standardize the civil registration system and ensure its accuracy, completeness, and efficiency. Though her failure may not have involved a deliberate act to inflict harm on others, this is not necessary to constitute gross negligence. Her failure to act like a reasonably prudent and careful person would have is enough.

Accordingly, respondent actions in connection with the registration of Edmilao and Chu's spurious marriage constitute gross neglect of duty. A different view would not only undermine the Civil Registry, but erode the stability of our national records and our reliance on it.

As for the charge of conduct prejudicial to the best interest of the service, the Court of Appeals absolved respondent of liability, finding that her actions did not cause undue prejudice to the government or the Civil Registry of Iligan City.

This Court disagrees.

In *Pia v. Gervacio, Jr.*,[58] it was explained that "acts may constitute Conduct Prejudicial to the Best Interest of the Service

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[57] *Id.*

[58] 710 Phil. 196 (2013) [Per *J.* Reyes, J., First Division].

as long as they tarnish the image and integrity of his/her public office."[59]

Contrary to the Court of Appeals ruling, respondent's actions were detrimental to the reputation of the Office of the Civil Registrar and the civil service in general. It must be emphasized that Edmilao was forced to initiate annulment proceedings before the Regional Trial Court and see it to fruition only to correct respondent's and Aranton's mistakes. Edmilao may have had a hand in it by signing a piece of paper as "game play," but the spurious marriage certificate would never have existed if not for Aranton and respondent's gross negligence and indifference in processing the application. This sort of behavior is not what is expected of our government employees and is definitely not worthy of the trust reposed onto them by the people.

It is imperative for any employee, most especially those of the government, to exercise their duties with the utmost care and responsibility. This is especially true for registration officers of the Civil Registry. A single mistake may entail a change in one's civil status and lead to unnecessary litigation, which is precisely what happened in this case. Hence, petitioner was correct in finding respondent guilty of gross neglect of duty and conduct prejudicial to the best interest of the service and meting her with a penalty of six (6) months' suspension.

WHEREFORE, the Petition is **GRANTED**. This Court modifies the December 8, 2014 Decision and June 8, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 03269-MIN and holds respondent Antonieta A. Llauder **GUILTY** of gross neglect of duty and conduct prejudicial to the interest of service.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[59] *Id.* at 206.

THIRD DIVISION

[G.R. No. 220142. January 29, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALD SUATING *y* SAYON *alias "BOK",*** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; CAN ONLY BE OVERTURNED BY PROOF BEYOND REASONABLE DOUBT OR THAT QUANTUM OF PROOF SUFFICIENT TO PRODUCE A MORAL CERTAINTY THAT WOULD CONVINCE AND SATISFY THE CONSCIENCE OF THOSE WHO ACT IN JUDGMENT. — Every criminal proceeding begins with the constitutionally safeguarded presumption that the accused is innocent, which can only be overturn by proof beyond reasonable doubt. The prosecution has the burden of proof. It must not depend on the weakness of the defense; rather, it must depend on the strength of its own cause. Proof beyond reasonable doubt, "or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment," is crucial in overthrowing the presumption of innocence. In the event that the prosecution falls short of meeting the standard of evidence called for, it would be needless for the defense to offer evidence on its behalf. The presumption of innocence stands, and the accused is accordingly acquitted of the charge.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — In order to guarantee a conviction for illegal sale of dangerous drugs, the prosecution must prove the following: (1) [T]he identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor[.] In sum, the occurrence of the sale should be established. Moreover, the object of the deal should also be

offered as evidence and must similarly be proven as the same one confiscated from the accused.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —As to the illegal possession of dangerous drugs, the following elements should be ascertained: [1] [T]he accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.

4. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE CONFISCATED ILLICIT DRUGS FROM THE ACCUSED COMPRISES THE *CORPUS DELICTI* OF THE CHARGES AND IT IS OF PARAMOUNT IMPORTANCE TO MAINTAIN THE INTEGRITY AND THE IDENTITY OF THE *CORPUS DELICTI*. — In x x x [illegal sale and illegal possession of dangerous drugs], the confiscated illicit drugs from the accused comprises the *corpus delicti* of the charges, "*i.e.*, the body or substance of the crime [which] establishes that a crime has actually been committed." It is of paramount importance to maintain the integrity and the identity of the *corpus delicti.* Thus, the chain of custody rule warrants that "unnecessary doubts concerning the identity of the evidence are removed."

5. ID.; ID.; CHAIN OF CUSTODY RULE; AS A MEANS OF VERIFYING EVIDENCE, THE CHAIN OF CUSTODY DEMANDS THAT THE ADMISSION OF AN EXHIBIT BE PRECEDED BY PROOF SUFFICIENT TO SUPPORT A FINDING THAT THE MATTER IN QUESTION IS WHAT THE PROPONENT CLAIMS IT TO BE. — The *chain of custody* is "the duly recorded authorized movements and custody of seized drugs. . . of each stage, from the time of seizure [or] confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." As a means of verifying evidence, it demands "that the admission of an exhibit be preceded by [proof] sufficient to support a finding that the matter in question is what the proponent claims it to be." Accordingly, the prosecution must be able to monitor each of the following links in the chain of custody over the illicit drugs: First, the *seizure and marking,* if practicable, of the illegal drug recovered from the accused by the apprehending officer; Second, the turnover of the illegal drug seized by the apprehending officer

to the investigating officer; Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

6. ID.; ID.; ID.; MARKING; THE MARKING OF THE CONFISCATED ILLICIT DRUGS IS THE INITIAL LINK IN THE CHAIN OF CUSTODY AND IT PRECLUDES ANY CONTAMINATION, SWITCHING OR PLANTING OF EVIDENCE. — The initial link in the chain of custody is the marking of the confiscated illicit drugs. Marking precludes any contamination, switching or planting of evidence. Through it, the evidence is separated from the *corpus* of other similar and correlated evidence, starting from confiscation until its disposal at the close of criminal proceedings. To be at par with the rule on the chain of custody, the marking of the confiscated articles should be undertaken: (1) in the *presence* of the accused; and (2) *immediately* upon seizure. This effectively guarantees that the articles seized "are the same items that enter[ed] the chain and are eventually the ones offered in evidence[.]"

7. ID.; ID.; ID.; WITNESS RULE; THE ABSENCE OF THE REQUIRED WITNESSES DOES NOT *PER SE* MAKE THE SEIZED ARTICLES INADMISSIBLE AS EVIDENCE BUT THE PROSECUTION MUST PROVE THAT IT HAS ACCEPTABLE REASON FOR SUCH FAILURE, OR A SHOWING THAT IT EXERTED GENUINE AND SUFFICIENT EFFORT TO SECURE THEIR PRESENCE. — The inconsistencies in the prosecution's narration of events points out that the required attendance of representatives (from both the media and the Department of Justice) during the inventory and photographing was not faithfully complied with, despite having more than enough time to secure their presence during preparation of the allegedly well-planned entrapment. Although their absence does not *per se* make the seized articles inadmissible as evidence, the prosecution must prove that it has acceptable reason for such failure, or a showing that it exerted "genuine and sufficient effort" to secure their presence, which, in this case, the prosecution failed to do. The attendance of third-party witnesses is called for in order "to ensure that the chain of custody rule is observed and thus, [it] remove[s] any

suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case." Even assuming that the inventory and photographing of the seized articles were made in the presence of two (2) elected public officials—still, the superfluity cannot justify the absence of the other required personalities therein.

8. ID.; ID.; ID.; NON-CONFORMITY THEREWITH IS NOT FATAL TO THE CAUSE OF THE PROSECUTION, AS LONG AS THE LAPSES COMMITTED BY POLICE OFFICERS IN THE HANDLING OF THE EVIDENCE ARE RECOGNIZED AND EXPLAINED IN TERMS OF THEIR JUSTIFIABLE GROUNDS AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED MUST BE SHOWN TO HAVE ALSO BEEN PRESERVED. — Section 21, Article II of Republic Act No. 9165 "is a matter of *substantive* law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects." Moreover, it "spells out matters that are imperative." Even performing actions, which seemingly near compliance but do not really conform to its requisites, is not enough. More so, "when the prosecution claims that the seizure of drugs . . . is the result of carefully planned operations, as is the case here." In addition, the prosecution cannot merely assert the saving clause under the Implementing Rules and Regulations of Republic Act No. 9165. Non-conformity with Section 21 of Republic Act No. 9165 is certainly not fatal to the cause of the prosecution, as long as the lapses committed by police officers in the handling of evidence were "recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have [also] been preserved." However, these requirements were not present in this case, since the prosecution, to begin with, failed to acknowledge that there were lapses committed by police officers while dealing with the custody of the seized illicit drugs. These irregularities created major gaps in the chain of custody rule, which, if remained unjustified, is prejudicial to the claim of the prosecution. To emphasize, only 0.15 and 0.14 grams of marijuana were confiscated from accused-appellant. For this reason, courts must exercise "heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule

amounts of drugs[,] [for] [t]hese can be readily planted and tampered."

9. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT STAND IN FAVOR OF THE POLICE OFFICERS ON ACCOUNT OF GLARING LAPSES COMMITTED IN HANDLING THE SEIZED ILLICIT DRUGS AND BY ITSELF, IT CANNOT OVERTURN THE CONSTITUTIONALLY SAFEGUARDED PRESUMPTION OF INNOCENCE. — Contrary to the rulings of both the trial and appellate court, the presumption of regularity in the performance of official duties cannot stand in favor of the police officers on account of the glaring lapses committed in handling the seized illicit drugs. To underscore, this presumption is neither definite nor conclusive. By itself, it cannot overturn the constitutional[ly] safeguarded presumption of innocence. When the assailed official act "is irregular on its face, as in this case, an adverse presumption arises as a matter of course.

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.*:

Only the police testified for the prosecution. The actual poseur [-] buyer was not presented, and the police officers were 10 meters away. The alleged contraband was laid out on the table when the barangay official came. There was no testimony on the chain of custody from the attesting officers to the persons who tested the alleged contraband.

In contrast, the accused presented five (5) witnesses from the community to prove that the alleged contraband was not taken from the accused, and that no buy-bust operation occurred. The accused testified that when he was searched, they only found two pesos and fifty centavos (₱2.50) on his person.

Yet, the trial court and the Court of Appeals were willing to send this accused to a life in prison and to impose a fine of ₱500,000.00 for allegedly selling a stick of marijuana.

We reverse. Efforts of law enforcers to go after the real drug syndicates are undermined by these obviously fictitious arrests. All it accomplishes is alienate our people, enable corrupt law enforcers, and undermine the confidence of our people—especially those who are impoverished and underprivileged—on our court's ability to do justice.

Courts must exercise "heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs [for] [t]hese can be readily planted and tampered."[1]

This Court resolves an Appeal[2] filed by Ronald Suating *y* Sayon, *alias* "Bok" (Suating), from the Decision[3] of the Court of Appeals in CA-GR CEB HC No. 01702 which affirmed the Regional Trial Court[4] ruling that he was guilty beyond reasonable doubt of Illegal Sale and Illegal Possession of Dangerous Drugs.[5]

Two (2) separate Informations were filed against Suating for violations of Sections 5[6] and 11[7] of Republic Act No. 9165,[8]

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[1] *Lescano v. People,* 778 Phil. 460, 479 (2016) [Per *J.* Leonen, Second Division] citing *People v. Holgado,* 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[2] CA *rollo,* pp. 87-89.

[3] *Rollo,* pp. 4-15. The Decision dated December 22, 2014 was penned by Associate Justice Edgardo L. Delos Santos (Chairman, now a member of this Court) and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez of the Nineteenth Division of the Court of Appeals, Cebu City.

[4] CA *rollo,* pp. 29-38. The Decision dated July 29, 2013 in Criminal Case Nos. 8451-69 and 8452-69 was penned by Presiding Judge Felipe G. Banzon of the Regional Trial Court of Silay City, Branch 69.

[5] *Rollo,* p. 14, CA Decision.

[6] Republic Act No. 9165 (2002), Sec. 5, provides:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled*

otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The charging portions of the Informations provided:

Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

. . . . . .

[7] Republic Act No. 9165 (2002), Sec. 11, provides:

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

. . . . . .

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

. . . . . .

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

[8] *Rollo,* p. 5.

Criminal Case No. 8451-69

"That on November 9, 2011 in Silay City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one large stick of marijuana cigarette marked as BOK-1, a prohibited drug to an asset of the Silay City PNP posing as a poseur [-] buyer in exchange for three [3] twenty peso bills with serial numbers RS65451 (sic), RT180921, and RT395576 all marked with the underline in the last digit of each serial numbers.

CONTRARY TO LAW."

Criminal Case No. 8452-69

"That on November 9, 2011 in Silay City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in possession and control [one] (1) large rolled stick of Marijuana cigarette with a total weight of 0.14 grams marked as BOK-2, a prohibited drug without any license or permit to possess the same.

CONTRARY TO LAW."[9]

Upon arraignment, Suating pleaded not guilty to the charges.[10] Joint trial on the merits commenced.[11]

The testimonies of the witnesses[12] for the prosecution corroborated the following account of events:

Acting on a tip from concerned constituents and barangay officials, the Philippine National Police of Silay City (PNP Silay) effected a surveillance to verify whether or not Suating was selling marijuana within the area of Barangay Mambulac

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[9] *Id.*

[10] *Id.*

[11] CA *rollo*, p. 30.

[12] *Id.* The witnesses for the Prosecution are: Police Chief Inspector Paul Jerome Puentespina, PO2 Christopher Panes, SPO1 Rayjay Rebadomia, Hon. Ireneo Celis, PO2 Reynaldo Bernil, Jose Junsay, Jr., PO2 Ian Libo-on, and PO2 Ariel Magbanua.

Elementary School.[13] After several test buys, the Information against Suating was confirmed.[14]

In coordination with the Regional Office of the Philippine Drug Enforcement Agency (PDEA) in Iloilo City, the police officers planned a buy-bust operation. They prepared three (3) ₱20.00 bills with serial numbers RS654551, RT180921, and RT395576. As marking, they underlined the last digit of each bill's serial number. They subscribed to the marked money before City Prosecutor Ma. Lisa Lorraine Atotubo, and the use of the same was entered in their blotter book under entry number 01723.[15]

Before the buy-bust operation, a short briefing commenced. PO2 Reynaldo Bernil (PO2 Bernil) handed the marked money to a confidential asset who was the designated poseur [-] buyer.[16]

On the afternoon of November 9, 2011,[17] the operation ensued.

The poseur [-] buyer went to the premises of Barangay Mambulac Elementary School, ahead of the police officers.[18] Shortly thereafter, he called PO2 Bernil when Suating was already "within his sight."[19] The rest of the police officers followed, positioning themselves approximately 10 meters away from the area of operation and about 50 meters away from the school.[20]

PO2 Bernil was the point person of the entrapment. He saw the poseur [-] buyer approach Suating and engage in a short conversation with him. He also witnessed when Suating left

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[13] *Id.* at 31.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Rollo,* p. 6.

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

[19] *Id.* at 32.

[20] *Id.*

the area of operation, only to return to the poseur [-] buyer after a few minutes. While Suating and the poseur [-] buyer were talking, the latter took out the marked money from his pocket and gave it to Suating. In exchange, Suating handed unknown articles suspected to be marijuana.[21]

After the sale, the poseur [-] buyer left the area. He proceeded to where PO2 Bernil was in order to surrender the large stick of suspected marijuana cigarette bought from Suating. PO2 Bernil then handed the item to PO2 Ian Libo-on (PO2 Libo-on), who marked it with "BOK-1."[22]

PO2 Bernil and the other police officers immediately moved towards Suating and restrained his hands. After introducing themselves as persons of authority, they apprehended Suating and informed him of his constitutional rights. Suating's father, along with the other unidentified individuals, attempted to stop the arrest but to no avail.[23]

Thereafter, the police officers brought Suating to a police station in Silay City, and proceeded to conduct a body search on him in the presence of Kagawad Jose Junsay of Barangay Mambulac. Found in his possession were the marked money used during the operation, together with another large rolled cigarette stick of suspected marijuana, which was marked "BOK-2" by PO2 Libo-on.[24]

In the presence of an elected official, the police officers inventoried and photographed the confiscated items. After the request letter was prepared, the items were brought to the PNP Crime Laboratory[25] of the Negros Occidental Police Provincial Office in Bacolod City.[26] Under Chemistry Report No. D-217-

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Rollo,* p. 7.

[26] CA *rollo,* p. 32.

2011, Forensic Officer Paul Jerome Puentespina (Forensic Officer Puentespina) examined the seized illicit drugs, which yielded positive for marijuana.[27]

On the other hand, Suating denied all charges against him and claimed that he was merely framed by the police.[28]

Suating detailed in his testimony, which the witnesses corroborated,[29] that he was allegedly buying fish in the flea market of Barangay Mambulac[30] on the day of the buy-bust operation, when a police officer suddenly apprehended him. The police officer brought him to a room in Silay City Police Station where they asked him certain questions. When Barangay Kagawad Junsay arrived, Suating was frisked. However, they were only able to recover two pesos and fifty centavos (₱2.50) from his possession. Thereafter, the police officers took his photo, made him sign a document, and later brought him to the Negros Occidental Police Provincial Office where he was made to urinate in a disposable cup.[31]

The Regional Trial Court convicted Suating of the charges.[32]

The Regional Trial Court did not find merit in Suating's contention that the buy-bust operation did not happen,[33] specifying how Suating was apprehended through a well-planned entrapment, which was conducted after monitoring and validation by the police officers.[34]

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[27] *Rollo,* p. 7.

[28] *Id.*

[29] *Id* . The witnesses for the defense were Albert Salonga, Aileen Capote, Luz Maalat, Jenelyn Javellana, and Romeo Suating.

[30] CA *rollo,* p. 33.

[31] *Rollo,* p. 7.

[32] CA *rollo,* pp. 37-38.

[33] *Id.* at 36.

[34] *Id.* at 34-36.

The Regional Trial Court found the testimonies of police officers Bernil and Libo-on to be "detailed and straightforward[.]"[35] Hinging on the presumption of regularity in the performance of their official duties, and in the absence of any convincing proof that they have ill intent to falsely testify against Suating, the trial court upheld the testimonies of the arresting officers.[36] The dispositive portion of the trial court Decision read:

> WHEREFORE, PREMISES CONSIDERED:
>
> In Criminal Case No. 8451-69, this Court finds accused, Ronald Suating y Sayon a.k.a. "Bok", GUILTY beyond any reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", as his guilt was proven by the prosecution beyond any reasonable doubt.
>
> Accordingly, this Court sentences accused, Ronald Suating y Sayon a.k.a "Bok", to suffer the penalty of Life Imprisonment, the same to be served by him at the National Bilibid Prison, Muntinlupa City, Province of Rizal.
>
> Accused named is, further, ordered by this Court to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos, Philippine Currency.
>
> In Criminal Case No. 8452-69 , this Court finds accused, Ronald Suating y Sayon a.k.a. "Bok", GUILTY beyond any reasonable doubt of Violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," as his guilt was proven by the prosecution beyond any reasonable doubt.
>
> Accordingly, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences accused, Ronald Suating y Sayon a.k.a. "Bok", to suffer the penalty of imprisonment for a period of [sic] from TWELVE (12) YEARS AND ONE (1) DAY TO FOURTEEN (14) YEARS , the same to be served by him at the National Bilibid Prison, Muntinlupa City, Province of Rizal.

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[35] *Id.*

[36] *Id.*

Accused named is, further, ordered by this Court to pay a fine of Three Hundred Thousand (₱300,000.00) Pesos, Philippine Currency.

The two (2) rolled sticks of marijuana cigarettes (Exhibits "H-1" and "H-2", prosecution) are ordered remitted to the office of the Philippine Drug Enforcement Agency (PDEA) at Negros Occidental Provincial Police Office (NOPPO), Camp Alfredo Montelibano, Sr., Bacolod City, for proper disposition.

In the service of the sentences imposed on him by this Court, accused named shall be given full credit for the entire period of his detention pending trial.

NO COSTS.

SO ORDERED.[37]

On appeal,[38] Suating assailed his conviction, asserting that the trial court was mistaken in relying on the weakness of his defense. He insisted that the prosecution failed to establish his guilt beyond reasonable doubt, as the identity of the confiscated illicit drugs were not sufficiently proven due to non-conformity with the provisions of Section 21 of Republic Act No. 9165.[39]

The Court of Appeals ruled against Suating.[40]

It held that the illegal sale transaction was effectively completed when Suating gave the hand rolled marijuana cigarette to the poseur [-] buyer in exchange for the marked money. As to the elements of illegal possession of dangerous drugs, Suating failed to persuade that he had legal authority to possess the marijuana cigarette found when he was frisked.[41] Moreover, his previous act of selling marijuana to the poseur buyer showed his intention to "freely and consciously"[42] possess illicit drugs.[43]

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

[38] *Id.* at 10-28, Brief for Accused-Appellant.

[39] *Rollo*, p. 9.

[40] *Id.* at 14.

[41] *Id.* at 10.

[42] *Id.*

[43] *Id.*

Relative to the alleged non-conformity with the chain of custody, the Court of Appeals underscored that the prosecution was able to prove that there was "no gap or confusion in the confiscation, handling, custody and examination"[44] of the confiscated illicit drugs. The dispositive portion of its Decision read:

WHEREFORE, the appeal is **DISMISSED.** The Decision dated July 29, 2013 of the Regional Trial Court, Branch 69 of Silay City, in Criminal Case No. 8451-69 to 8452-69, is hereby **AFFIRMED.**

SO ORDERED.[45] (Emphasis in the original)

Hence, this appeal.[46]

On July 27, 2015, the Court of Appeals forwarded the records of this case to this Court[47] pursuant to its June 10, 2015 Resolution which gave due course to Suating's Notice of Appeal.[48]

In its November 11, 2015 Resolution,[49] this Court noted the records forwarded by the Court of Appeals. In the same Resolution, the parties were required to file their Supplemental Briefs within 30 days from notice, should they desire to do so. Both parties manifested that they no longer intend to file Supplemental Briefs.[50]

For this Court's resolution is whether or not the guilt of Suating was proven beyond reasonable doubt. Subsumed in the resolution of this issue is whether or not the police officers complied with

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[44] *Id.* at 13.

[45] *Id.* at 14.

[46] CA *rollo,* pp. 87-89.

[47] *Rollo,* p. 1.

[48] CA *rollo,* pp. 94-95.

[49] *Rollo,* pp. 22-23.

[50] *Id.* at 24-28, Manifestation; and 32-34, Manifestation in Lieu of Supplemental Brief.

the chain of custody as provided for under Section 21 of Republic Act No. 9165 and its Implementing Rules.

Suating maintains his innocence.[51]

While he concedes that the defense of frame-up and denial is weak, he asserts that this cannot be utilized to further the prosecution's cause, as the latter's evidence "must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of [his] defense."[52]

Contrary to the ruling of the Court of Appeals,[53] Suating claims that the prosecution failed to establish the illegal sale of illicit drugs. Arguing that the police officers were 10 meters away from the area of operation, he insists that it would be impossible for them to observe or even hear what transpired during the alleged transaction.[54] He then questions why the prosecution failed to present the poseur [-] buyer as witness when only the latter can best ascertain the necessary details surrounding the sale.[55]

As to the chain of custody in handling the seized illicit drugs, Suating underscores the following irregularities on the part of the police officers:[56]

First, he points out that the marking of the large stick of marijuana cigarette was done neither in his presence nor in the presence of third-party witnesses.[57] Moreover, Suating emphasizes that during the inventory, the confiscated illicit drugs

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[51] CA *rollo,* p. 19, Brief for the Accused-Appellant. Suating was firm that he did not commit the charge and that he does not own the articles seized from his possession.

[52] *Id.*

[53] See *Rollo,* pp. 9-10, CA Decision.

[54] CA *rollo,* p. 20, Brief for the Accused-Appellant.

[55] *Id.* at 21.

[56] *Id.* at 23.

[57] *Id.* at 24.

were already laid down on the table when the barangay officials came.[58] Hence, they have no personal knowledge on how the items were taken from his possession.[59]

Second, he also stresses that since the body search was belatedly undertaken, there is a possibility that the second item might have been merely planted by the police.[60]

Lastly, Suating also stresses his misgivings on whether or not the articles allegedly seized from him were the same ones tested by the forensic chemist in the first place, and eventually, the ones presented in court. He posits that the records failed to provide details on who handled the confiscated illicit drugs after examination and up to the moment they were offered as evidence in court.[61]

On the other hand, the Office of the Solicitor General[62] insists that the statements of PO2 Bernil, who had the opportunity to observe the sale from a distance, duly substantiated the identities of both the buyer and seller.[63] That even if the actual dialogue cannot be heard, the actions of both the accused and the poseur [-] buyer supports the conclusion that the sale of illicit drugs did happen.[64]

The Office of the Solicitor General also underscores that the testimony of the poseur [-] buyer is neither necessary for conviction nor crucial to a plausible prosecution of the charges. With the statements made by the police officers, the testimony of the poseur [-] buyer is only corroborative.[65]

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[58] *Id.* at 25.

[59] *Id*.

[60] *Id.*

[61] *Id.* at 26.

[62] *Id.* at 52-69, Brief for the Appellee.

[63] *Id.* at 58.

[64] *Id.* at 59.

[65] *Id.* at 60.

As to the alleged broken chain of custody, the Office of the Solicitor General claims that PO2 Bernil and PO2 Libo-on were able to ascertain the identities of the marked seized illicit drugs. Further, non-conformity with Section 21 of Republic Act No. 9165 does not immediately render the apprehension of an accused as illegal, or the articles seized inadmissible.[66]

Finally, it argues that the defense of frame-up necessarily involves the assessment of the credibility and statements of witnesses. It underscores that, as an often repeated rule that higher courts mostly accede to the evaluation of trial courts, which have the opportunity to hear and observe the actuations of witnesses during the proceedings.[67]

I

This Court rules in favor of Suating.

Every criminal proceeding begins with the constitutionally safeguarded presumption that the accused is innocent, which can only be overturn by proof beyond reasonable doubt.[68] The prosecution has the burden of proof. It must not depend on the weakness of the defense; rather, it must depend on the strength of its own cause.[69]

Proof beyond reasonable doubt, "or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment," is crucial in overthrowing the presumption of innocence.[70] In the event that the prosecution falls short of meeting the standard of evidence called for, it would be needless for the defense to offer evidence on its behalf.[71] The presumption

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[66] *Id.* at 61.

[67] *Id.* at 67.

[68] *People v. Garcia*, 599 Phil. 416 (2009) [Per *J.* Brion, Second Division].

[69] *People v. Sanchez*, 590 Phil. 214 (2008) [Per *J.* Brion, Second Division].

[70] *Franco v. People*, 780 Phil. 36, 43 (2016) [Per *J.* Reyes, Third Division].

[71] *People v. Capuno*, 655 Phil. 226 (2011) [Per *J.* Brion, Third Division].

of innocence stands, and the accused is accordingly acquitted of the charge.[72]

In order to guarantee a conviction for illegal sale of dangerous drugs, the prosecution must prove the following:

> (1) [T]he identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor[.][73]

In sum, the occurrence of the sale should be established.

Moreover, the object of the deal should also be offered as evidence and must similarly be proven as the same one confiscated from the accused.[74]

As to the illegal possession of dangerous drugs, the following elements should be ascertained:

> [1] [T]he accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.[75]

In both cases, the confiscated illicit drugs from the accused comprises the *corpus delicti* of the charges,[76] "*i.e.*, the body or substance of the crime [which] establishes that a crime has actually been committed."[77] It is of paramount importance to maintain the integrity and the identity of the *corpus delicti.*

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[72] *People v. Ismael,* 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

[73] *Id.* at 29 citing *People v. Alberto,* 625 Phil. 545 (2010) [Per J. Del Castillo, Second Division].

[74] *Id.*

[75] *Id.* citing *Reyes v. Court of Appeals,* 686 Phil. 137 (2012) [Per J. Bersamin, First Division].

[76] *Id.*

[77] *People v. Garcia,* 599 Phil. 416, 426 (2009) [Per J. Brion, Second Division].

Thus, the chain of custody rule warrants that "unnecessary doubts concerning the identity of the evidence are removed."[78]

The *chain of custody* is "the duly recorded authorized movements and custody of seized drugs. . . of each stage, from the time of seizure [or] confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction."[79] As a means of verifying evidence, it demands "that the admission of an exhibit be preceded by [proof] sufficient to support a finding that the matter in question is what the proponent claims it to be."[80] Accordingly, the prosecution must be able to monitor each of the following links in the chain of custody over the illicit drugs:

> First, the *seizure and marking*, if practicable, of the illegal drug recovered from the accused by the apprehending officer;
>
> Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;
>
> Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and
>
> Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[81] (Emphasis supplied, citation omitted)

In this case, a prearranged police entrapment led to Suating's apprehension. However, despite a carefully planned and

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[78] *People v. Ismael*, 806 Phil. 21, 29 (2017) [Per J. Del Castillo, First Division] citing *Fajardo v. People*, 691 Phil. 752 (2012) [Per J. Perez, Second Division].

[79] *People v. Garcia*, 599 Phil. 416, 434 (2009) [Per J. Brion, Second Division].

[80] *Mallillin v. People*, 576 Phil. 576 , 587 (2008) [Per J. Tinga, Second Division] citing *United States v. Howard-Arias*, 679 F.2d 363, 366; and *United States v. Ricco*, 52 F.3d 58.

[81] *People v. Casacop*, 755 Phil. 265, 278 (2015) [Per J. Leonen, Second Division] citing *People v. Remigio*, 700 Phil. 452 (2012) [Per J. Perez, Second Division].

coordinated buy-bust operation, there were still irregularities committed in the course of the entrapment, which caused apparent lapses to the chain of custody rule.[82]

For this reason, the identity of the *corpus delicti* was *not* duly established beyond reasonable doubt. We are no longer certain whether or not the miniscule quantities of 0.15[83] and 0.14 grams[84] of marijuana, presented as evidence against Suating in court, were the very same ones allegedly confiscated from him.

II

The apprehension of Suating and the consequent seizure of illegal drugs in his possession were due to a buy-bust operation conducted by the police officers, after prior surveillance and investigation.[85] Although this type of operation has been recognized to be effective in eliminating unlawful dealings that are covertly undertaken, it has a notable "downside that has not escaped the attention of the framers of the law."[86] Buy-bust operations are vulnerable "to police abuse, the most notorious of which is its use as a tool for extortion."[87]

Accordingly, police officers are mandated to *strictly* observe the procedure for confiscation and custody of prohibited drugs under Republic Act No. 9165.[88] The initial procedural safeguard[89] under Article II, Section 21[90] thereof provides:

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[82] CA *rollo*, p. 34.

[83] *Id.* at 35.

[84] *Id.* at 36.

[85] *Id.* at 34.

[86] *People v. Garcia*, 599 Phil. 416, 427 (2009) [Per *J.* Brion, Second Division].

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] Republic Act No. 9165 (2002) was the prevailing law before its amendment in 2014 by Republic Act No. 10640.

(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;[91] (Emphasis and underscoring supplied)

In effecting the provisions of Republic Act No. 9165, the Implementing Rules and Regulations[92] read:

a) The apprehending officer/team having initial custody and control of the drugs ***shall*** , immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: ***Provided,*** that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided, further,*** that *non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;*[93] (Emphasis and underscoring supplied)

Notwithstanding the *mandatory* directive of the law as construed from its use of the word "*shall,*"[94] the police officers

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[91] Republic Act No. 9165 (2002), Sec. 21(1).

[92] Implementing Rules and Regulations of Republic Act No. 9165 (2002).

[93] Implementing Rules and Regulations of Republic Act No. 9165 (2002), Sec. 21 (a).

[94] *People v. Sanchez,* 590 Phil. 214 (2008) [Per *J* . Brion, Second Division].

miserably failed to comply with the specific procedures in handling the seized marijuana cigarettes allegedly taken from accused-appellant.

The initial link in the chain of custody is the marking of the confiscated illicit drugs. Marking precludes any contamination, switching or planting of evidence. Through it, the evidence is separated from the *corpus* of other similar and correlated evidence, starting from confiscation until its disposal at the close of criminal proceedings.[95] To be at par with the rule on the chain of custody, the marking of the confiscated articles should be undertaken: (1) in the *presence* of the accused; and (2) *immediately* upon seizure.[96] This effectively guarantees that the articles seized "are the same items that enter[ed] the chain and are eventually the ones offered in evidence[.]"[97]

In this case, the prosecution offered no reason as to why the marking of the seized marijuana labelled "BOK-1" was *not* immediately done after confiscation, but rather only after a considerable lapse of time, thereto when the poseur buyer was able to leave the area of operation, *away* from the sight of the accused. Moreover, they particularly failed to explain why the police officers could not have promptly marked the item in the presence of Suating, if only to remove any uncertainty that the marijuana cigarette marked by PO2 Libo-on, and later subjected to laboratory testing, was the very same one allegedly sold by the accused to the poseur [-] buyer.[98] Here, an apparent break in the chain of custody already existed before the item was even marked.

Additionally, the prosecution's failure to present the poseur [-] buyer is prejudicial to their cause.[99] To emphasize, the

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[95] *People v. Ismael,* 806 Phil. 21 (2017) [Per *J.* Del Castillo, First Division].

[96] *People v. Sanchez,* 590 Phil. 214 (2008) [Per *J.* Brion, Second Division].

[97] *Id.* at 541.

[98] See CA *rollo,* p. 24, Brief for Accused-Appellant.

[99] *People v. Casacop,* 755 Phil. 265 (2015) [Per *J.* Leonen, Second Division].

negotiations during the assailed transaction was intimately between the poseur buyer and Suating. PO2 Bernil, whose exact location from the area of operation was not specifically stated, was merely observing from a distance.[100] Considering that the poseur buyer was the one who has personal knowledge of the illegal sale transaction since he was the one who conducted the same, his testimony is not merely corroborative to that of the police officers.[101] The quantity of dangerous drugs here is "so small that the reason for not presenting the poseur[-] buyer does not square with such a miniscule amount."[102]

Moreover, this Court observed that while there was a narration that the confiscated items were inventoried and photographed in the police station,[103] it is not, however, clear[104] whether such procedures were done in the presence of the required third-party witnesses. To underscore, the prosecution's narrative in the Court of Appeals' Decision states that both the inventory and photograph of the confiscated articles were undertaken before "an *elected public official.*"[105] However, in the Appellee's Brief, the mandatory procedures were allegedly made "in the presence of Hon. Ireneo Celis *and* the Barangay Kagawad."[106]

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[100] See CA *rollo,* pp. 31-32.

[101] *People v. Casacop,* 755 Phil. 265 (2015) [Per *J.* Leonen, Second Division].

[102] *Id.* at 283.

[103] *Rollo,* p. 7; and CA *rollo,* p. 32.

[104] The Decision of the Court of Appeals mentioned that based on the version of the Prosecution, the inventory and photograph of the seized illicit drugs were undertaken in the presence of an elected public official. However, the Court of Appeals seemingly deviated from this thereby stating in its discussion that the inventory was signed by, among others, representatives from the media and the Department of Justice whose names were apparently not disclosed or their circumstances not even elaborated in the records of the case. Also, they were not made as witnesses for the defense.

[105] *Rollo,* p. 7.

[106] CA *rollo,* p. 57, Brief for the Appellee. That the inventory and photograph were made in the presence of Celis and a Barangay Kagawad was similarly affirmed in the Brief of the Appellant at pages 16-17 of the *CA Rollo.*

The inconsistencies in the prosecution's narration of events points out that the required attendance of representatives (from both the media and the Department of Justice) during the inventory and photographing was not faithfully complied with, despite having more than enough time to secure their presence during preparation of the allegedly well-planned entrapment. Although their absence does not *per se* make the seized articles inadmissible as evidence, the prosecution must prove that it has acceptable reason for such failure, or a showing that it exerted "genuine and sufficient effort" to secure their presence,[107] which, in this case, the prosecution failed to do.

The attendance of third-party witnesses is called for in order "to ensure that the chain of custody rule is observed and thus, [it] remove[s] any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case."[108] Even assuming that the inventory and photographing of the seized articles were made in the presence of two (2) elected public officials — still, the superfluity cannot justify the absence of the other required personalities therein.

With the glaring lapses committed by the police officers, which inevitably tainted the integrity and evidentiary value of the seized illicit drugs, we cannot help but subscribe to Suating's contention that there is a possibility that the marijuana stick allegedly confiscated from his possession was merely planted, considering that the body search was belatedly done at the police station and only after more than an hour from his apprehension.[109]

Finally, the prosecution's narration of facts ended when the confiscated articles were examined by Forensic Officer Puentespina, whose findings under Chemistry Report No. D-217-2011 provided that the items yielded positive for marijuana.[110] This

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[107] *People v. Crispo,* G.R. No. 230065, March 14, 2018, 859 SCRA 356, 376 (2018) [Per *J.* Perlas-Bernabe, Second Division].

[108] *Id.* at 375.

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

[110] See CA *rollo,* pp. 32-33; and *rollo,* p. 7.

finding, however, leaves the following questions unresolved: (1) did the confiscated drugs remain under Forensic Officer Puentespina's custody; and (2) were they conveyed to some other place until their presentation in court as evidence? The lack of details on the post-chemical examination custody[111] of the confiscated illicit drugs creates another substantial gap in the chain of custody rule, particularly on the must accounted "turnover and submission of the marked illegal drug seized by the forensic chemist to the court."[112]

Section 21, Article II of Republic Act No. 9165 "is a matter of *substantive* law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects."[113] Moreover, it "spells out matters that are imperative."[114] Even performing actions, which seemingly near compliance but do not really conform to its requisites, is not enough.[115] More so, "when the prosecution claims that the seizure of drugs ... is the result of carefully planned operations, as is the case here."[116]

In addition, the prosecution cannot merely assert the saving clause under the Implementing Rules and Regulations of Republic Act No. 9165. Non-conformity with Section 21 of Republic Act No. 9165 is certainly not fatal to the cause of the prosecution, as long as the lapses committed by police officers in the handling of evidence were "recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of

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[111] See *People v. Coreche*, 612 Phil. 1238 (2009) [Per J. Carpio, First Division].

[112] *People v. Casacop*, 755 Phil. 265, 278 (2015) [Per J. Leonen, Second Division].

[113] *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 377-378 [Per J. Perlas-Bernabe, Second Division].

[114] *Lescano v. People*, 778 Phil. 460, 475 (2016) [Per J. Leonen, Second Division].

[115] *Id.*

[116] *Id.* at 476.

the evidence seized must be shown to have [also] been preserved."[117]

However, these requirements were not present in this case, since the prosecution, to begin with, failed to acknowledge that there were lapses committed by police officers while dealing with the custody of the seized illicit drugs. These irregularities created major gaps in the chain of custody rule, which, if remained unjustified, is prejudicial to the claim of the prosecution.[118]

To emphasize, only 0.15[119] and 0.14 grams[120] of marijuana were confiscated from accused-appellant. For this reason, courts must exercise "heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs[,] [for] [t]hese can be readily planted and tampered."[121]

III

Contrary to the rulings of both the trial[122] and appellate court,[123] the presumption of regularity in the performance of official duties cannot stand in favor of the police officers on account of the glaring lapses committed in handling the seized illicit drugs. To underscore, this presumption is neither definite nor conclusive. By itself, it cannot overturn the constitutional safeguarded presumption of innocence.[124] When the assailed

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[117] *People v. Sanchez,* 590 Phil. 214, 234 (2008) [Per *J.* Brion, Second Division].

[118] *People v. Garcia,* 599 Phil. 416 (2009) [Per *J.* Brion, Second Division].

[119] CA *rollo,* p. 35, RTC Decision.

[120] *Id.* at 36.

[121] *Lescano v. People,* 778 Phil. 460, 479 (2016) [Per *J.* Leonen, Second Division] citing *People v. Holgado,* 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[122] CA *rollo,* p. 36.

[123] *Rollo,* p. 13.

[124] *People v. Capuno,* 655 Phil. 226 (2011) [Per *J.* Brion, Third Division].

official act "is irregular on its face, as in this case, an adverse presumption arises as a matter of course."[125]

From the standpoint of the accused, we concede that his defense[126] of denial and frame-up is weak.[127] In our jurisdiction, these defenses, "like alibi[s], [have] been viewed with disfavor for [these] can easily be concocted and [are] common defense ploy [s] in most prosecutions for violation of the Dangerous Drugs Act."[128] However, this cannot strengthen or aid the case of the prosecution. "If the prosecution cannot establish, in the first place, the appellant's guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf in fact never arises."[129] Additionally, "however weak the defense evidence might be, the prosecution's whole case still falls."[130]

Considering that non-conformity with Section 21 equates to "failure in establishing [the] identity of *corpus delicti,* [which is] an essential element"[131] of the charges, Suating's acquittal is therefore in order.

WHEREFORE, the Court of Appeals' December 22, 2014 Decision in CA-GR CEB HC No. 01702 is **REVERSED** and **SET ASIDE**. Accused-appellant Ronald Suating *y* Sayon is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

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[125] *Id.* at 244.

[126] See *Rollo,* p. 7, CA Decision.

[127] *People v. Sanchez,* 590 Phil. 214 (2008) [Per *J.* Brion, Second Division].

[128] *Id.* at 244.

[129] *Id*.

[130] *Id*.

[131] See *Lescano v. People,* 778 Phil. 460, 470 (2016) [Per *J.* Leonen, Second Division].

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. For their information, copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court is directed to turn over the two (2) sticks of marijuana cigarettes subject of this case to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.,* concur.

SECOND DIVISION

[G.R. No. 223195. January 29, 2020]

NATIONAL TRANSMISSION CORPORATION, as Transferee-in-Interest of the NATIONAL POWER CORPORATION, *petitioner, vs.* **SPOUSES MARIANO S. TAGLAO and CORAZON M. TAGLAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTION; PRESENT IN CASE AT BAR. — [T]he rule that only questions of law are the proper subject of a petition for review on *certiorari*

under Rule 45 of the Rules of Court applies with equal force to expropriation cases. Unless the value of the expropriated property is grounded entirely on speculations, surmises or conjectures, such issue is beyond the scope of the Court's judicial review in a Rule 45 petition. The aforecited exception obtains in the case at bar.

2. POLITICAL LAW; EXPROPRIATION; JUST COMPENSATION; THE MEASURE IS NOT THE TAKER'S GAIN, BUT THE OWNER'S LOSS. — Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It is that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as price to be given and received therefor. The measure is not the taker's gain, but the owner's loss.

3. ID.; ID.; ID.; SHOULD BE COMPUTED BASED ON THE FAIR VALUE OF THE PROPERTY AT THE TIME OF ITS TAKING OR THE FILING OF THE COMPLAINT. —While market value may be one of the basis in the determination of just compensation, the same cannot be arbitrarily arrived at without considering the factors to be appreciated in arriving at the fair market value of the property, *e.g.*, the cost of acquisition, the current value of like properties, its size, shape, location, as well as the tax declarations thereon. Moreover, it should be borne in mind that just compensation should be computed based on the fair value of the property at the time of its taking or the filing of the complaint, whichever came first. Here, the action for eminent domain was filed by the NPC on November 24, 1995. By virtue of the writ issued in favor of the NPC, it took possession of the subject property on October 9, 1996. Since the filing of the Complaint for Eminent Domain came ahead of the taking, just compensation should be based on the fair market value of Spouses Taglao's property at the time of the filing of the NPC's Complaint on November 24, 1995.

4. ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION LIES WITHIN THE TRIAL COURT'S DISCRETION BUT IT SHOULD NOT BE DONE ARBITRARILY OR CAPRICIOUSLY. — A simple reading of the CA's Decision would signify that its conclusion was highly speculative and devoid of any actual and reliable basis. Although the determination of just compensation indeed lies

within the trial court's discretion, it should not be done arbitrarily or capriciously. The valuation of courts must be based on all established rules, correct legal principles, and competent evidence. The courts are proscribed from basing their judgments on speculations and surmises. The findings of both the RTC and the CA not being based on well grounded data, it is incumbent upon the Court to disregard them.

5. ID.; ID.; ID.; AN OWNER IS ENTITLED TO THE PAYMENT OF A JUST COMPENSATION WHEN THE EASEMENT IS INTENDED TO PERPETUALLY OR INDEFINITELY DEPRIVE HIM OF THE NORMAL USE OF HIS PROPERTY. — [N]ot only that the market value fixed by the RTC was speculative, the computation by the trial court of the property's just compensation was also improperly made. According to the RTC, since the NPC was not seeking to acquire the subject property, but merely intends to establish an easement of right of way thereon, the NPC should only pay Spouses Taglao 10% of the market value of the subject portion in accordance to Section 3A of RA 6395, as amended by Presidential Decree (PD) No. 938. x x x The just compensation should not only be 10% of the market value of the subject property. In several cases, the Court struck down reliance on Section 3A of RA 6395, as amended by PD No. 938. True, an easement of a right of way transmits no rights except the easement itself, and the respondents would retain full ownership of the property taken. Nonetheless, the acquisition of such easement is not *gratis*. The limitations on the use of the property taken for an indefinite period would deprive its owner of the normal use thereof. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land taken. x x x In this case, the TRANSCO needed to acquire easement on the subject property to enable it to construct and maintain its Tayabas-Dasmariñas 500 KV Transmission Line Project. Certainly the high-tension current to be conveyed through said transmission lines poses danger to life and limb; or possible injury, death or destruction to life and property within the vicinity. Considering that the installation of the power lines would definitely deprive Spouses Taglao of the normal use of their property, they are entitled to the payment of a just compensation, which is neither more nor less than the monetary equivalent of the subject property. x x x The subject property's

> market value should be fixed by the RTC taking into consideration the cost of acquisition of the land involved, the current value of like properties, its size, shape, location, as well as the tax declarations thereon, at the time of the filing of the NPC's complaint. x x x The Court has no alternative but to remand the case to the court of origin for the proper determination of just compensation. The unpaid balance of the just compensation shall earn legal interest at the rate of 12% *per annum* from the time of the filing of the complaint on November 24, 1995. The 12% *per annum* rate of legal interest is only applicable until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due to Spouses Taglao shall earn interest at the rate [of] 6% *per annum*, in line with Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799, Series of 2013. Prevailing jurisprudence has upheld the applicability of BSP-MB Circular No. 799, Series of 2013 to forbearances of money in expropriation cases.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Elsa T. Villapando-Kasilag for respondents.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to nullify and set aside the Decision[2] dated December 17, 2015 and the Resolution[3] dated February 22, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102782. The CA dismissed for lack of merit the appeal filed by the National Power Corporation (NPC) to the

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[1] *Rollo*, pp. 28-42.

[2] *Id.* at 47-56; penned by Associate Justice Romeo F. Barza with Presiding Justice Andres B. Reyes, Jr. (now a Member of this Court) and Associate Justice Agnes Reyes-Carpio, concurring.

[3] *Id.* at 58-59.

Decision[4] dated January 13, 2003 of Branch 83, Regional Trial Court (RTC), Tanauan City, Batangas.

The Antecedents

The National Transmission Corporation (TRANSCO) is the transferee-in-interest of the NPC — a government entity created to undertake the development of hydroelectric generation of power and production of electricity from any and all sources. To carry out its purpose, NPC was given authority by Republic Act No. (RA) 6395[5] to enter and acquire private properties.

To enable it to construct and maintain its Tayabas-Dasmariñas 500 KV Transmission Line Project, the NPC, on November 24, 1995, filed before the RTC a Complaint for Eminent Domain[6] against the spouses Mariano and Corazon Taglao (Spouses Taglao), docketed as Civil Case No. C-034. The Spouses Taglao are the owners of a parcel of land covering an area of 5,143 square meters (sq.m.) situated at San Pioquinto, Malvar, Batangas. The NPC sought to acquire an easement of right of way over the 3,573-sq.m. portion (subject portion) of Spouses Taglao's property.

Spouses Taglao moved to dismiss the eminent domain case filed by the NPC.[7] Meanwhile, the NPC filed an Urgent *Ex-Parte* Motion for the Issuance of a Writ of Possession[8] over the subject property.

In the Order[9] dated September 18, 1996, the RTC denied the Motion to Dismiss of Spouses Taglao and granted the NPC's Motion for the Issuance of a Writ of Possession over the subject

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[4] *Id.* at 115-116; penned by Judge Voltaire Y. Rosales.

[5] Entitled "An Act Revising the Charter of the National Power Corporation" (September 10, 1971).

[6] *Rollo*, pp. 60-66.

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

[8] *Id.* at 73-75.

[9] *Id.* at 87.

portion of Spouses Taglao's property. In another Order[10] dated June 23, 1999, the RTC thereafter declared as condemned the subject property.

On July 21, 1999, the RTC directed the parties to submit the names of their recommended commissioners for the purpose of determining just compensation.[11] The NPC recommended Engineer Moiselito C. Abcejo (Engr. Abcejo), while Spouses Taglao recommended Atty. Elueterio G. Zaballero (Atty. Zaballero).

On June 19, 2001, the NPC's recommended commissioner, Engr. Abcejo, submitted a Commissioner's Report[12] recommending the amount of ₱156,690.44 as just compensation for the subject portion, broken down as follows: a) ₱4,490.44 as easement fee (10% of the fair market value of the subject portion based on Tax Declaration); b) ₱151,570.00 as the value of damaged improvements; and c) ₱300.00 as tower occupancy fee for two legs.

On the other hand, the commissioner for Spouses Taglao, Atty. Zaballero, submitted a Report recommending the amount of ₱12,858,000.00 as just compensation. The value was pegged at ₱2,500.00 per sq.m., the market value of the subject property as of August 15, 2000.

The Ruling of the RTC

In a Decision[13] dated January 13, 2003, the RTC fixed the market value of the subject property at ₱1,000.00 per sq.m. by ruling in this wise:

> The lot is unregistered and classified as orchard per Tax Declaration No. 014-00026 with a total area of 5,143 square meters. The affected area by the KV Tayabas-Dasmariñas transmission line project is 3,573 square meters and situated along a Barangay Road.

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[10] *Id.* at 88-89.

[11] *Id.* at 90.

[12] *Id.* at 91-93.

[13] *Id.* at 115-116.

Based on the foregoing considerations, this Court fixes the market value at ₱1,000.00 per square meter.

Considering that plaintiff is not seeking to purchase or acquire the areas affected but merely seeking for an easement of right-of-way, this Court fixes the just compensation at ₱509,170.00 applying the following formula[:]

$$\text{Easement Fee} = \frac{\text{Market Value x Area Affected x 10\%}}{\text{Total Area}}$$

$$= \frac{5{,}143{,}000 \times 3{,}573 \times 10\%}{5{,}143}$$

$$= 357{,}300.00$$

Tower Occupancy Fee for 2legs at 150/sq.m. = ₱300

Value of crops/plants/trees/improvements = ₱151,570.00

TOTAL= 509,170.00[14]

The NPC moved for reconsideration[15] of the RTC Decision, but its motion for reconsideration was denied on August 8, 2007.[16]

The Ruling of the CA

Aggrieved, the NPC appealed before the CA. In the herein assailed Decision[17] dated December 17, 2015, the CA denied the NPC's appeal and affirmed *in toto* the RTC's ruling.[18]

The NPC moved for a reconsideration of the CA's Decision, but its motion was denied in a Resolution[19] dated February 22, 2016.

Hence, the instant petition.

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[14] *Id.* at 116.

[15] *Id.* at 117-120.

[16] *Id.* at 122.

[17] *Id.* at 47-56.

[18] *Id.* at 55.

[19] *Id.* at 58-59.

The Court's Ruling

The TRANSCO imputes grave error on the part of the CA when it affirmed the RTC's ruling, which fixed the market value of the subject property at ₱1,000.00 per sq.m. It avers that just compensation must be determined as of the date of the taking of the property or the filing of the complaint, whichever came first. The TRANSCO points out that it filed the Complaint for Eminent Domain on November 24, 1995, and took possession of the subject property on October 9, 1996. The filing of the complaint taking place first, the NPC asserts that the compensation must be determined as of the time of its filing, not when it was taken in 1996.[20]

Moreover, the TRANSCO argues that the RTC and CA's calculation of the just compensation was not based on any established rule, principle, or evidence. Per the TRANSCO, the RTC and the CA merely speculated and made a rough calculation of the just compensation. In affirming the RTC Decision, the CA made a speculation that "if in the year 2000, the value of the subject property was between ₱2,000.00 to ₱2,500.00 per sq.m., it could be safely inferred that the amount of ₱1,000.00 per sq.m., as pegged by the court *a quo*, was the fair market value in the year 1995, when the complaint for eminent domain was filed." According to the NPC, such statement belonged to the realm of speculation.[21]

The petition is meritorious.

At the outset, the rule that only questions of law are the proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court applies with equal force to expropriation cases.[22] Unless the value of the expropriated property is grounded entirely on speculations, surmises or

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[20] *Id.* at 35-37.

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

[22] *Republic v. Decena*, G.R. No. 212786, July 30, 2018.

conjectures,[23] such issue is beyond the scope of the Court's judicial review in a Rule 45 petition. The aforecited exception obtains in the case at bar.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.[24] It is that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as price to be given and received therefor. The measure is not the taker's gain, but the owner's loss.[25]

While market value may be one of the basis in the determination of just compensation, the same cannot be arbitrarily arrived at without considering the factors to be appreciated in arriving at the fair market value of the property, *e.g.*, the cost of acquisition, the current value of like properties, its size, shape, location, as well as the tax declarations thereon. Moreover, it should be borne in mind that just compensation should be computed based on the fair value of the property at the time of its taking or the filing of the complaint, whichever came first.[26]

Here, the action for eminent domain was filed by the NPC on November 24, 1995. By virtue of the writ issued in favor of the NPC, it took possession of the subject property on October 9, 1996. Since the filing of the Complaint for Eminent Domain came ahead of the taking, just compensation should be based on the fair market value of Spouses Taglao's property at the time of the filing of the NPC's Complaint on November 24, 1995.

In this case, the valuation recommended by the commissioner for the NPC was ₱13.607 per sq.m.[27] The valuation was based

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[23] *National Power Corp. v. Bagui, et al.*, 590 Phil. 424, 433 (2008).

[24] *National Power Corporation v. Diato-Bernal*, 653 Phil. 345, 354 (2010).

[25] *National Power Corporation v. Tiangco*, 543 Phil. 637, 648 (2007).

[26] *National Power Corporation v. Sps. Zabala*, 702 Phil. 491, 505 (2013).

[27] Based on the formula provided in the computation of easement fee

$$\text{Amount per sq.m.} = \frac{\text{Market Value}}{\text{Total Area}}$$

on the market value stated on the property's Tax Declaration for December 29, 1993. The commissioner for Spouses Taglao, on the other hand, recommended a valuation of ₱2,500.00 per sq.m. This amount was in turn based on the market value of the property as of August 15, 2000.

We cannot uphold the valuations made by the respective commissioners as they were not based on the market value of the property at the time of the filing of NPC's complaint for eminent domain on November 24, 1995. The market value of the subject property could have been different in 1993 and in 2000. Moreover, the valuation of the commissioner for the NPC was arrived at by considering only the property's tax declaration, without taking into account other relevant factors, such as the property's cost of acquisition, the value of like properties in 1995, its size, shape, and location.

Not being reflective of the fair market value of the subject property, the RTC valued the affected lot at ₱1,000.00 per sq.m. by ruling in this wise:

> The lot is unregistered and classified as orchard per Tax Declaration No. 014-00026 with a total area of 5,143 square meters. The affected area by the KV Tayabas-Dasmariñas transmission line project is 3,573 square meters and situated along a Barangay Road.
>
> Based on the foregoing considerations, this Court fixes the market value at ₱1,000.00 per square meter.[28]

As could be gleaned from the RTC's disquisition, there is nothing in the RTC Decision which would show how it arrived at such valuation. The valuation at ₱1,000.00 per sq.m. was not also supported by any documentary evidence. Nevertheless, the CA affirmed the RTC's Decision and justified its ₱1,000 per sq.m. valuation in this wise:

> If in the year 2000, the value of the subject property was between Php2,000.00 to Php2,500 per square meter, it could safely be inferred that the amount of Php1,000.00 per square meter, as pegged by the

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[28] *Rollo*, p. 116.

court *a quo*, was the fair market value in the year 1995, when the complaint for eminent domain was filed.[29]

A simple reading of the CA's Decision would signify that its conclusion was highly speculative and devoid of any actual and reliable basis. Although the determination of just compensation indeed lies within the trial court's discretion, it should not be done arbitrarily or capriciously. The valuation of courts must be based on all established rules, correct legal principles, and competent evidence. The courts are proscribed from basing their judgments on speculations and surmises. The findings of both the RTC and the CA not being based on well grounded data, it is incumbent upon the Court to disregard them.

Furthermore, not only that the market value fixed by the RTC was speculative, the computation by the trial court of the property's just compensation was also improperly made. According to the RTC, since the NPC was not seeking to acquire the subject property, but merely intends to establish an easement of right of way thereon, the NPC should only pay Spouses Taglao 10% of the market value of the subject portion in accordance to Section 3A of RA 6395, as amended by Presidential Decree (PD) No. 938.

The RTC and the CA computed the just compensation using the following formula:

$$\text{Just Compensation} = \frac{\text{Market Value x Area Affected x 10\%}}{\text{Total Area}}$$

We disagree. The just compensation should not only be 10% of the market value of the subject property.

In several cases, the Court struck down reliance on Section 3A of RA 6395, as amended by PD No. 938. True, an easement of a right of way transmits no rights except the easement itself, and the respondents would retain full ownership of the property taken. Nonetheless, the acquisition of such easement is not *gratis*. The limitations on the use of the property taken for an indefinite

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[29] *Id.* at 53.

period would deprive its owner of the normal use thereof. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land taken.[30]

Citing the case of *National Power Corporation v. Tiangco*,[31] the Court in *National Power Corporation v. Sps. Asoque*[32] elucidated:

> While the power of eminent domain results in the taking or appropriation of title to, and possession of the expropriated property, no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of the condemned property, without loss of title and possession. However, if the easement is intended to perpetually or indefinitely deprive the owner of his proprietary rights through the imposition of conditions that affect the ordinary use, free enjoyment and disposal of the property or through restrictions and limitations that are inconsistent with the exercise of the attributes of ownership, or when the introduction of structures or objects which, by their nature, create or increase the probability of injury, death upon or destruction of life and property found on the land is necessary, then the owner should be compensated for the monetary equivalent of the land, x x x.[33]

In this case, the TRANSCO needed to acquire easement on the subject property to enable it to construct and maintain its Tayabas-Dasmariñas 500 KV Transmission Line Project. Certainly the high-tension current to be conveyed through said transmission lines poses danger to life and limb; or possible injury, death or destruction to life and property within the vicinity. Considering that the installation of the power lines would definitely deprive Spouses Taglao of the normal use of their property, they are entitled to the payment of a just compensation,

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[30] *National Power Corporation v. Tiangco, supra* note 25 at 649, citing *NPC v. Manubay Agro-Industrial Development Corp.*, 480 Phil. 470, 479 (2004).

[31] 543 Phil. 637 (2007).

[32] 795 Phil. 19 (2016).

[33] *Id.* at 47.

which is neither more nor less than the monetary equivalent of the subject property.

In view of the foregoing, the computation by the RTC of the just compensation should be done using the following formula:

$$\text{Just Compensation} = \frac{\text{Total Market Value x Area Affected}}{\text{Total Area}}[34]$$

$$= \frac{\text{Total Market Value x 3,573 sq.m.}}{\text{5,143 sq.m.}}$$

The subject property's market value should be fixed by the RTC taking into consideration the cost of acquisition of the land involved, the current value of like properties, its size, shape, location, as well as the tax declarations thereon, at the time of the filing of the NPC's complaint.[35]

In light of the foregoing, the Court sets aside the Decision and the Resolution of the CA. The Court has no alternative but to remand the case to the court of origin for the proper determination of just compensation.

The unpaid balance of the just compensation shall earn legal interest at the rate of 12% *per annum* from the time of the filing of the complaint on November 24, 1995. The 12% *per annum* rate of legal interest is only applicable until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due to Spouses Taglao shall earn interest at the rate 6% *per annum*,[36] in line with Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799, Series of 2013. Prevailing jurisprudence[37] has upheld the applicability of BSP-

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[34] The standard formula used by the Court, such as in *National Power Corp. v. Judge Paderanga*, 502 Phil. 722 (2005).

[35] *National Power Corp. v. Bagui, et al., supra* note 23 at 434 (2008), citing *Land Bank of the Phil. v. Wycoco*, 464 Phil. 83, 97 (2004).

[36] *Felisa Agricultural Corp. v. National Transmission Corp.*, G.R. Nos. 231655 & 231670, July 2, 2018.

[37] See *Evergreen Manufacturing Corp. v. Rep. of the Phils.*, 817 Phil. 1048 (2017); *Land Bank of the Phils. v. Omengan*, 813 Phil. 901 (2017);

MB Circular No. 799, Series of 2013 to forbearances of money in expropriation cases.[38]

WHEREFORE, the instant petition is **GRANTED**. The Decision dated December 17, 2015 and the Resolution dated February 22, 2016 of the Court of Appeals in CA-G.R. CV No. 102782 are **SET ASIDE**. The case is ordered **REMANDED** to the court of origin for the proper determination of the amount of just compensation based on the pronouncements at bar, with legal interest at the rate of 12% *per annum* on the unpaid balance of the just compensation, reckoned from the date of the filing of the complaint on November 24, 1995 to June 30, 2013, and, thereafter, at 6% *per annum* until full payment.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Gesmundo,*[*] and *Delos Santos, JJ.*, concur.

Hernando, J., on official leave.

National Power Corporation v. Heirs of Gregorio Ramoran, et al., 787 Phil. 77 (2016).

[38] *Republic v. Macabagdal*, G.R. No. 227215, January 10, 2018, 850 SCRA 501, 507-508.

[*] Designated as additional member per Raffle dated January 6, 2020 in lieu of Associate Justice Andres B. Reyes, Jr., who recused from the case due to prior participation in the Court of Appeals.

THIRD DIVISION

[G.R. No. 223429. January 29, 2020]

DELILAH L. SOLIVA, *petitioner, vs.* **DR. SUKARNO D. TANGGOL, in his capacity as Chancellor of Mindanao State University - Iligan Institute of Technology (MSU-IIT),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45; FACTUAL QUESTIONS ARE NOT THE PROPER SUBJECT THEREOF; EXCEPTIONS. — A petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari.* Nonetheless, the Court has recognized several exceptions to the rule, including: (a) when the findings are grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of facts are conflicting; (f) 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; (g) when the findings are contrary to those of the trial court; (h) when the findings are conclusions without citation of specific evidence on which they are based; (i) 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; (j) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (k) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. ID.; ID.; ID.; FACTUAL FINDINGS BY QUASI-JUDICIAL BODIES AND ADMINISTRATIVE AGENCIES, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE AND SUSTAINED BY THE COURT OF APPEALS, ARE

ACCORDED GREAT RESPECT AND BINDING UPON THE SUPREME COURT.— Settled is the rule that factual findings by quasi-judicial bodies and administrative agencies, when supported by substantial evidence and sustained by the Court of Appeals, are accorded great respect and binding upon this Court. We recognize that administrative agencies possess specialized knowledge and expertise in their respective fields, so long as the quantum of evidence required in administrative proceedings which is substantial evidence has been met.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE DUE PROCESS; THE ESSENCE OF DUE PROCESS, AS APPLIED TO ADMINISTRATIVE PROCEEDINGS, IS AN OPPORTUNITY TO EXPLAIN ONE'S SIDE, OR AN OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF. — In administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. The essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard.

4. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE DISHONESTY; COMMITTED WHEN THE DISHONEST ACT IS NOT SHOWN TO FALL UNDER SERIOUS OR LESS SERIOUS DISHONESTY AND IT DOES NOT CAUSE DAMAGE OR PREJUDICE TO THE GOVERNMENT OR RESULT IN ANY GAIN OR BENEFIT TO THE RESPONDENT, AND IN THE DETERMINATION OF PENALTY TO BE IMPOSED, THE LENGTH OF SERVICE IS APPRECIATED AS A MITIGATING

CIRCUMSTANCE. — As an administrative offense, dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Although dishonesty covers a broad spectrum of conduct, CSC Resolution No. 06-0538 set the criteria for determining the severity of dishonest acts. CSC Resolution No. 06-0538 recognizes that dishonesty is a grave offense generally punishable by dismissal from service. Nonetheless, some acts of dishonesty are not constitutive of offenses so grave that they warrant the ultimate penalty of dismissal. Thus, the CSC issued parameters "in order to guide the disciplining authority in charging the proper offense" and in imposing the correct penalty. x x x On February 13, 2014, the CSC found petitioner guilty of Serious Dishonesty but it did not specify her act which classifies it to serious dishonesty under CSC Resolution No. 06-0538. The 2017 Rules on Administrative Cases in the Civil Service, Rule 10, Section 53 provides for mitigating or aggravating circumstances which may be appreciated in the determination of penalties to be imposed, such as length of service in the government, first offense and other analogous circumstances. Considering that petitioner's dishonest act was not shown to fall under serious or less serious dishonesty, it did not cause damage or prejudice to the government or result in any gain or benefit to her, and petitioner has been in the service for more than 40 years, petitioner should only be liable of simple dishonesty, which may be punished by suspension of six months.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioner.
Roberto C. Padilla for respondent.

D E C I S I O N

CARANDANG, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated October 2, 2015 and Resolution[3] dated February 9, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 137277. The CA affirmed the Decision[4] dated February 13, 2014 of the Civil Service Commission (CSC) finding petitioner Delilah L. Soliva (petitioner) guilty of Serious Dishonesty and imposed upon her the penalty of dismissal from service with all accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except terminal leave benefits and personal contribution to the GSIS), perpetual disqualification from holding public office, and bar from taking civil service examinations.

Facts of the Case

Petitioner, a faculty member of the School of Computer Studies of the Mindanao State University - Iligan Institute of Technology (MSU-IIT), together with the other members of the Board of Canvassers (BOC), was charged with Gross Dishonesty and Conduct Prejudicial to the Best Interest of the Services for rigging the result of the Vice Chancellor for Academic Affairs (VCAA) straw poll.

It was alleged that on October 6, 2010, when the votes were canvassed, petitioner was added as member of the BOC.[5] She was tasked to read the ballots. There were eight members of the BOC present at the canvassing. On petitioner's left side

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[1] *Rollo*, pp. 3-50.

[2] Penned by Associate Justice Amy C. Lazaro-Javier (Now a Member of this Court), with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang, concurring; *id.* at 52-80.

[3] *Id.* at 82.

[4] *Id.* at 160-167.

[5] *Id.* at 83.

was Meles Castillano (Castillano), who wrote the count on the tally sheet; on her right were Sittie Sultan (Sultan) and Mosmera Ampa (Ampa), watchers; standing behind her were Irene Estrada (Estrada) and Soraida Zaman (Zaman); in charge of the tally board was Michael Almazan (Almazan); and sitting beside Almazan was Ombos Ariong (Ariong), whose function was to repeat the name being read out by petitioner. The canvassing of ballots was done by sector. First to be canvassed was the students' ballot box, followed by the administrative staff ballot box, and last was the faculty ballot box.[6]

At that time, Dr. Olga Nuñeza (Dr. Nuñeza), the Chairperson of the Search Committee, was on official travel to Manila. Professor Jeoffrey Salgado (Prof. Salgado), the Chairman of the BOC, was also not present during the canvassing as he allegedly had a class.[7]

During the canvassing, the white board and tally sheet tabulations were consistent. The October 6 canvassing showed the following results:[8]

Candidate	Faculty	Staff	Students	Total
Dr. Feliciano Alagao	63	31	17	111
Dr. Jerson Orejudos	227	4	11	242
Dr. Rhodora Englis	31	10	23	64

After the canvassing, the ballots were placed inside their respective boxes sealed with plastic tape. Petitioner and Sultan affixed their signatures over the plastic tape. Estrada kept the ballot boxes.[9] However, on October 7, 2010, Prof. Salgado asked that the ballot boxes be brought to him. Then he affixed his signature over the tape sealing the boxes.[10]

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[6] *Id.* at 54-57.

[7] *Id.* at 56.

[8] *Id.* at 58.

[9] *Id.* at 144.

[10] *Id.* at 254.

The result of the October 6, 2010 canvassing was not officially published or divulged to the public.[11]

On October 14, 2010, Dr. Nuñeza sent a communication to Dr. Marcelo P. Salazar, then Chancellor of MSU-IIT, about the alleged irregularities in the canvassing of votes for VCAA held on October 6, 2010.[12] Dr. Nuñeza stated that Dr. Rhodora Englis (Dr. Englis), one of the candidates, texted Prof. Salgado questioning the integrity of the straw polls. Dr. Englis wanted a recount because she refused to believe she only received 31 votes from the faculty. In the letter, Dr. Nuñeza stated that a recount was done on October 13, 2010 at 10 a.m. and another at 12 p.m., with the presence of watchers and the representatives of nominees. Petitioner was neither notified nor present because she was on official leave to India.[13] The October 13, 2010 re-canvassing showed disparity from the results of the October 6 canvassing. The October 13, 2010 recount showed the following results,[14] both in the 10 a.m. and 12 p.m. canvassing, *viz.*:

Candidate	Faculty	Staff	Students	Total
Dr. Feliciano Alagao	129	29	17	175
Dr. Jerson Orejudos	111	5	11	127
Dr. Rhodora Englis	81	11	23	115

After a formal investigation conducted by the Institute Formal Investigation Committee (IFIC),[15] petitioner alone was found administratively guilty of Gross Dishonesty (with aggravating circumstance of habituality, it being her second offense) and was recommended to be dismissed from the service.[16] Castillano,

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[11] See Comment (Answer) of the BOR; *id.* at 446.

[12] *Id.* at 88-90.

[13] *Id.* at 87.

[14] *Id.* at 86.

[15] *Id.* at 103.

[16] *Id.* at 107-122.

Estrada, Ariong, Sultan, Ampa, and Almazan were declared innocent for lack of evidence to prove direct participation or conspiracy with petitioner.[17] The IFIC found that when the reading of the staff ballots was about to be completed, petitioner instructed Ampa and Sultan to bundle and staple the counted ballots in groups of 10. Since Ampa and Sultan were preoccupied with the task, they failed to counter-check petitioner's reading of the remaining staff ballots and the whole of the faculty ballots. Estrada, who stood behind petitioner, was also directed by petitioner to check the food for dinner. When she returned, the canvassing was already done. Almazan, Castillano, and Sultan testified that subsequent to the reassignment of the two watchers, petitioner's reading of the ballots was unusually quick and the name "Orejudos" was almost always successively called out by petitioner.[18] The recount, in the presence of the nominees' respective watchers, showed an enormous difference in the faculty votes. Only 116 votes were credited to Dr. Jerson Orejudos (Dr. Orejudos).[19]

The resolution of the IFIC was adopted *in toto*[20] by respondent Dr. Sukarno D. Tanggol (Chancellor Tanggol), Chancellor of the MSU-IIT, who endorsed the same for approval to Dr. Macapano A. Muslim (Dr. Muslim), MSU-Marawi City President. Dr. Muslim, with the assistance of the Director of the Legal Services Division, recommended instead a penalty of six months suspension without pay.[21]

On September 19, 2012, the MSU-Board of Regents (MSU-BOR) found petitioner not guilty in its Resolution No. 171, Series of 2012. The MSU-BOR voted as follows: 5 - GUILT HAS BEEN ESTABLISHED; 6 - GUILT HAS NOT BEEN ESTABLISHED; and 3 - ABSTAINED.[22]

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[17] *Id.* at 122. Zaman was not included in the charge.

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

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

[20] *Id.* at 123.

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

[22] *Id.* at 126-127.

The MSU-IIT, represented by Chancellor Tanggol, moved for reconsideration but the MSU-BOR denied the same in its Resolution No. 2, S. 2013.[23]

Chancellor Tanggol appealed[24] the MSU-BOR Resolution to the CSC arguing that: (1) there were no serious procedural lapses committed during the investigation;[25] (2) there was sufficient evidence to hold petitioner liable for gross dishonesty;[26] and (3) there was no violation of petitioner's constitutional right to speedy trial.[27]

Ruling of the Civil Service Commission

On February 13, 2014, the CSC granted Chancellor Tanggol's appeal, reversing Resolution No. 171, s. 2012 issued by the MSU-BOR.[28] It found petitioner guilty of Serious Dishonesty, the dispositive portion of the Decision reads:

> **WHEREFORE**, the appeal of Dr. Sukarno D. Tanggol, Chancellor of the Mindanao State University- Iligan Institute of Technology (MSU-IIT), is **GRANTED**. Accordingly, Resolution No. 171, s. 2012 dated September 19, 2012 of the MSU-Board of Regents (BOR), exonerating Prof. Delilah L. Soliva for Gross Dishonesty is **REVERSED**. Soliva is hereby found **GUILTY** of Serious Dishonesty and meted the penalty of dismissal from the service with all accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, (except terminal leave benefits and personal contribution to the GSIS), perpetual disqualification from holding public office and bar from taking civil service examinations are deemed imposed.
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> Copies of this Decision shall be furnished the Government Service Insurance System (GSIS), Commission on Audit (COA-MSU-IIT)

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[23] *Id.* at 137-138.

[24] *Id.* at 139-159.

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

[26] *Id.* at 155.

[27] *Id.* at 156.

[28] *Id.* at 160-167.

Office of the Ombudsman, and the Integrated Records Management Office (IRMO), this Commission for their appropriate action.[29]

The CSC gave greater evidentiary weight to the positive and corroborative declarations executed by Ampa, Almazan, Castillano, Ariong, and Sultan, rather than the bare denials of petitioner. It ruled that the scheme perpetuated by petitioner in assigning the watchers, Ampa and Sultan, to do another task, and directing Estrada to check the food for dinner, primarily facilitated the discrepancy in the results of the canvassing. The CSC further declared that petitioner failed to live up to the high degree of professionalism required of public officers. She intentionally strayed from performing her duties truthfully and honestly causing serious damages and prejudice to the government.

Petitioner moved for reconsideration[30] but it was denied in the Resolution dated August 18, 2014.[31]

Via Rule 43, petitioner elevated the case to the CA.

Ruling of the Court of Appeals

On October 2, 2015, the CA denied the petition and affirmed the CSC Decision.[32] The CA ruled that from the series of facts, it can be logically concluded that it was petitioner who deliberately manipulated the results of the October 6 canvassing to favor one candidate over the others. The circumstantial evidence showed that it was petitioner alone who was responsible for misreading the results during the October 6 canvassing.[33]

The CA found the following circumstantial evidence: a) the witnesses were one in saying that petitioner ordered Ampa and Sultan to group together and staple the ballots even, while

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[29] *Id.* at 167.

[30] *Id.* at 168-187.

[31] *Id.* at 258-266.

[32] *Supra* note 4.

[33] *Rollo*, p. 74.

petitioner was still reading the votes; b) the witnesses were also unanimous in identifying petitioner as the only person reading all the ballots; c) it was petitioner alone who had full control of the reading of the ballots; d) it was petitioner who announced the name of Dr. Orejudos 242 times, *albeit* the votes for him only numbered 127; e) she announced the name of Dr. Feliciano Alagao (Dr. Alagao) 111 times and Dr. Englis 64 times only, when in fact each one got 175 and 115, respectively; f) she read the ballots quickly, while the designated watchers were preoccupied; g) she misread the names indicated in the ballots 100 times, strongly indicating that the erroneous results of the October 6 canvassing was not accidental, but intentional; and h) the October 6 canvassing results, which she participated in were substantially different from the two separate canvassing results on October 13, wherein she was not a participant.[34] The CA gave credence to the factual findings of the CSC. Anent petitioner's claim of denial of due process, the CA declared that petitioner was given the opportunity to present her own evidence, submit her motions, memoranda, and other papers, and actively participate in the cross examinations of the witnesses before the Investigating Committee, which means that the basic tenets of due process were complied with.[35] Administrative due process cannot be fully equated with due process in its strict judicial sense. It is enough that the party is given the chance to be heard before the case against him or her is decided.

Petitioner moved for reconsideration but her motion was denied in the Resolution[36] dated February 9, 2016 of the CA.

Hence, petitioner filed this Petition for review on *Certiorari* under Rule 45 on the following grounds:

-A-

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RULING THAT PETITIONER DELIBERATELY

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

[35] *Id.* at 77-78.

[36] *Id.* at 82.

MANIPULATED THE RESULTS OF THE OCTOBER 6, 2010 CANVASSING TO FAVOR ONE CANDIDATE OVER THE OTHERS.

-B-

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN HOLDING THAT THE SANCTITY OF BALLOTS AFTER THE OCTOBER 6 CANVASSING WERE PRESERVED CONSIDERING THAT THERE IS NO SHOWING THAT THE WITNESSES WHO TESTIFIED HAD ILL MOTIVE TO PUT PETITIONER DOWN.

-C-

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RULING THAT PETITIONER SOLIVA WAS AFFORDED DUE PROCESS.

-D-

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN IMPOSING THE PENALTY OF DISMISSAL FROM OFFICE ON PETITIONER SOLIVA.[37]

Petitioner argues that it is impossible for her to have manipulated the October 6 canvassing considering that there were other members of the straw poll present and watching during the entire canvassing; she was included only as a member of the BOC on the same day of canvassing; and she had no intention to gamble her retirement benefits. Petitioner asserts that it is highly impossible for her to singlehandedly manipulate 236 votes without getting caught by any of the members of the straw poll present and watching the October 6, 2010 canvassing. It is unbelievable for Ampa and Sultan not to have seen the names being read by petitioner considering that there were only three names written in bold, large font letters.[38] Petitioner, likewise, points out the inconsistencies in the affidavits of Ampa and Sultan with the established factual circumstances of the

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[37] *Id.* at 16.

[38] *Id.* at 17-18.

case. Ampa and Sultan alleged in their affidavits that it was near the end of the counting of the administrative staff ballots that they were instructed by petitioner to arrange the ballots into groups of 10 and staple them together. During the formal hearing, however, Ampa testified that it was during the canvassing of the faculty votes when petitioner instructed her and Sultan to arrange the canvassed ballots by 10 and staple it. Petitioner claims that it is important to know when she allegedly gave the instructions to arrange and group the read ballots in order to determine how many ballots are to be arranged, grouped, and stapled.[39] She also contends that the sanctity of the ballots after the October 6, 2010 canvassing was not preserved; hence, the authenticity and integrity of the ballots canvassed during the October 13, 2010 re-canvassing are questionable.[40] Petitioner claims that she was not afforded due process because: (1) she was not notified that a re-canvassing was to be conducted;[41] (2) she was not furnished a copy of the IFIC Resolution which was submitted to the MSU-President;[42] (3) she did not receive any paper, document, or any communication from the CSC when respondent appealed this case;[43] and (4) the CSC Decision was intentionally kept secret and was never released to petitioner by the Office of the Chancellor of MSU-IIT, until June 3, 2014.[44] Lastly, petitioner posits that the penalty of dismissal is too harsh for her "who is a widow, sickly, has served the MSU-IIT for more than 40 years and has followed the order of the Chair of BOC to canvass the ballots."[45]

In his Comment,[46] Chancellor Tanggol avers that petitioner manipulated 116 votes. The disparity between the October 6,

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[39] *Id.* at 19-22.
[40] *Id.* at 25-34.
[41] *Id.* at 35-36.
[42] *Id.* at 36.
[43] *Id.* at 41.
[44] *Id.* at 42.
[45] *Id.* at 43.
[46] *Id.* at 455-477.

2010 canvassing and the October 13, 2010 recount stretched to 116 votes. This will prove that in the October 6, 2010 canvassing, the votes for Dr. Alagao and Dr. Englis were shaved off by 66 and 50 votes, respectively, which were credited by petitioner to the votes of Dr. Orejudos. The disparity of 116 votes could not be dismissed simply as the product of honest mistake. Chancellor Tanggol also claims that it is an established fact that when the faculty votes were about to be canvassed, petitioner instructed Ampa and Sultan to staple the counted ballots in groups of 10. Preoccupied with a different assignment, Ampa and Sultan failed to counter-check petitioner's fast-pace reading of the faculty ballots. If petitioner were true to her task in honestly counting the votes, she should have insisted the presence of watchers since they play an important role in upholding the integrity of the canvassing process. As to petitioner's assertion that the sanctity of the ballots was not preserved, Chancellor Tanggol declares that the ballots canvassed on October 6, 2010 were the same ballots counted on October 13, 2010; there were no signs of tampering; and the ballots were still stapled and bundled in groups of 10. Moreover, petitioner was not denied due process. She was represented by a competent lawyer; had the opportunity to present her evidence; submitted her motions, memoranda and other papers; and actively participated in the cross examination of witnesses. Thus, it was not an error to impose upon her the penalty of dismissal from service.

Issue

Stripped of non-essentials, the pivotal issue to be resolved herein is whether there is substantial evidence to sustain the guilt of petitioner for serious dishonesty warranting her dismissal from the service.

The Court's Ruling.

The petition is partially granted.

A petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. Nonetheless, the Court has recognized several

exceptions to the rule, including: (a) when the findings are grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of facts are conflicting; (f) 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; (g) when the findings are contrary to those of the trial court; (h) when the findings are conclusions without citation of specific evidence on which they are based; (i) 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; (j) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (k) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[47]

Petitioner asserts that her petition falls under the established exceptions because the judgment of the Court of Appeals is based on a misappreciation of facts; the findings are grounded entirely on speculation, surmises, or conjectures; and the inference is manifestly mistaken, absurd, or impossible.

Aside from this general statement, however, petitioner did not fully explain how the CA's findings are grounded entirely on speculations, surmises, or conjectures; or how its inference is manifestly mistaken, absurd, or impossible; or how its judgment is based on misappreciation of facts. Not only must the parties allege that their case falls under the exception, but also parties praying for a review of the factual findings of the CA should prove and substantiate that their case clearly falls under the exception to the rule.[48]

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[47] *Angeles v. Pascual*, 673 Phil. 499, 506 (2011).

[48] *Quirino v. National Police Commission*, G.R. No. 215545, January 7, 2019.

Without substantiating her allegation that her petition falls within the exceptions, the present petition does not merit a review of the factual findings of the CSC, as affirmed by the CA.

Factual Findings of the CSC and the CA are Binding Upon this Court

Petitioner argues in this petition that the CA committed grave reversible error in ruling that: (1) she deliberately manipulated the results of the October 6, 2010 canvassing to favor one candidate over the others; (2) the sanctity of the ballots was preserved; (3) she was afforded due process of law; and (4) the penalty of dismissal should be imposed on her. The first two (2) issues raised by petitioner involve questions of fact as it necessitates a review of the appreciation of evidence by the CSC and the CA.

Settled is the rule that factual findings by quasi-judicial bodies and administrative agencies, when supported by substantial evidence and sustained by the Court of Appeals, are accorded great respect and binding upon this Court.[49] We recognize that administrative agencies possess specialized knowledge and expertise in their respective fields,[50] so long as the quantum of evidence required in administrative proceedings which is substantial evidence has been met.

In this case, both the CSC and the CA were one in saying that there is substantial evidence to hold petitioner guilty of the administrative offense of serious dishonesty by misreading 116 ballots to favor one candidate.[51]

The CSC gave greater evidentiary weight to the positive and corroborative declarations executed by Ampa, Almazan, Castillano, Ariong and Sultan, rather than the bare denials of petitioner. It ruled that the scheme perpetuated by petitioner in assigning the watchers, Ampa and Sultan, to do another task,

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[49] *Japson v. Court of Appeals*, 663 Phil. 665, 675 (2011).

[50] *Id.*

[51] *Rollo*, pp. 78-79.

and directing Estrada to check the food for dinner, primarily facilitated the discrepancy in the results of the canvassing. As attested to by Almazan, Castillano, Ariong and Sultan, petitioner's reading of the ballots became remarkably fast after she sent the two watchers to do another task and they heard the name of Orejudos continuously announced by petitioner. Also, petitioner admitted that she sealed and signed all the ballot boxes after the canvassing and securely kept by Estrada and was publicly shown only during the recount on October 13, 2010. The CSC further declared that petitioner failed to live up to the high degree of professionalism required of public officers. She intentionally strayed from performing her duties truthfully and honestly caused serious damages and prejudice to the government.

The CA found the following circumstantial evidence pointing to petitioner as the one responsible for misreading the results of the October 6, 2010 canvassing:

a) the witnesses were one in saying that petitioner ordered Ampa and Sultan to group together and staple the ballots even while petitioner was still reading the votes;

b) the witnesses were also unanimous in identifying petitioner as the only person reading all the ballots;

c) it was petitioner alone who had full control of the reading of the ballots;

d) it was petitioner who announced the name of Dr. Oejudos 242 times, albeit the votes for him only numbered 127;

e) she announced the name of Dr. Alagao 111 times and Dr. Englis, 64 times only, when in fact each one got 175 and 115 respectively;

f) she read the ballots quickly while the designated watchers were preoccupied;

g) she misread the names indicated in the ballots 100 times, strongly indicating that the erroneous results of the October 6 canvassing was not accidental, but intentional; and

h) the October 6 canvassing results which she participated in were substantially different from the 2 separate canvassing results on October 13 wherein she was not a participant.[52]

That it was impossible for petitioner to cheat because there were many watchers during the canvassing and that she was included as member of the Board of Canvassers at the last minute are speculative and untenable contentions. The incontrovertible fact is she gave instructions to the watchers, which divided their attention from watching her read the ballots. If she had no intention to commit a dishonest act, they why would she instruct them to do other things in the first place? That there was a short period of time from her inclusion in the BOC to the canvassing itself is not determinative of her lack of intention to commit a dishonest act. While intention involves a state of mind, subsequent and contemporaneous acts, and evidentiary facts as proved and admitted, can be reflective of one's intention.[53]

As discussed by the CA, petitioner's attempt to cast suspicion or possibly pass the blame to others, to destroy the credibility of the witnesses as to their inconsistent testimonies, and to claim that the sanctity of the ballot was not preserved are conjectures which does not bear any probative value. Petitioner's bare assertions are purely speculative and without any evidence to support it. Furthermore, considering that no improper motive has been proved against the witnesses that might prompt them to testify falsely against petitioner, there was no reason to doubt their credibility.[54]

Indeed, the factual findings of the CSC, as given credence by the CA, substantially proved that petitioner committed the act of dishonesty in misreading 116 ballots during the canvassing for the Vice Chancellor for Academic Affairs Straw Poll.

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

[53] *Sarming v. Dy*, 432 Phil. 685, 699 (2002).

[54] *People v. Fuertes*, 299 Phil. 285, 297 (1994).

Petitioner was Afforded Due Process of Law

Petitioner claims that she was not afforded due process because: (1) she was not notified that a recanvassing was to be conducted; (2) she was not furnished a copy of the IFIC Resolution which was submitted to the MSU- President; (3) she did not receive any paper, document, or any communication from the CSC when respondent appealed this case; and (4) the CSC Decision was intentionally kept secret and was never released to petitioner by the Office of the Chancellor of MSU-IIT, until June 3, 2014.

In administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.[55]

Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied.[56] The essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard.[57]

We agree that petitioner was given the opportunity to present her own evidence, submit her motions, memoranda, and other papers, and actively participate in the cross-examination of the witnesses before the IFIC. While she was not directed to file

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[55] *Office of the Ombudsman v. Conti*, G.R. No. 221296, February 2, 2017, 818 SCRA 528, 539.

[56] *Nestle Philippines, Inc. v. Puedan*, 804 Phil. 583, 594 (2017).

[57] *Supra* note 54.

a comment by the CSC of Chancellor Tanggol's appeal, she was able to file a motion for reconsideration of the CSC Decision dated February 13, 2014. Petitioner further elevated the case to the CA and moved for reconsideration after the CA dismissed her petition in the Decision dated October 2, 2015.

Petitioner need not be notified of the recanvassing because she was only one of the BOC during the initial canvassing, and there were no charges against her yet to merit her presence or representation. The recanvassing was done to clear the doubt of one candidate and was not done to cast suspicion or accuse anyone at that time. After the recanvassing, petitioner was notified that she was one of those administratively charged. Petitioner was represented by a lawyer, and she was given every opportunity to answer the charge from the investigation of the Institute Formal Investigation Committee until her appeal to Us.

That petitioner actively participated in every stage of the proceedings removes any badge of deficiency and satisfied the due process requirement in administrative proceedings.

Petitioner Should Only Be Held Liable For Simple Dishonesty

The above discussions notwithstanding, We find the petition partially meritorious because the penalty of dismissal from service is not proportionate to the dishonesty committed by petitioner. We find the penalty of dismissal from government service with forfeiture of benefits too severe under the circumstances of petitioner's case.

Petitioner posits that the penalty of dismissal is too harsh for her who is a widow, sickly, has served the MSU-IIT for more than 40 years and has followed the order of the Chair of BOC to canvass the ballots.

As an administrative offense, dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle;

lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[58]

Although dishonesty covers a broad spectrum of conduct, CSC Resolution No. 06-0538[59] set the criteria for determining the severity of dishonest acts. CSC Resolution No. 06-0538 recognizes that dishonesty is a grave offense generally punishable by dismissal from service. Nonetheless, some acts of dishonesty are not constitutive of offenses so grave that they warrant the ultimate penalty of dismissal. Thus, the CSC issued parameters "in order to guide the disciplining authority in charging the proper offense" and in imposing the correct penalty.[60]

Under Sections 3, 4, and 5 of Resolution No. 06-0538, serious, less serious and simple dishonesty comprise the following acts:

> Sec. 3. The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:
>
> a. The dishonest act causes serious damage and grave prejudice to the government.
>
> b. The respondent gravely abused his authority in order to commit the dishonest act.
>
> c. Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption.
>
> d. The dishonest act exhibits moral depravity on the part of the respondent.
>
> e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment.

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[58] *Field Investigation Office v. Piano*, G.R. No. 215042, November 20, 2017, 845 SCRA 167, 180.

[59] Rules on Administrative Offense on Dishonesty, April 4, 2006.

[60] *Committee on Security and Safety, Court of Appeals v. Dianco*, 760 Phil. 169, 188 (2015).

f. The dishonest act was committed several times or in various occasions.

g. The dishonest act involves a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.

h. Other analogous circumstances.

Sec. 4. The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Less Serious Dishonesty:

a. The dishonest act caused damage and prejudice to the government which is not so serious as to qualify under the immediately preceding classification.

b. The respondent did not take advantage of his/her position in committing the dishonest act.

c. Other analogous circumstances.

Sec. 5. The presence of any of the following attendant circumstances in the commission of the dishonest act constitutes the offense of Simple Dishonesty:

a. The dishonest act did not cause damage or prejudice to the government.

b. The dishonest act had no direct relation to or does not involve the duties and responsibilities of the respondent.

c. In falsification of any official document, where the information falsified is not related to his/her employment.

d. That the dishonest act did not result in any gain or benefit to the offender.

e. Other analogous circumstances.

On February 13, 2014, the CSC found petitioner guilty of Serious Dishonesty but it did not specify her act which classifies it to serious dishonesty under CSC Resolution No. 06-0538. The 2017 Rules on Administrative Cases in the Civil Service, Rule 10, Section 53 provides for mitigating or aggravating circumstances which may be appreciated in the determination

of penalties to be imposed, such as length of service in the government, first offense and other analogous circumstances.

Considering that petitioner's dishonest act was not shown to fall under serious or less serious dishonesty, it did not cause damage or prejudice to the government or result in any gain or benefit to her, and petitioner has been in the service for more than 40 years, petitioner should only be liable of simple dishonesty, which may be punished by suspension of six months.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. Petitioner Delilah L. Soliva is hereby found administratively **GUILTY** of Simple Dishonesty and is meted the penalty of **SUSPENSION** for **SIX (6) MONTHS**.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 223623. January 29, 2020]

ROBERTO C. EUSEBIO, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

[G.R. No. 223644. January 29, 2020]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **ROBERTO C. EUSEBIO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION (CSC); CSC REVISED RULES ON CONTEMPT; CONSIDERING THAT THE CSC HAS ITS OWN RULES IN PENALIZING CONTEMPT COMMITTED AGAINST IT, THE RULES OF COURT MUST DEFER TO THE CSC's POWER TO PROMULGATE AND APPLY ITS OWN PROCEDURE AND PENALTIES. — Under Section 6, Article IX-A of the 1987 Constitution, the CSC *en banc* may promulgate its own rules concerning pleadings and practice before any of its offices so long as such rules do not diminish, increase, or modify substantive rights. Further, Section 12(2), Title I(A), Book V of EO 292 ordains: **SECTION 12**. Powers and Functions. — The Commission shall have the following powers and functions: x x x (2) Prescribe amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws; x x x Pursuant to the foregoing provisions, the CSC issued Memorandum Circular No. 42, s. 1990 which was later amended by CSC Resolution No. 071245 dated June 22, 2007, otherwise known as the CSC Revised Rules on Contempt. Based thereon, the CSC wields the power to punish for contempt. Indeed, the Court has never nullified the rules of procedure of Constitutional Commissions on ground that their respective enabling laws supposedly do not authorize them to prescribe penalties for contemptuous conduct. The Court never curtailed and will never curtail their power to punish for contempt on such ground. While it is true that Section 16(2)(d), Title I(A), Book V of EO 292 states that the CSC through its adjudicative arm shall have the power to "punish for contempt in accordance with the same procedures and penalties prescribed in the Rules of Court", Section 12, Rule 71 of the Rules of Court states that the application of said rules is merely suppletory x x x. Indeed, the Rules of Court must defer to the CSC's power to promulgate and apply its own rules in penalizing contempt committed against it. The existence of the CSC's Revised Rules on Contempt, therefore, calls for the application of its own procedure and penalties, thus, precluding Section 7, Rule 7 of the Rules of Court from coming into play at first instance. This is not an expansion of the CSC's authority to punish for contempt

under EO 292 but the Court's deference to the CSC to wield such power.

2. ID.; ID.; ID.; ID.; PENALTY; THE CSC MAY IMPOSE FINE OF ONE THOUSAND PESOS A DAY FOR EVERY ACT OF INDIRECT CONTEMPT COMMITTED AGAINST IT. — Under Section 4 of the CSC Revised Rules on Contempt, a fine of ₱1,000.00 may be imposed on the contemnor for each day of defiance of, disobedience to, or non-enforcement of, a final ruling of the CSC. Further, if the contempt consists in the violation of an injunction or omission to do an act which is within the power of respondent to perform, he or she, in addition, shall be liable for damages as a consequence thereof. In accordance, therefore, with Section 4 of the CSC Revised Rules on Contempt, the CSC imposed a fine of ₱1,000.00 per day or a total of ₱416,000.00 on Eusebio for his contumacious defiance of the CSC's directive to reinstate Tirona to her post as PLP President. This conforms with the subsequent CSC rules penalizing contumacious conduct before it. x x x Meanwhile, [pursuant to] Section 85 of the 2017 Rules on Administrative Cases in the Civil Service, x x x the CSC may impose a fine of ₱1,000.00 a day for every act of indirect contempt committed against it. The word "may" implies that it is discretionary, not mandatory. It is an auxiliary verb indicating liberty, opportunity, permission and possibility. It means, therefore, that the CSC may impose a fine less than ₱1,000.00 a day or even dispense therewith depending on the circumstances of each case. In other words, it is not constrained to impose a fine of ₱1,000.00 a day at every instance of contempt committed against it. The attendant circumstances here compel the imposition of the maximum fine of ₱1,000.00 per day for the repeated contumacious act committed by Eusebio against the CSC over a long period of four hundred sixteen (416) days to be exact.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; COMPLIANCE WITH THE JUDGMENTS OF COURTS AND QUASI-JUDICIAL BODIES ARE COMPULSORY, ESPECIALLY WHEN PUBLIC INTEREST IS AT STAKE. — Judgments of courts and quasi-judicial bodies are couched in mandatory language. Compliance therewith is compulsory, especially when public interest is at stake. The authority of these rulings, however, is diminished by the flagrant and stubborn refusal of party-litigants to comply with their directives. The

worst of these miscreants taunt judicial bodies and flout procedural rules unabashed, prolonging litigation by opting to pay the fine for contempt rather than fulfilling their legal obligation promptly, as here. Eusebio acted as though he was above the law when he brazenly defied the numerous rulings of the CSC. Contrary to his claim of good faith, he willingly chose to suffer under pain of contempt than reinstate Tirona. This cannot be countenanced. Neither should the penalty imposed by the CSC be reduced unnecessarily lest we trade the rule of law for a mere pittance. Indeed, the rationale behind the fine of ₱1,000.00 a day is not difficult to divine—to give teeth to the coercive powers to the CSC as the implementer of civil service laws. It is meant to deter those who dare defy the authority of the CSC and in the process, interrupt, nay prejudice, the flow of public service.

APPEARANCES OF COUNSEL

Christian B. Villar for Roberto C. Eusebio.
The Solicitor General for Civil Service Commission.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Cases

In G.R. No. 223644 the Civil Service Commission (CSC) assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 129526 entitled *"Roberto C. Eusebio v. CSC"*:

(1) Decision dated July 21, 2015[1] insofar as it reduced the fine which the CSC imposed on Roberto C. Eusebio from ₱416,000.00 to ₱30,000.00; and

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[1] Penned by then Court of Appeals (now Supreme Court) Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Mario V. Lopez (now of the Supreme Court) and Nina G. Antonio-Valenzuela; G.R. No. 223644, *Rollo*, p. 28.

2) Resolution dated February 19, 2016 [2] denying the CSC's motion for reconsideration.

In G.R. No. 223623, Roberto C. Eusebio twice moved for extension to file a petition for review on *certiorari* against the same dispositions but despite the lapse of the extended period sought, has not to this date filed his intended petition for review on *certiorari*. By Resolution dated March 29, 2017,[3] the Court declared G.R. No. 223623 closed and terminated. Entry of judgment thereon was thereafter issued as a matter of course.[4]

Antecedents

The facts are undisputed.

On February 1, 2008, then Pasig City Mayor Eusebio appointed retired career diplomat Rosalina V. Tirona as President of the Pamantasan ng Lungsod ng Pasig (PLP) for a four (4)-year term or until January 31, 2012. The CSC approved Tirona's appointment.[5]

Upon his re-election, on June 7, 2010, Eusebio issued a memorandum urging all Pasig City chiefs of office, including Tirona, to tender their courtesy resignations. Tirona did not heed the call and wrote Eusebio why she will not resign.[6]

Through letter dated July 19, 2010, Eusebio terminated Tirona's appointment as PLP President and declared the position vacant. He cited as reason Tirona's having reached the compulsory retirement age of seventy (70). Aggrieved, Tirona questioned her termination before the CSC.[7]

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[2] G.R. No. 223644, *Rollo*, p. 41.

[3] G.R. No. 223623, *Rollo*, p. 30.

[4] *Id.* at 32.

[5] G.R. No. 223644, *Rollo*, p. 28.

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

[7] *Id.* at 29.

By Decision dated September 23, 2010, the CSC ruled that Tirona was illegally dismissed and, thus, ordered her reinstatement as PLP President, *viz*:

> WHEREFORE, foregoing premises considered, the Commission hereby resolves to GRANT the appeal of Rosalinda V. Tirona. The letter dated July 19, 2010 of City Mayor Roberto C. Eusebio terminating her service as President of the Pamantasan ng Lungsod ng Pasig is REVERSED and SET ASIDE. Tirona should be reinstated into the service.[8]

Eusebio and the PLP Board of Regents filed separate motions for reconsideration which were denied under Resolution dated December 13, 2010.[9]

They further appealed to the Court of Appeals via CA-G.R. SP No. 117512. The Court of Appeals, meantime, did not issue any injunctive relief or restraining order to enjoin Tirona's reinstatement. But still, Eusebio did not comply with the CSC's directive for Tirona's reinstatement.[10]

Consequently, on June 21, 2011, the CSC *motu proprio* charged Eusebio with indirect contempt.[11]

In his Answer, Eusebio reasoned that his failure to reinstate Tirona was not contumacious since he did not act in bad faith; his timely appeal from the CSC's dispositions purportedly stayed the finality of the order of reinstatement. At any rate, Tirona never filed any motion to implement her reinstatement.[12]

The CSC Rulings

Under Decision No. 12-0843 dated November 26, 2012,[13] the CSC held Eusebio liable for indirect contempt and imposed on him a fine of ₱416,000.00, thus:

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[8] *Id.*

[9] *Id.*

[10] *Id.* at 30.

[11] *Id.* at 48.

[12] *Id.* at 48-50.

[13] *Id.* at 46.

WHEREFORE, premises considered, the City Mayor Roberto C. Eusebio of the Pasig City Government, Pasig City, is hereby adjudged GUILTY of Indirect Contempt of the Commission. Accordingly, he is imposed a fine of One Thousand Pesos (₱1,000.00) per day, payable to the Commission, counted from the denial of the respondent's Motion for Reconsideration of CSC Resolution No. 10-0068 dated September 23,2010 on December 13, 2010 up to the end of the four-year term of Rosalina V. Tirona as University/College President III of the Pamantasan ng Lungsod ng Pasig (PLP), or an amount equivalent to the four hundred sixteen thousand pesos (₱416,000.00) for the period from December 13, 2010 up to February 1, 2012.[14]

The Disbursing Officer/Cashier of the Pasig City Government is directed to deduct from the salaries, monetary benefits, and allowance of the City Mayor Eusebio the accumulated amount of fine of four hundred sixteen thousand pesos (₱416,000.00) and remit the same to the Commission.

A copy of this Decision shall be furnished the Commission on Audit for appropriate action.[15]

It held that under Section 82 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS),[16] which was still in force during the time material to the case, final rulings of the CSC are immediately executory. Appeals therefrom will not stay their implementation unless the Court of Appeals restrains or enjoins it.

As for the imposable penalty, it cited Section 4 of its Memorandum Circular No. 42, s. 1990[17] as amended by CSC

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[14] G.R. No. 223644, *Rollo,* p. 54.

[15] *Id.*

[16] **Section 82**. *Effect of Pendency of Petition for Review/Certiorari with the Court.* — The filing and pendency of a petition for review with the Court of Appeals or *certiorari* with the Supreme Court shall not stop the execution of the final decision of the Commission unless the court issues a restraining order or an injunction.

[17] RULES AND REGULATIONS GOVERNING THE CONTEMPT POWER OF THE CIVIL SERVICE COMMISSION UNDER EXECUTIVE ORDER NO. 292.

Resolution No. 071245 dated June 22, 2007, otherwise known as the CSC Revised Rules on Contempt, *viz*:

> Section 4. *Punishment if found guilty* — If the respondent is adjudged guilty of indirect contempt committed against the Commission, **he/she may be punished by a fine of One Thousand (₱1,000.00) Pesos per day for every act of indirect contempt**. Each day of defiance of, or disobedience to, or non-enforcement of a final order, resolution, decision, ruling, injunction or processes, shall constitute an indirect contempt of the Commission. If the contempt consists in the violation of an injunction or omission to do an act which is within the power of the respondent to perform, the respondent shall, in addition, be made liable for all damages as a consequence thereof. The damages shall be measured by the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct, disobedience to, defiance of a lawful order, and/or such other contumacious acts or omissions of which the contempt is being prosecuted, and the costs of the proceedings, including payment of interest on damages.
>
> Damages sustained by the aggrieved party shall refer to the total amount of his or her salaries and other money benefits which shall have accrued to the latter had the final order, decision, resolution, ruling, injunction, or processes of the Commission been enforced/implemented immediately. (emphasis added)

Based thereon, Eusebio was fined ₱1,000.00 per day starting from December 13, 2010 when the CSC denied his motion for reconsideration until Tirona shall have been reinstated as PLP President. But since Tirona had never been reinstated and her term in the meantime had already expired as of January 31, 2012, the fine was re-computed to start from December 13, 2010 to January 31, 2012.

Under Resolution No. 13-00522 dated March 12, 2013, the CSC denied Eusebio's motion for reconsideration.[18] Aggrieved, Eusebio filed another petition for review with the Court of Appeals via CA-G.R. SP No. 129526, this time assailing the dispositions in the case for indirect contempt.[19]

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[18] G.R. No. 223644, *Rollo*, p. 56.

[19] *Id.* at 31.

Meanwhile, the Court of Appeals dismissed the first petition for review filed by Eusebio and the PLP Board of Regents in CA-G.R. SP No. 117512 under Decision dated September 26, 2013.[20] Their motion for reconsideration was denied on May 29, 2014.

Back to CA-G.R. SP No. 129526, pending disposition thereof on the merits, Eusebio paid the ₱416,000.00 fine imposed by the CSC.[21]

The Court of Appeals' Rulings

Under its assailed Decision dated July 21, 2015 the Court of Appeals affirmed with modification, *viz*:

WHEREFORE, premises considered, the assailed Decision is**AFFIRMED** with **MODIFICATION** that the amount of the fine is reduced to ₱30,000.00. No cost.

SO ORDERED.[22]

As it was, although the Court of Appeals upheld Eusebio's liability for indirect contempt, it voided the ₱1,000.00 per day fine the CSC imposed, thus:

A closer look at the enabling law, however, reveals that there is no specific amount fixed therein for the imposition of fines for indirect contempt. Paragraph 11, Section 12, Title I(A), Book V of EO 292 does not provide for the range of the amount of fine that the CSC can impose. xxx

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In this case, the imposition of a fine of ₱1,000.00 a day against [Eusebio] was not sanctioned by the enabling law itself but only by the administrative rule implementing the same. Obviously, Section 4 of the Revised Rules on Contempt extended the scope of Paragraph 11, Section 12, Title I(A), Book V of Executive Order

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[20] Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Noel G. Tijam and Socorro B. Inting.

[21] G.R. No. 223644, *Rollo*, p. 61.

[22] *Id.* at 37.

No. 292. This cannot be done as the spring cannot rise higher than its source.

Moreover, the enormity of the amount of the fine imposed by the public respondent against the petitioner is confiscatory and unreasonable. Administrative authorities must not act arbitrarily and capriciously in the enactment of rules and regulations in the exercise of their delegated power to create new or additional legal rules that have the effect of law. Such rules and regulations should be within the scope of the legislative authority granted by the legislature and, whether required by statute or judicial decisions, their rules and regulations, to be valid must be reasonable. (words in brackets added, underscoring in the original)[23]

The Court of Appeals deemed it proper to reduce the fine of ₱416,000.00 to ₱30,000.00, the maximum amount imposable under Section 7, Rule 71 of the Rules of Court.[24]

Eusebio and the CSC filed their respective motion for reconsideration and partial motion for reconsideration but both were denied under Resolution dated February 19, 2016.[25]

The Present Petition

The Office of the Solicitor General (OSG), through Solicitor General Florin T. Hilbay, Assistant Solicitor General Nyriam Susan O. Sedillo-Hernandez and State Solicitor Samantha P. Camitan now assails the Court of Appeals' dispositions insofar as they reduced the fine imposed by the CSC on Eusebio.

The OSG invokes, **first,** Section 6, Article IX-A of the 1987 Constitution authorizing the CSC to promulgate its own rules concerning pleadings and practice before its offices, and **second,** Section 12(2), Chapter 3, Title I, Subtitle A, Book V of Executive Order (EO) 292, otherwise known as the Administrative Code of 1987, empowering the CSC to prescribe and enforce its rules

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[23] *Id.* at 35-36.

[24] *Id.* at 37.

[25] *Id.* at 41.

and regulations to effectively carry into effect the provisions of the Civil Service Law and other pertinent laws.[26]

According to the OSG, the CSC neither expanded nor diminished the aforesaid powers when it promulgated its Revised Rules on Contempt. The prescribed fine of Php1,000.00 per day is not rendered invalid by the mere fact that both EO 292 and the 1987 Constitution are silent insofar as penalties in contempt cases are concerned. More so because the imposition of fine is a reasonable measure by which the CSC's mandate may be carried out. It is also a logical consequence of a finding of guilt in contempt cases.[27]

In his Comment,[28] Eusebio maintains that his failure to reinstate Tirona was not contumacious since he did not act in bad faith. Being then the Chairman of the Board of PLP did not mean he had complete power to effect Tirona's reinstatement.[29]

At any rate, he submits that the Court of Appeals correctly nullified Section 4 of the CSC Revised Rules on Contempt for extending the scope of Paragraph 11, Section 12, Title I(A), Book V of EO 292. Thus, the reduction of the fine of Php416,000.00 is allegedly in order.[30]

Finally, he manifests that Tirona herself has a pending motion to cite him for indirect contempt before the CSC itself arising from the same incident.[31]

The Threshold Issue

First off, in view of the entry of judgment in G.R. No. 223623, the verdict of guilt for indirect contempt against Eusebio had lapsed into finality and may no longer be disturbed. Under the doctrine of finality or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and

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[26] *Id.* at 16-18.

[27] *Id.* at 18.

[28] *Id.* at 86.

[29] *Id.* at 87-90.

[30] *Id.* at 90-92.

[31] *Id.* at 92.

may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law.[32]

The only remaining issue now is — did the Court of Appeals err in reducing the fine imposed on Eusebio for indirect contempt?

Ruling

The petition is impressed with merit.

Under Section 6, Article IX-A of the 1987 Constitution, the CSC *en banc* may promulgate its own rules concerning pleadings and practice before any of its offices so long as such rules do not diminish, increase, or modify substantive rights.

Further, Section 12(2), Title I(A), Book V of EO 292 ordains:

SECTION 12. Powers and Functions. — The Commission shall have the following powers and functions:

x x x x x x x x x

(2) Prescribe amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;

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Pursuant to the foregoing provisions, the CSC issued Memorandum Circular No. 42, s. 1990 which was later amended by CSC Resolution No. 071245 dated June 22, 2007, otherwise known as the CSC Revised Rules on Contempt. Based thereon, the CSC wields the power to punish for contempt. Indeed, the Court has never nullified the rules of procedure of Constitutional Commissions on ground that their respective enabling laws supposedly do not authorize them to prescribe penalties for contemptuous conduct. The Court never curtailed and will never curtail their power to punish for contempt on such ground.

While it is true that Section 16(2)(d), Title I(A), Book V of EO 292[33] states that the CSC through its adjudicative arm shall

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[32] *Re: Karen Herico Licerio,* G.R. No. 208005, November 21, 2018.

[33] **Section 16**. *Offices in the Commission.*— The Commission shall have the following offices:

have the power to "punish for contempt in accordance with the same procedures and penalties prescribed in the Rules of Court", Section 12, Rule 71 of the Rules of Court states that the application of said rules is merely suppletory, *viz*:

Section 12. *Contempt against quasi-judicial entities.* — **Unless otherwise provided by law, this Rule** shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or **shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt**. The Regional Trial Court of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefor. (emphases added)

Indeed, the Rules of Court must defer to the CSC's power to promulgate and apply its own rules in penalizing contempt committed against it. The existence of the CSC's Revised Rules

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(2) The Merit System Protection Board composed of a Chairman and two (2) members shall have the following functions:

(a) Hear and decide on appeal administrative cases involving officials and employees of the Civil Service. Its decision shall be final except those involving dismissal or separation from the service which may be appealed to the Commission;

(b) Hear and decide cases brought before it on appeal by officials and employees who feel aggrieved by the determination of appointing authorities involving personnel actions and violations of the merit system. The decision of the Board shall be final except those involving division chiefs or officials of higher ranks which may be appealed to the Commission;

(c) Directly take cognizance of complaints affecting functions of the Commission, those which are unacted upon by the agencies, and such other complaints which require direct action of the Board in the interest of justice;

(d) Administer oaths, issue subpoena and subpoena *duces tecum*, take testimony in any investigation or inquiry, **punish for contempt in accordance with the same procedures and penalties prescribed in the Rules of Court**; and

(e) Promulgate rules and regulations to carry out the functions of the Board subject to the approval of the Commission. (emphasis added)

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on Contempt, therefore, calls for the application of its own procedure and penalties, thus, precluding Section 7, Rule 7 of the Rules of Court from coming into play at first instance. This is not an expansion of the CSC's authority to punish for contempt under EO 292 but the Court's deference to the CSC to wield such power.

Under Section 4[34] of the CSC Revised Rules on Contempt, a fine of ₱1,000.00 may be imposed on the contemnor for each day of defiance of, disobedience to, or non-enforcement of, a final ruling of the CSC. Further, if the contempt consists in the violation of an injunction or omission to do an act which is within the power of respondent to perform, he or she, in addition, shall be liable for damages as a consequence thereof.

In accordance, therefore, with Section 4 of the CSC Revised Rules on Contempt, the CSC imposed a fine of ₱1,000.00 per day or a total of ₱416,000.00 on Eusebio for his contumacious defiance of the CSC's directive to reinstate Tirona to her post as PLP President. This conforms with the subsequent CSC rules penalizing contumacious conduct before it. Section 76, Rule 15 of the 2011 Revised Rules in Administrative Cases in the Civil Service provides:

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[34] **Section 4**. *Punishment if found guilty* — If the respondent is adjudged guilty of indirect contempt committed against the Commission, he/she may be punished by a fine of One Thousand (₱1,000.00) Pesos per day for every act of indirect contempt. Each day of defiance of, or disobedience to, or non-enforcement of a final order, resolution, decision, ruling, injunction or processes, shall constitute an indirect contempt of the Commission. If the contempt consists in the violation of an injunction or omission to do an act which is within the power of the respondent to perform, the respondent shall, in addition, be made liable for all damages as a consequence thereof. The damages shall be measured by the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct, disobedience to, defiance of a lawful order, and/or such other contumacious acts or omissions of which the contempt is being prosecuted, and the costs of the proceedings, including payment of interest on damages.

Damages sustained by the aggrieved party shall refer to the total amount of his or her salaries and other money benefits which shall have accrued to the latter had the final order, decision, resolution, ruling, injunction, or processes of the Commission been enforced/implemented immediately.

Section 76. Punishment, if found guilty. — If the respondent is adjudged guilty of indirect contempt committed against the Commission, **he/she may be punished by a fine of One Thousand (₱1,000.00) Pesos per day for every act of indirect contempt**. Each day of defiance of, or disobedience to, or non-enforcement of a final order, resolution, decision, ruling, injunction or processes, shall constitute an indirect contempt of the Commission. If the contempt consists in the violation of an injunction or omission to do an act which is still within the power of the respondent to perform, the respondent shall, in addition, be made liable for all damages as a consequence thereof. The damages shall be measured by the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct, disobedience to, defiance of a lawful order, and/or such other contumacious acts or omissions of which the contempt is being prosecuted, and the costs of the proceedings, including payment of interest on damages. (emphasis added)

Meanwhile, Section 85 of the 2017 Rules on Administrative Cases in the Civil Service reads:

Section 85. ***Penalty, if found guilty.*** If the respondent is adjudged guilty of indirect contempt against the Commission, **he/she may be penalized by a fine of One Thousand Pesos (₱1,000.00) per day** for every act of indirect contempt and/or suspension for one (1) month up to a maximum period of six (6) months. The fine imposed shall be paid to the Commission and shall be the personal liability of the respondent. (emphasis added)

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As worded, the CSC may impose a fine of ₱1,000.00 a day for every act of indirect contempt committed against it. The word "may" implies that it is discretionary, not mandatory. It is an auxiliary verb indicating liberty, opportunity, permission and possibility.[35] It means, therefore, that the CSC may impose a fine less than ₱1,000.00 a day or even dispense therewith depending on the circumstances of each case. In other words, it is not constrained to impose a fine of ₱1,000.00 a day at every instance of contempt committed against it.

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[35] *UCPB General Insurance Company v. Hughes Electronics Corporation*, 800 Phil. 67, 80-81 (2016).

The attendant circumstances here compel the imposition of the maximum fine of ₱1,000.00 per day for the repeated contumacious act committed by Eusebio against the CSC over a long period of four hundred sixteen (416) days to be exact.

To emphasize, Eusebio's failure to reinstate Tirona as PLP President did not only come with the obvious consequence of depriving her of the salaries and emoluments she would have been entitled to. More than this, the public was unduly deprived of the professional services Tirona would have been able to render them as PLP President. As it was, Eusebio's omission to reinstate Tirona was not only deliberate, but undeniably tainted with evident bad faith. As the Court of Appeals aptly ruled, time was of the essence in Tirona's reinstatement since her term was only until January 31, 2012. Eusebio could not have plausibly feigned ignorance of the immediately executory nature of CSC rulings since he had served as chief executive of Pasig City for three (3) terms. What manifestly appears on record was Eusebio's obstinate refusal to implement the immediately executory CSC rulings for over four hundred sixteen (416) days. In fact, even on appeal, Eusebio continued to defy the CSC 's order of reinstatement despite the appellate court's non-issuance of an injunctive writ against its implementation. In the end, Eusebio's appeal outlived Tirona's supposed term. The eventual dismissal of CA-G.R. SP No. 117512 became a mere paper victory for Tirona.[36] She was prevented from assuming her office and performing her functions as PLP president to the detriment not only of herself and PLP, but more importantly, the stakeholders of the institution.

Judgments of courts and quasi-judicial bodies are couched in mandatory language. Compliance therewith is compulsory, especially when public interest is at stake. The authority of these rulings, however, is diminished by the flagrant and stubborn refusal of party-litigants to comply with their directives. The worst of these miscreants taunt judicial bodies and flout procedural rules unabashed, prolonging litigation by opting to

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[36] G.R. No. 223644, *Rollo*, p. 33.

pay the fine for contempt rather than fulfilling their legal obligation promptly, as here. Eusebio acted as though he was above the law when he brazenly defied the numerous rulings of the CSC. Contrary to his claim of good faith, he willingly chose to suffer under pain of contempt than reinstate Tirona. This cannot be countenanced. Neither should the penalty imposed by the CSC be reduced unnecessarily lest we trade the rule of law for a mere pittance. Indeed, the rationale behind the fine of ₱1,000.00 a day is not difficult to divine—to give teeth to the coercive powers to the CSC as the implementer of civil service laws. It is meant to deter those who dare defy the authority of the CSC and in the process, interrupt, nay prejudice, the flow of public service.

All told, the CSC did not act arbitrarily when it prescribed a fine of ₱1,000.00 per day as penalty for Eusebio's repeated defiance of the final and executory judgment of the CSC. The penalty is reasonable and fair in relation to the purpose of preserving the CSC's Constitutional mandate as the central personnel agency of the Philippine government tasked with rendering final arbitration on disputes regarding personnel actions in the civil service and implementing civil service rules and regulations.

ACCORDINGLY, the petition in G.R. No. 223644 is **GRANTED** and the Decision dated July 21, 2015 and Resolution dated February 19, 2016 in CA-G.R. SP No. 129526 are **MODIFIED**. The fine imposed by the Civil Service Commission on Roberto C. Eusebio of ₱1,000.00 per day for four hundred sixteen (416) days, or a total of ₱416,000.00 is **REINSTATED.**

SO ORDERED.

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

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[*] Designated additional member in lieu of *J.* Lopez per Raffle dated Jan. 20, 2020.

FIRST DIVISION

[G.R. No. 225425. January 29, 2020]

WILHELMSEN SMITH BELL MANNING, INC., WILHELMSEN SHIP MANAGEMENT LTD., and FAUSTO R. PREYSLER, JR., *petitioners, vs.* **FRANKLIN J. VILLAFLOR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; COMPENSABILITY OF DISABILITY; ELEMENTS. — For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, the two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's contract.

2. ID.; ID.; ID.; ID.; WORK-RELATED INJURY, DEFINED; IT IS NOT NECESSARY THAT THE NATURE OF THE EMPLOYMENT BE THE SOLE AND ONLY REASON FOR THE ILLNESS OR INJURY SUFFERED BY THE SEAFARER. — The POEA-SEC defines work-related injury as one "arising out of and in the course of employment." Jurisprudence is to the effect that compensable illness or injury cannot be confined to the strict interpretation of said provision in the POEA-SEC as even pre-existing conditions may be compensable if aggravated by the seafarer's working condition. It is not necessary that the nature of the employment be the sole and only reason for the illness or injury suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

3. ID.; ID.; ID.; ID.; THE ENTITLEMENT OF AN OVERSEAS SEAFARER TO DISABILITY BENEFITS IS GOVERNED

BY LAW, THE EMPLOYMENT CONTRACT, AND THE MEDICAL FINDINGS IN ACCORDANCE WITH THE RULES. — As to the extent of compensability, the entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract, and the medical findings in accordance with the rules. *By law*, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI of the Labor Code, in relation to Rule X, Section 2 of the Implementing Rules and Regulations (IRR) of the Labor Code x x x [and] Rule VII, Section 2(b) of the Amended Rules on Employees' Compensation x x x. The exception to the 120-day rule x x x is Rule X of the Implementing Rules and Regulations (IRR) of Book IV of the Labor Code, specifically Section 2 thereof x x x. *By contract*, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract. In this case, the parties executed the contract of employment on August 22, 2012, thus, the 2010 POEA-SEC is applicable. [The] [r]elevant provision x x x [is] Section 20(A) x x x. *By the medical findings*, the assessment of the company-designated doctor generally prevails, unless the seafarer disputes such assessment by exercising his right to a second opinion by consulting a physician of his choice, in which case, the medical report issued by the latter shall also be evaluated by the labor tribunal and the court, based on its inherent merit. In case of disagreement in the findings of the company-designated doctor and the seafarer's personal doctor, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them.

4. ID.; ID.; ID.; ID.; THE COMPANY-DESIGNATED PHYSICIAN HAS THE DUTY TO ISSUE A FINAL MEDICAL ASSESSMENT ON THE SEAFARER'S DISABILITY GRADING TO DETERMINE THE EXTENT OF COMPENSATION. — In the landmark case of *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, the Court had the occasion to summarize the rules x x x regarding the company-designated physician's duty to issue a final medical assessment on the seafarer's disability grading to determine the extent of compensation: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading

> within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. x x x To emphasize, a final and definite disability assessment within the 120-day or 240-day period under the rules is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his capacity to resume to work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Carrera and Associates Law Office for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated March 7,

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[1] *Rollo,* pp. 3-33.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring; *id.* at 41-56.

2016 and Resolution[3] dated May 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 142966.

The Factual Antecedents

Wilhelmsen Smith Bell Manning, Inc., on behalf of its principal Wilhelmsen Ship Management Ltd. (petitioners) hired Franklin J. Villaflor (respondent) as Third Engineer on board their vessel *M/V NOCC Puebla* on a seven-month contract dated August 22, 2012. Respondent underwent the required pre-employment medical examinations and was thereby pronounced fit to work on August 22, 2012. On September 5, 2012, respondent boarded the vessel.[4]

Sometime in March 2013, while conducting maintenance works on the vessel and lifting heavy engine and generator spare parts with his crewmates, respondent felt severe back pain which caused him to fall on his knees. He was given pain relievers by his superiors for immediate relief but was advised by the Master to be repatriated for further examination.[5]

Respondent was, thus, medically repatriated on March 28, 2013.[6]

Upon arrival in Manila, petitioners referred respondent to Marine Medical Service for examination. He was diagnosed to have *S/P Laminotomy, L4 Bilateral Interspinous Process Decompression Coflex* and has been advised to regularly consult with the specialists for the monitoring of his condition. He also underwent out-patient rehabilitation sessions at the Metropolitan Medical Center.[7]

On July 9, 2013, Dr. William Chuasuan, Jr. (Dr. Chuasuan), an Orthopedic and Adult Joint Replacement Surgeon, issued a

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[3] *Id.* at 58-61.

[4] *Id.* at 43.

[5] *Id.*

[6] *Id.*

[7] *Id.*

letter addressed to the company-designated physician, Dr. Robert D. Lim (Dr. Lim), stating that respondent's prognosis is guarded and that the latter had already reached his maximum medical improvement. Consequently, Dr. Chuasuan gave respondent a disability grading of 8 or 2/3 loss of lifting power of the trunk. Despite this, the company-designated physician still advised respondent to continue with his medications and rehabilitation. Respondent was also directed to see Dr. Lim sometime in May 2014.[8]

On June 5, 2014, respondent independently consulted a physician of his choice, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto). On July 21, 2014, Dr. Jacinto issued a Medical Certificate, stating that respondent's disability is total and the cause of injury is work-related/work-aggravated, thus, declaring respondent unfit to go back to work as a seafarer.[9] This prompted respondent to file a complaint for total and permanent disability benefits against petitioners.

For its part, petitioners alleged that respondent's condition was merely brought about by the recurrence of his lumbar problem from his previous employment, for which he had already claimed total and permanent disability benefits from his previous employer.[10]

In a Decision dated April 16, 2015, the labor arbiter dismissed the complaint for disability benefits, finding that respondent's injury is not work-related as it was merely a recurrence of the condition he suffered from his previous employment and as such, the complained injury did not occur during his term of employment with petitioners. It disposed, thus:

WHEREFORE, premises considered, the instant complaint is dismissed for lack of merit.[11]

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[8] *Id.* at 50.

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

[10] *Id.* at 44-46.

[11] *Id.* at 46.

On appeal, the National Labor Relations Commission (NLRC) affirmed the dismissal of the complaint, finding that respondent failed to exhibit good faith when he entered into the contract of employment with petitioners as he already knew that he was not fit to work then, considering that he previously pursued a case for and was actually granted total and permanent disability benefits against his former employer. Hence, respondent's appeal was likewise dismissed:

> **WHEREFORE**, premises considered, the appeal of the [respondent] is hereby dismissed for lack of merit.
>
> **SO ORDERED**.[12]

Respondent's motion for reconsideration of said NLRC Resolution was likewise denied in its Resolution dated September 24, 2015.[13]

A different conclusion was reached on *certiorari* to the CA. The appellate court ruled that petitioners cannot harp on the fact that respondent had previously claimed disability benefits from his former employer. According to the CA, the fact that respondent was able to find gainful employment even after such claim against his former employer does not preclude him from instituting another disability claim against his petitioners as long as his complained injury is work-related or work-aggravated and that such injury has prevented him from doing the same work.[14]

On the merits, the CA found that when petitioners engaged respondent's services, they were aware of the latter's history of back injury as this was disclosed by respondent in his PEME. Despite such history, respondent passed all the required tests in the PEME and was declared fit to work. The CA also found that while respondent had a pre-existing back problem, his condition was aggravated by the nature of his work on board the vessel as Third Engineer like lifting heavy materials during

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[12] *Id*. at 47.

[13] *Id.* at 48.

[14] *Id.* at 49.

maintenance operations, among others. It was further found that while Dr. Chuasuan gave respondent a Grade 8 disability rating, his findings also stated that the prognosis on respondent's case is guarded, meaning "the outcome of the patient's illness is in doubt." Respondent was thereafter still required to continue his medications and rehabilitation for over a year since his repatriation. Hence, the CA concluded that respondent is considered totally and permanently disabled. The CA disposed, thus:

> **WHEREFORE**, in view of the foregoing, the instant Petition is hereby **GRANTED**. Consequently, the assailed Resolutions dated July 31, 2015 and September 24, 2015 rendered by public respondent NLRC-2nd Division in NLRC LAC No. 06-000486-15/NLRC NCR-OFW-M-08-10443-14 are hereby **REVERSED and SET ASIDE** and a new one entered ordering [petitioners] to jointly and severally pay [respondent] the following: a) permanent total disability benefits of **US$60,000.00** at its peso equivalent at the time of actual payment; and b) attorney's fees often percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.
>
> **SO ORDERED**.[15]

Petitioners then filed a motion for reconsideration which was denied by the CA in its May 19, 2016 assailed Resolution:

> **WHEREFORE**, in view of the foregoing, the instant Motion is hereby **DENIED**.
>
> **SO ORDERED**.[16]

Hence, this Petition.

Issue

In the main, petitioners argue that the CA erred in granting total and permanent disability benefits to respondent considering that he was assessed with a Grade 8 disability by the company-designated doctor. Petitioners reasoned that, according to the rules, the company-designated doctor's assessment should prevail

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[15] *Id.* at 55-56.

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

over the seafarer's personal doctor. Further, petitioners argue that mere inability to work for over 120 days does not entitle a seafarer to total and permanent disability compensation. Also, petitioners point out that, in the first place, respondent's condition was pre-existing and not suffered on board.

Ultimately, the issue before us is whether or not respondent is entitled to total and permanent disability benefits.

The Court's Ruling

We find no reversible error on the assailed CA Decision and Resolution. Accordingly, we affirm the assailed rulings, but modify the same by imposing legal interest upon the monetary awards given by the CA.

For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, the two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's contract. The POEA-SEC defines work-related injury as one "arising out of and in the course of employment." Jurisprudence is to the effect that compensable illness or injury cannot be confined to the strict interpretation of said provision in the POEA-SEC as even pre-existing conditions may be compensable if aggravated by the seafarer's working condition. It is not necessary that the nature of the employment be the sole and only reason for the illness or injury suffered by the seafarer.[17] It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[18] The Court explained in one case:

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[17] *Manansala v. Marlow Navigation Phils., Inc.*, 817 Phil. 84, 96 (2017), August 23, 2017 citing *Magsaysay Maritime Services v. Laurel* , 707 Phil. 210, 225 (2013).

[18] *Dohle-Philmn Manning Agency, Inc. v. Heirs of Andres G. Gazzingan, represented by Lenie L. Gazzingan,* 760 Phil. 861, 878 (2015) citing *Magsaysay Maritime Services v. Laurel,* 707 Phil. 210, 225 (2013).

Common sense dictates that an illness could not possibly have been "contracted as a result of the seafarer's exposure to the described risks" if it has been existing before the seafarer's services are engaged. Still, pre-existing illnesses may be aggravated by the seafarer's working conditions. To the extent that any such aggravation is brought about by the work of the seafarer, compensability ensues x x x.[19]

Thus, the CA correctly ruled that petitioners could not harp on the fact of respondent's previous disability benefits complaint against his former employer to support their argument that respondent's condition is not work-related as it is pre-existing. It is noteworthy that despite such back injury history , respondent was able to pass all the required tests in the PEME. It should also be pointed out that petitioners were aware of such history as respondent disclosed the same in his PEME. Nevertheless, petitioners engaged his services. Hence, while it may be true that respondent's back injury is a recurrence of his previous condition, still, such recurrence can be attributed to the nature of his work on board petitioners' vessel. As found by the CA, the normal duties of a Third Engineer include daily maintenance and operation of the engine room, which entail activities such as lifting of heavy materials and spare parts. It was also established that respondent felt pain in his back while lifting some heavy spare engine parts during maintenance operations with his co-workers. That respondent's condition is work-aggravated and as such, compensable, cannot be denied.

As to the extent of compensability, the entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract, and the medical findings in accordance with the rules.[20]

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI of the Labor Code, in relation to Rule X, Section 2 of the Implementing Rules and Regulations

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[19] *Supra* note 17, at 96.

[20] *The Late Alberto B. Javier, et al. v. Philippine Transmarine Carriers, Inc., et al.*, 738 Phil. 374 (2014).

(IRR) of the Labor Code.[21] Article 192 (c) (1) of the Labor Code provides:

Art. 192. Permanent total disability. x x x x

C. The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

x x x x x x x x x

Rule VII, Section 2(b) of the Amended Rules on Employees' Compensation also provides:

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

The exception to the 120-day rule repeatedly cited above is Rule X of the Implementing Rules and Regulations (IRR) of Book IV of the Labor Code, specifically Section 2 thereof which states:

Section 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. **If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid**. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Emphasis supplied)

By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.[22] In this case,

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[21] *Id.*

[22] *Id.*

the parties executed the contract of employment on August 22, 2012, thus, the 2010 POEA-SEC is applicable.

Relevant provision of Section 20(A) thereof provides:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

   The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

By the medical findings, the assessment of the company-designated doctor generally prevails, unless the seafarer disputes such assessment by exercising his right to a second opinion by consulting a physician of his choice, in which case, the medical report issued by the latter shall also be evaluated by the labor tribunal and the court, based on its inherent merit. In case of disagreement in the findings of the company-designated doctor and the seafarer's personal doctor, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them.[23]

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[23] Section 20(B)(3), POEA-SEC (2000); *Tradephil Shipping Agencies, Inc. v. Dela Cruz*, 806 Phil. 338, 355-356 (2017).

In the landmark case of *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[24] the Court had the occasion to summarize the rules above-cited regarding the company-designated physician's duty to issue a final medical assessment on the seafarer's disability grading to determine the extent of compensation:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In this case, respondent was repatriated on March 28, 2013. He was immediately referred to the company-designated physician upon arrival. While he was subjected to a series of medications and rehabilitation, no definite disability assessment was, however, given to respondent at all. The Grade 8 disability rating given by Dr. Chuasuan cannot be considered as the complete, definite, and final medical assessment contemplated by the rules. Consider: the Grade 8 disability assessment given by Dr . Chuasuan was merely addressed to Dr. Lim, who despite such assessment from the specialist, still advised respondent to continue with his medications and rehabilitation. Records

[24] 765 Phil. 341, 362-363 (2015).

also show that up to May 2014, respondent was still ordered to see Dr. Lim for re-evaluation. Respondent's treatment lasted for over a year, evidencing that respondent's condition remained unresolved. Also worthy is the fact that Dr. Chuasuan's prognosis on respondent's condition was guarded, meaning, " the outcome of the patient's illness is in doubt." Clearly, there is nothing definite and final in the assessment given by the company-designated doctor/s to respondent's condition. Due to this failure, respondent's disability, under legal contemplation, is deemed total and permanent.[25]

To emphasize, a final and definite disability assessment within the 120-day or 240-day period under the rules is necessary In order to truly reflect the true extent of the sickness or injuries of the seafarer and his capacity to resume to work as such.[26] Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[27]

Invoking Section 20(A)(6) of the 2010 POEA-SEC will not help petitioners' case. Indeed, the recent amendments on the POEA-SEC, specifically Section 20(A)(6) thereof, states that "[t]he disability shall be based solely on the disability gradings provided under Section 32 of this contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid." Nevertheless, the Court has consistently ruled that before the disability gradings under Section 32 should be considered, the disability ratings should be properly established and contained in a valid and timely medical report of a company-designated physician or the third doctor agreed upon by the parties. In other words, the periods prescribed by the rules should still be complied with. Thus, the foremost

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[25] See *Pastor v. Bibby Shipping Philippines, Inc.,* G.R. No. 238842, November 19, 2018.

[26] *Id*.

[27] *Sunit v. OSM Maritime Services, Inc.,* 806 Phil. 505, 519 (2017).

consideration of the courts should be to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein cannot be seriously appreciated.[28] As above-discussed, no final and complete assessment was given in this case.

Lastly, we find no cogent reason to deviate from the CA's award of attorney's fees to the respondent. Considering that respondent was forced to litigate and incur expenses to protect his right and interest, he is entitled to a reasonable amount of attorney's fees pursuant to Article 2208(8)[29] of the New Civil Code. However, in accordance with prevailing jurisprudence,[30] the Court hereby imposes legal interest upon the disability benefits and attorney's fees awarded by the CA at the rate of 6% per annum, reckoned from the finality of this Decision until its full payment.

WHEREFORE, premises considered, the Petition is **DENIED.** The assailed Decision dated March 7, 2016 and Resolution dated May 19, 2016 of the Court of Appeals in CA G.R. SP No. 142966 are hereby **AFFIRMED** with **MODIFICATION** that the monetary awards made therein shall earn legal interest of 6% per annum from finality of this Decision until full payment.

SO ORDERED.

Peralta, C.J., Caguioa, Lazaro-Javier, and *Lopez, JJ.,* concur.

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[28] *Olidana v. Jebsens Maritime, Inc.,* 772 Phil. 234, 245 (2015).

[29] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws.

[30] See *Lara's Gifts and Decors, Inc. v. Midtown Industrial Sales, Inc.,* G.R. No. 225433, August 28, 2019.

FIRST DIVISION

[G.R. No. 227896. January 29, 2020]

ROBERTO R. IGNACIO and TERESA R. IGNACIO doing business under the name and style TERESA R. IGNACIO ENTERPRISES, *petitioners, vs.* **MYRNA P. RAGASA and AZUCENA B. ROA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW SHOULD BE RAISED THEREIN; EXCEPTIONS. — The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45. This Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence

of evidence and is contradicted by the evidence on record. These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.

2. ID.; ID.; ID.; QUESTION OF FACT; REQUIRES A REVIEW OF THE TRUTHFULNESS OR FALSITY OF THE ALLEGATIONS OF THE PARTIES, OR WHEN THE ISSUE PRESENTED IS THE CORRECTNESS OF THE LOWER COURT'S APPRECIATION OF EVIDENCE PRESENTED BY THE PARTIES. — A question of fact requires this Court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties. In this case, the issue raised by the petitioners obviously asks this Court to review the evidence presented during the trial. Clearly, this is not the role of this Court because the issue presented is factual in nature. None of the exceptions are present. The findings of the lower courts are supported by substantial evidence. Thus, the present petition must fail.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; BROKERAGE SERVICE; THE BROKER IS ENTITLED TO A COMMISSION WHEN THERE IS A CLOSE, PROXIMATE, AND CAUSAL CONNECTION BETWEEN THE BROKER'S EFFORTS AND THE PRINCIPAL'S SALE OF HIS PROPERTY, OR JOINT VENTURE AGREEMENT. — In *Medrano v. Court of Appeals*, We held that "when there is a close, proximate, and causal connection between the broker's efforts and the principal's sale of his property — or joint venture agreement, in this case — the broker is entitled to a commission." Here, as aptly ruled by the CA, the proximity in time between the meetings held by the respondents and Woodridge and the subsequent execution of the joint venture agreements leads to a logical conclusion that it was the respondents who brokered it. Likewise, it is inconsequential that the authority of the respondents as brokers had already expired when the joint venture agreements over the subject properties were executed. The negotiation for these transactions began during the effectivity of the authority of

the respondents, and these were carried out through their efforts. Thus, the respondents are entitled to a commission.

4. ID.; ID.; ID.; THE PERFORMANCE OF A BROKERAGE SERVICE DOES NOT INVOLVE AN ACQUIESCENCE TO THE TEMPORARY USE OF A PARTY'S MONEY WHICH NECESSITATES THE IMPOSITION OF INTEREST AT THE RATE OF SIX PERCENT.— We, however, agree with the petitioners that the interest rate should be at the prevailing rate of six percent (6%) *per annum*, and not twelve percent (12%) *per annum.* In *Nacar v. Gallery Frames, et al.*, We modified the guidelines laid down in the case of *Eastern Shipping Lines, Inc. v. Court of Appeals* to embody BSP-MB Circular No. 799 x x x. And, in addition x x x, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein. It should be noted, however, that the rate of six percent (6%) *per annum* could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Starting July 1, 2013, the rate of six percent (6%) *per annum* shall be the prevailing rate of interest when applicable. Thus, the need to determine whether the obligation involved herein is a loan and forbearance of money nonetheless exists. The term "forbearance," within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable. Forbearance of money, goods or credits, therefore, refers to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending the happening of certain events or fulfilment of certain conditions. Consequently, if those conditions are breached, said person is entitled not only to the return of the principal amount paid, but also to compensation for the use of his money which would be the same rate of legal interest applicable to a loan since the use or deprivation of funds therein is similar to a loan. This case, however, does not involve an acquiescence to the temporary use of a party's money but the performance of a brokerage service. Thus, the matter of interest award arising from the dispute in this case falls under the paragraph II, subparagraph 2, of the x x x modified guidelines,

which necessitates the imposition of interest at the rate of 6%, instead of the 12% imposed by the courts below.

APPEARANCES OF COUNSEL

Lara Uy Santos Tayag and Danganan Law Offices for petitioners.

Tan Acut Lopez and Pison for respondents.

D E C I S I O N

PERALTA, *C.J.*:

Before Us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated September 30, 2015 and the Resolution[2] dated October 21, 2016 of the Court of Appeals (*CA*) in CA- G.R. CV No. 102112, which affirmed the Decision of the Regional Trial Court, Parañaque City, Branch 274, in favor of herein respondents.

The antecedent facts, as culled from the CA Decision, are as follows:

On January 11, 2000, petitioners engaged, on an exclusive basis, the services of the respondents, who are both licensed real estate brokers, to look for and negotiate with a person or entity for a joint venture project involving petitioners' undeveloped lands in Mindanao Avenue, Quezon City and the developed subdivision sites in Las Piñas City, Parañaque City, and Bacoor.[3] The contract was embodied in the *Authority to*

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[1] Penned by Associate Justice Mario V. Lopez, (now a member of this Court), with Associate Justices Rosmari D. Carandang (now a member of this Court), Chairperson and Myra V. Garcia-Fernandez, concurring, *rollo*, pp. 94-105.

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

[3] *Id.* at 94. The developed subdivision sites are the following:

(a) Camella Classic Homes (Almanza, Las Piñas City);
(b) St. Catherine's Sucat (Kabesang Segundo Street, Dr. A. Santos Avenue, Parañaque City);

Look and Negotiate for a Joint Venture Partner,[4] effective for six months from January 10, 2000, or until July 10, 2000. The said *Authority* provided that the petitioners will pay the respondents a commission equivalent to five percent (5%) of the price of the properties.[5]

On January 13, 2000, respondents met with Mr. Porfirio Yusingbo, Jr. (*Yusingbo*), the General Manager of Woodridge Properties, Inc. (*Woodridge*), and they presented to him the different subdivisions and project sites available for investment. After inspecting the properties, Yusingbo expressed Woodridge's interest in acquiring and developing the Krause Park and Teresa Park properties.

As a result, Woodridge sent respondents a formal proposal dated January 21, 2000[6] for a joint venture agreement with the petitioners covering the Teresa Park. The proposal was sent by the respondents to the petitioners via facsimile. On January 25, 2000, the petitioners met with the representatives of Woodridge to discuss the prices of the properties, and Woodridge likewise intimated that it would develop both the Krause Park and the Teresa Park.

(c) Christianville, Sucat, Greenheights (Dr. A. Santos Avenue, Parañaque City);

(d) Teresa Park (Almanza, Las Piñas City); and

(e) Krause Park, Molino I (Molino, Bacoor).

[4] *Id.* at 95.

[5] The Commission will be paid as follows:

(a) Fifty percent (50%) of the total commissions or fee would be due within thirty days from receipt by [petitioners] of any funds or proceeds from any joint venture partner or buyer constituting at least thirty percent (30%) of the amount due from the joint venture partners, developers, or buyers, or from projects on any or all of the aforementioned properties;

(b) The balance of fifty percent (50%) would be due and payable to [respondents] within a period of one (1) year on a quarterly basis to start three (3) months after the first fifty percent (50%) was due and payable.

[6] *Rollo*, p. 95.

On February 4, 2000, respondents met again with Yusingbo and Mr. Elmer Loredo (*Loredo*), Woodridge's broker, to discuss Woodridge's proposal for bulk purchase covering the Teresa Park, including the terms of payment. On February 9, 2000, respondents presented Woodridge's offer to petitioner Roberto Ignacio. They discussed the projected cash inflows and the advantages of the scheme. Petitioner Ignacio said he wanted to sell the lots in batches at a lower volume, instead of in bulk. Respondents communicated the offer to Woodridge and the latter intimated that it will make a revised offer. On March 9, 2000,[7] Woodridge, however, changed its offer from direct acquisition to joint venture, covering 200 lots in Teresa Park, and sent the proposal to the respondents, who, in turn, relayed it to the petitioners. In a meeting on March 13, 2000, petitioners and respondents discussed the proposal for joint venture. Petitioners commented that Woodridge's offer was low, but respondents reassured them that they could negotiate for a better price. After this March 13, 2000 meeting, however, petitioners stopped communicating with the respondents. Several attempts were made by the respondents to contact the petitioners to follow-up on the proposal of Woodridge, but to no avail.

Sometime thereafter, respondents learned that the petitioners continued to negotiate with Woodridge, and this led to the execution of two joint venture agreements between the petitioners and Woodridge, covering the Krause Park. The two joint venture agreements were notarized on March 7, 2000 and October 16, 2000.[8]

For the Teresa Park, four joint venture agreements were executed between the petitioners and Woodridge, and these were notarized on December 6, 2000, March 12, 2001, September 25, 2001, and October 1, 2002.[9] Aside from the joint venture agreements, several deeds of sale were also executed between

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[7] *Id.* at 96.

[8] *Id.*

[9] *Id.*

the petitioners and Woodridge, and these are dated September 24, 2001 and August 25, 2003.[10]

Per respondents' estimate, petitioners earned ₱26,068,000.00 and ₱22,497,000.00 for the sale of the Krause Park and Teresa Park projects, respectively. Respondents demanded payment of their commission from the petitioners, contending that the joint venture agreements and the sales over the Krause Park and Teresa Park were products of their successful negotiation with Woodridge. Petitioners, however, refused to pay despite demand.[11] Thus, respondents filed a complaint for sum of money, damages, attorney's fees, and litigation expenses before the Regional Trial Court of Parañaque City.[12]

In their Answer,[13] petitioners denied that they have an obligation to pay the respondents. Petitioners contend that the respondents offered their services as exclusive real estate brokers, but they were never engaged. Petitioners further state that they were not looking for an exclusive agency and they entertained brokers on a "first come, first served" basis. Petitioners, likewise, contend that they were not agreeable with the respondents' proposal to sell the lots below the prevailing market value with no escalation clause, and that the sale of the Krause Park and the Teresa Park was made through the joint efforts of their consultants, Engr. Julius Aragon and Florence Cabansag. No sales transaction was realized on account of the respondents.

Ruling of the RTC

After trial on the merits, the trial court rendered judgment in favor of herein respondents. It ruled that herein respondents are entitled to brokers' fees and damages because the sale and development of the Krause Park and the Teresa Park were made possible because of the efforts of the respondents. The RTC Decision reads —

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[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 97.

WHEREFORE, all the foregoing duly considered, judgment is hereby rendered for the plaintiffs and against the defendants, as follows:

(1) Ordering the defendants solidarily to pay the plaintiffs the sum of ₱11,881,915.50 as brokers' fee affecting Krause Park, Molino, Bacoor, Cavite, and Teresa Park, Almanza, Las Piñas City, plus legal interest of 12% per annum to be computed thereon starting July 3, 2001, the date of the first demand letter of plaintiffs' counsel until the obligation shall be fully paid;

(2) Ordering the defendants solidarily to pay the plaintiffs the sum of ₱200,000[.00] as moral damages, the sum of ₱100,000[.00] as exemplary damages, the sum of ₱200,000[.00] as attorney's fees, and costs of suit.

SO ORDERED.[14]

Aggrieved, petitioners filed an appeal before the Court of Appeals.

Ruling of the CA

In its Decision dated September 30, 2015, the CA denied the appeal and affirmed *in toto* the ruling of the RTC.

The CA held that herein respondents are entitled to their commission because they were the procuring cause of the joint venture agreements and sales between the petitioners and Woodridge. Through the respondents' efforts, they held meetings with the officers of Woodridge in the year 2000, started negotiating with them, and accompanied them during the ocular inspection. All these brought the petitioners and Woodridge together and resulted in joint venture agreements and deeds of sale.

The CA did not find any credence in petitioner Ignacio's claim that it was Julius Aragon who brokered the said transactions, particularly the March 7, 2000 joint venture agreement. This is because respondents were already in active negotiation with Woodridge and, in fact, held meetings with them on separate dates of January 13, 21, and 25, 2000, and

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

February 4, 2000, wherein they extensively discussed about Teresa Park and Krause Park, and that Aragon had no participation in those meetings.

A motion for reconsideration was filed by herein petitioners, but the same was denied by the CA in its Resolution dated October 21, 2016.

Thus, this petition for review.

Issues

The petitioners raised the sole issue:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN RULING THAT RESPONDENTS ARE ENTITLED TO BROKERS' FEES.

Petitioners contend that the respondents are not entitled to commission or brokers' fees because they are not the procuring cause for the successful business transactions between the petitioners and Woodridge.

Petitioners anchored their position on the following: (1) respondents allegedly admitted that they did not negotiate a successful joint venture agreement between the petitioners and Woodridge because, according to the respondents, their sole responsibility was merely to look for or source potential buyers and not to successfully negotiate a joint venture agreement; (2) respondents miserably failed in their duty to negotiate a successful joint venture agreement between the petitioners and Woodridge because respondents insisted on the bulk sale of the petitioners' properties instead of a joint venture agreement; (3) respondents' authority already expired when the petitioners entered into the joint venture agreements and deeds of sale with Woodridge for the development of the properties in Teresa Park and Krause Park.

Our Ruling

The petition lacks merit.

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.[15] This Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[16] when supported by substantial evidence.[17] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[18]

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[19]

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[15] Rules of Court, Rule 45, Sec. I.

[16] *Commissioner of Internal Revenue v. Embroidery and Garments Industries Phil., Inc.*, 364 Phil. 541, 546 (1999) [Per J. Pardo, First Division].

[17] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per J. Bellosillo, First Division]; and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division].

[18] *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

[19] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

These exceptions similarly apply in petitions for review filed before this court involving civil,[20] labor,[21] tax,[22] or criminal cases.[23]

A question of fact requires this Court to review the truthfulness or falsity of the allegations of the parties.[24] This review includes assessment of the "probative value of the evidence presented."[25] There is also a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[26]

In this case, the issue raised by the petitioners obviously asks this Court to review the evidence presented during the trial. Clearly, this is not the role of this Court because the issue presented is factual in nature. None of the exceptions are present. The findings of the lower courts are supported by substantial evidence. Thus, the present petition must fail.

Nevertheless, even if the Court were to look into the merits of the petitioners' main contention that respondents are not

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[20] *Dichoso, Jr., et al. v. Marcos*, 663 Phil. 48 (2011) [Per J. Nachura, Second Division] and *Spouses Caoili v. Court of Appeals*, 373 Phil. 122, 132 (1999) [Per J. Gonzaga-Reyes, Third Division].

[21] *Go v. Court of Appeals*, 474 Phil. 404, 411 (2004) [Per J. Ynares-Santiago, First Division] and *Arriola v. Filipino Star Ngayon, Inc., et al.*, 741 Phil. 171 (2014) [Per J. Leonen, Third Division].

[22] *Commissioner of Internal Revenue v. Embroidery and Garments Industries Phil., Inc.*, 364 Phil. 541, 546-547 (1999) [Per J. Pardo, First Division].

[23] *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division]; *Benito v. People*, 753 Phil. 616 (2015) [Per J. Leonen, Second Division].

[24] *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 287-288 (2014) [Per J. Leonen, Third Division] and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 788 (2011) [Per J. Carpio Morales, Third Division].

[25] *Republic v. Ortigas and Company Limited Partnership*, [Per J. Leonen, Third Division].

[26] *Pascual v. Burgos, et al.*, 776 Phil. 167, 183 (2016).

entitled to commission or brokers' fees, the petition must still fail.

In *Medrano v. Court of Appeals*,[27] We held that "when there is a close, proximate, and causal connection between the broker's efforts and the principal's sale of his property — or joint venture agreement, in this case — the broker is entitled to a commission."

Here, as aptly ruled by the CA, the proximity in time between the meetings held by the respondents and Woodridge and the subsequent execution of the joint venture agreements leads to a logical conclusion that it was the respondents who brokered it. Likewise, it is inconsequential that the authority of the respondents as brokers had already expired when the joint venture agreements over the subject properties were executed. The negotiation for these transactions began during the effectivity of the authority of the respondents, and these were carried out through their efforts. Thus, the respondents are entitled to a commission.

We, however, agree with the petitioners that the interest rate should be at the prevailing rate of six percent (6%) *per annum*, and not twelve percent (12%) *per annum*. In *Nacar v. Gallery Frames, et al.*,[28] We modified the guidelines laid down in the case of *Eastern Shipping Lines, Inc. v. Court of Appeals*[29] to embody BSP-MB Circular No. 799, as follows:

> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
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> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

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[27] 492 Phil. 222, 234 (2005).

[28] 716 Phil. 267, 278-279 (2013).

[29] 304 Phil. 236, 252-254 (1994).

> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[30]

It should be noted, however, that the rate of six percent (6%) *per annum* could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum*

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[30] *Nacar v. Gallery Frames, et al.*, *supra* note 26, at 283.

legal interest shall apply only until June 30, 2013. Starting July 1, 2013, the rate of six percent (6%) *per annum* shall be the prevailing rate of interest when applicable. Thus, the need to determine whether the obligation involved herein is a loan and forbearance of money nonetheless exists.

The term "forbearance," within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable.[31]

Forbearance of money, goods or credits, therefore, refers to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending the happening of certain events or fulfilment of certain conditions.[32] Consequently, if those conditions are breached, said person is entitled not only to the return of the principal amount paid, but also to compensation for the use of his money which would be the same rate of legal interest applicable to a loan since the use or deprivation of funds therein is similar to a loan.[33]

This case, however, does not involve an acquiescence to the temporary use of a party's money but the performance of a brokerage service.

Thus, the matter of interest award arising from the dispute in this case falls under the paragraph II, subparagraph 2, of the above-quoted modified guidelines, which necessitates the imposition of interest at the rate of 6%, instead of the 12% imposed by the courts below.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated September 30, 2015 and the Resolution dated October 21, 2016 of the Court of Appeals in CA-G.R. CV No. 102112 are hereby **AFFIRMED** with

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[31] *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 752, 771 (2013).

[32] *Estores v. Spouses Supangan*, 686 Phil. 86, 97 (2012).

[33] *Id.*

MODIFICATION. The interest rate of six percent (6%) *per annum*, instead of twelve percent (12%), is imposed on all the monetary awards from the date of finality of this Decision until full payment.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Zalameda*,[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 229349. January 29, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GREG ANTONIO *y* PABLEO @ TOKMOL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE AND DEFENSE OF A RELATIVE; THE BURDEN OF PROOF IS SHIFTED TO THE ACCUSED TO PROVE THAT THE ACT WAS JUSTIFIED. — Accused-appellant's defense centers on his claim of self-defense and defense of his sister, invoking the first and second justifying circumstances under Article 11 of the Revised Penal Code: x x x An admission of self-defense or defense of a relative frees the prosecution from the burden of proving that the accused committed the act charged against him or her. The burden is shifted to the accused to prove that his or her act was justified.

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[*] Designated Additional Member in lieu of Associate Justice Mario V. Lopez, per Raffle dated January 27, 2020.

2. ID.; ID.; ID.; REQUISITES. — For the justifying circumstance of self-defense to be appreciated in the accused's favor, the accused must prove the following: "(1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense." The justifying circumstance of defense of a relative likewise requires the first two (2) requisites, but in lieu of the third requirement, it requires that "in case the provocation was given by the person attacked, that the one making the defense had no part therein."

3. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM. — The first requisite of unlawful aggression is defined as the actual or imminent threat to the person invoking self-defense. This requirement is an indispensable condition of both self-defense and defense of a relative; after all, if there is no unlawful aggression, the assailant would have nothing to prevent or repel. In *People v. Caratao*, this Court emphasized that if unlawful aggression is not proven, "self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present."

4. ID.; ID.; ID.; ID.; REASONABLE NECESSITY OF MEANS EMPLOYED TO PREVENT OR REPEL THE AGGRESSION. — As for the second requisite, "reasonable necessity of means employed to prevent or repel such aggression" envisions a rational equivalence between the perceived danger and the means employed to repel the attack. This Court in *People v. Encomienda* recognized that in circumstances that lead to self-defense or defense of a relative, the instinct for self-preservation will outweigh rational thinking. Thus, "when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and hold the act irresponsible in law for the consequences.

5. ID.; ID.; ID.; ID.; LACK OF SUFFICIENT PROVOCATION ON THE PART OF THE PERSON RESORTING TO SELF DEFENSE. — "Finally, the third requisite of lack of sufficient provocation requires the person invoking self-defense to not have antagonized the attacker. This Court explained in *People v. Nabora* that a provocation is deemed sufficient if it is "adequate

to excite the person to commit the wrong and must accordingly be proportionate to its gravity."

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED. — This Court sees no reason to reverse the factual findings of the lower courts. After all, when it comes to the credibility of witnesses, the trial court's findings and its calibration of their testimonies' probative weight are accorded high respect and even finality. The trial court's unique vantage point allows it to observe the witnesses during trial, putting it in the best position to determine whether a witness is telling the truth. In *People v. Cirbeto,* this Court underscored that an appellate court can only overturn the trial court's factual findings and replace it with its own factual findings if "there is a showing that the [trial court] overlooked facts or circumstances of weight and substance that would affect the result of the case. "This rule "finds an even more stringent application where the findings of the [trial court] are sustained by the [Court of Appeals]."

7. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES. — [T]reachery is present here. Treachery is defined as "the swift and unexpected attack on the unarmed victim without the slightest provocation on his [or her] part." To substantiate its allegation of treachery, the prosecution must prove: "(1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him."

8. ID.; ID.; PENALTY AND DAMAGES. — Accused-appellant was charged with murder, which is defined and penalized under Article 248 of the Revised Penal Code: ARTICLE 248. Murder. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances: x x x [B]ecause treachery is present in the killing, accused-appellant's conviction for murder is affirmed. Moreover, this Court modifies the awards of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each, in accordance with *People v. Jugueta*. x x x All damages awarded shall be subject to interest at the

rate of six percent (6%) from the finality of this Decision until fully paid.

9. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; NOT APPRECIATED IN THE ABSENCE OF EVIDENCE TO SHOW THE HOW AND WHEN OF THE PLAN TO KILL THE VICTIM; CASE AT BAR. — [T]o substantiate the claim of evident premeditation, this Court instructed in *People v. Borbon* that it is indispensable that the facts on "how and when the plan to kill was hatched" are presented into evidence. In *People v. Ordona*, we added that "[t]he requirement of deliberate planning should not be based merely on inferences and presumptions but on clear evidence. Here, the prosecution failed to establish in its version of the events that accused-appellant and his family members had schemed to kill Villalobos. Fresado's testimony merely showed that Villalobos followed Lorna to Delpan Bridge, and that he was later attacked by accused-appellant, Lorna, and Lorna's husband. The Regional Trial Court merely inferred that there was a plan in place because accused-appellant's act of stabbing Villalobos five (5) times implied that "[s]ufficient time elapsed from the time [accused-appellant] determined to kill the victim up to the time he actually committed the act." In fact, no evidence was presented to show the how and when of the plan to kill Villalobos.

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.*:

An accused's invocation of a justifying circumstance frees the prosecution from the burden of proving that the accused committed the offense charged. The burden shifts to the accused to prove the justifying circumstance with clear and convincing evidence.

For this Court's resolution is an appeal from the Decision[1] of the Court of Appeals, which affirmed the conviction of Greg Antonio *y* Pableo @ Tokmol (Antonio) for the crime of murder.

Before the Regional Trial Court, Antonio was charged in two (2) separate Informations for frustrated murder and murder. The accusatory portions of the two (2) Informations read:

Crim. Case No. 06-246909 (Frustrated Murder)

"That on or about August 15, 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, real identities and present whereabouts are still unknown and helping one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one ARSENIO CAHILIG y MALINANA, by then and there stabbing the latter with a bladed weapon at that (*sic*) back of his body, thereby inflicting upon said ARSENIO CAHILIG y MALINANA injuries which are necessarily fatal and mortal, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason or causes independent of the will of the said accused, that is, by the timely and able medical attendance rendered to said ARSENIO CAHILIG y MALINANA which saved his life.

Contrary to law."

Crim. Case No. 06-246310 (Murder)

"That on or about August 15, 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon one ARTHURO[*] VILLALOBOS y BIJASA, by then and there stabbing

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[1] *Rollo*, pp. 2-14. The February 18, 2016 Decision in CA-G.R. CR-HC No. 06744 was penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ricardo R. Rosario and Edwin D. Sorongon of the Sixteenth Division, Court of Appeals, Manila.

[*] "Arturo" in some parts of the records.

the latter with a bladed weapon on the different parts of his body, thereby inflicting upon said ARTHURO VILLALOBOS y BIJASA mortal stab wounds which were the direct and immediate cause of his death.

Contrary to law."[2]

The cases were consolidated, and Antonio pleaded not guilty to both charges. After pre-trial was terminated, trial on the merits ensued.[3]

The prosecution presented David Fresado (Fresado), Ligaya Villalobos (Ligaya), Dr. Romeo T. Salen (Dr. Salen), and Police Inspector Ismael Dela Cruz as its witnesses.[4]

From their testimonies, the prosecution alleged that the murder was committed in Tondo, Manila, on the early morning of August 15, 2006. Around this time, Fresado had been drinking in front of a store with Dondon, Emerson Jocson (Jocson), and Arthuro Villalobos (Villalobos).[5]

By 2:00 a.m., in the middle of their drinking session, a certain Lorna approached them, trying to sell a cellphone for ₱400.00. At the sight of Lorna, Villalobos got mad, claiming that she had supposedly sold him a fake cellphone before. In the argument that ensued, Lorna and Villalobos started hitting each other.[6]

Fresado, together with some barangay members who arrived, tried to break up the fight. When Lorna and Villalobos were pacified, they were told to go home. Lorna walked toward Delpan Bridge, as she lived underneath it.[7]

Moments later, a cousin of Villalobos, Peter, approached Fresado and asked for help, saying he saw Villalobos following

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[2] CA *rollo*, pp. 58-59, RTC Decision.

[3] *Id.* at 59.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

Lorna to Delpan Bridge. Fresado, Dondon, and Jocson ran toward the bridge where, upon reaching San Simon Street, they saw Arsenio Cahilig (Cahilig) talking to Villalobos and convincing him to go home.[8]

However, while the two were talking, Antonio, Lorna's brother, suddenly sidled up beside them, placed his arm around Villalobos' shoulders, and then stabbed him several times with a foot-long knife.[9] Villalobos was able to break free from Antonio, but Lorna stepped in and repeatedly punched him. Her husband Rey joined in, hacking Villalobos' arm with a butcher's knife.[10]

Jocson ran toward the barangay to ask for help. Meanwhile, Fresado ran back to the store, where he took his bag and met with his wife. They went straight home. The following day, Fresado's wife informed him that Villalobos had died. He attended Villalobos' wake three (3) days later.[11]

Ligaya, Villalobos' mother, testified that she spent around ₱70,000.00 for her son's embalming and burial expenses. However, she could not present the receipts for her expenses.[12]

Dr. Salen, who conducted the postmortem examination, testified that Villalobos sustained five (5) stab wounds, with three (3) fatal stab wounds that pierced his lungs and heart. Dr. Salen also testified that Villalobos had injuries in his extemities which could have been caused by a fistfight. Villalobos' death certificate stated the cause of his death as "multiple stab wounds of the body."[13]

The defense, for its part, presented Antonio as its sole witness.[14]

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[8] *Id.* at 59-60.

[9] *Id.* at 60.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 61.

Antonio testified that on August 15, 2006, at about 3:00 a.m., he was with Lorna, buying bread at a bakery on Delpan Street, while Villalobos was drinking nearby with friends. Out of nowhere, Villalobos suddenly grabbed Lorna's cellphone. Villalobos and his drinking companions then ganged up on Lorna and beat her up.[15]

When Antonio pleaded with the men to stop hurting his sister, Villalobos turned on him instead. As his companions held Lorna, Villalobos drew out a knife and lunged at Antonio. Antonio managed to evade this first attack. The second time Villalobos tried to stab him, Antonio was able to wrestle the knife away and then use it to stab Villalobos several times, losing count of how many stabs he had inflicted on him. When Antonio fled the scene, he tried to look for his sister, but he could not find her.[16]

Antonio admitted killing Villalobos but claimed that he only did it to defend himself and his sister. Nonetheless, he denied killing Cahilig.[17]

In a March 4, 2014 Decision,[18] the Regional Trial Court acquitted Antonio of the charge of frustrated murder, but convicted him of murder.

The Regional Trial Court stated that Antonio's admission of self-defense shifted the burden of proof from the prosecution to the defense. It then stressed that Antonio's testimony of self-defense was replete with inconsistencies, as his statements varied over who actually mauled his sister and who originally had the knife he eventually used to stab Villalobos. It likewise gave weight to Fresado's eyewitness testimony that Villalobos did not expect to be stabbed by Antonio.[19]

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[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 58-66. The Decision was penned by Presiding Judge Marlina M. Manuel of Branch 25, Regional Trial Court, Manila.

[19] *Id.* at 62-65.

The Regional Trial Court further appreciated both the aggravating circumstances of treachery and evident premeditation in the killing of Villalobos, qualifying Antonio's offense to murder.[20]

Meanwhile, in acquitting Antonio of frustrated murder, the Regional Trial Court found Fresado's testimony missing as to who had stabbed Cahilig. It pointed out that the prosecution failed to present any testimony as to Cahilig's stabbing.[21]

The dispositive portion of the Regional Trial Court Decision read:

> **WHEREFORE**, in Criminal Case No. 06-246309, for failure of the prosecution to prove his guilt for the crime of Frustrated Murder, accused GREG ANTONIO y PABLEO @ TOKMOL is hereby **ACQUITTED**.
>
> In Criminal Case No. 06-246310, the Court finds accused GREG ANTONIO y PABLEO @ TOKMOL **GUILTY** beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code. He is hereby sentenced to suffer the penalty of *reclusion perpetua*. Furthermore, accused is ordered to pay the heirs of deceased Arthuro Villalobos the sum of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.
>
> **SO ORDERED**.[22] (Emphasis in the original)

Antonio filed a Notice of Appeal,[23] to which the Regional Trial Court gave due course.[24]

Antonio's appeal,[25] however, was denied by the Court of Appeals in its February 18, 2016 Decision.[26]

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[20] *Id.* at 66.

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

[22] *Id.* at 66.

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

[24] *Id.* at 30.

[25] *Id.* at 42-57.

[26] *Rollo*, pp. 2-14.

The Court of Appeals gave much weight to Fresado's eyewitness testimony over Antonio's self-serving and uncorroborated version of the facts.[27] It also found that treachery attended Villalobos' killing, elevating the offense to murder.[28]

Nonetheless, the Court of Appeals disagreed with the Regional Trial Court that evident premeditation attended Villalobos' killing. It found that the prosecution failed to present proof that there was an actual plan to kill Villalobos.[29]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED.**

The *04 March 2014 Decision* of Branch 25, Regional Trial Court of Manila in Criminal Case No. 06-246310 is hereby **AFFIRMED** subject to the following **MODIFICATIONS**:

(1) Accused-appellant Greg Antonio y Pableo is guilty beyond reasonable doubt for the crime of murder qualified by treachery; and

(2) The award of moral damages is increased to Php75,000.00.

No pronouncement as to costs.

SO ORDERED.[30] (Emphasis in the original)

Antonio filed a Notice of Appeal.[31] The Court of Appeals, having given due course[32] to the appeal, elevated[33] the case records to this Court.

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[27] *Id.* at 11.

[28] *Id.* at 11-12.

[29] *Id.* at 12-13.

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

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

[32] *Id.* at 18.

[33] *Id.* at 1.

Accused-appellant and plaintiff-appellee People of the Philippines were directed[34] to file their respective supplemental briefs. However, they each manifested[35] that they would instead be adopting the Briefs they had filed before the Court of Appeals.

In his Brief,[36] accused-appellant insists that the Regional Trial Court erred in failing to appreciate in his favor the justifying circumstances of self-defense and defense of a relative. He avers that he was able to prove that Villalobos and his cohorts were beating up his sister, without any provocation from her, prompting him to rush to her aid and defend her.[37]

Additionally, accused-appellant maintains that the Regional Trial Court erred in appreciating treachery as an aggravating circumstance. He insists that Fresado's testimony lacked sufficient detail to conclusively show that the mode and manner of attack was adapted to render Villalobos defenseless. He also points out that the evidence failed to show that Villalobos was stabbed from behind, or that he was helpless when he was attacked.[38]

On the other hand, plaintiff-appellee underscores in its Brief[39] that accused-appellant failed to prove all the requisites of self-defense and defense of a relative.[40]

Plaintiff-appellee also adds that the Regional Trial Court rightly appreciated the aggravating circumstance of treachery. It maintains that Fresado's testimony showed how the suddenness of the attack ensured the victim's killing: accused-appellant surprised Villalobos when he grabbed his shoulders

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[34] *Id.* at 20-21.

[35] *Id.* at 22-27 and 28-32.

[36] CA *rollo*, pp. 42-57.

[37] *Id.* at 49-52.

[38] *Id.* at 52-54.

[39] *Id.* at 86-102.

[40] *Id.* at 95-97.

to prevent retaliation or defense, and thereafter repeatedly stabbing him.[41]

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in finding accused-appellant Greg Antonio *y* Pableo @ Tokmol guilty beyond reasonable doubt of murder.

I

Accused-appellant's defense centers on his claim of self-defense and defense of his sister, invoking the first and second justifying circumstances under Article 11 of the Revised Penal Code:

> ARTICLE 11. Justifying Circumstances. — The following do not incur any criminal liability:
>
> 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:
>
> First. Unlawful aggression;
>
> Second. Reasonable necessity of the means employed to prevent or repel it;
>
> Third. Lack of sufficient provocation on the part of the person defending himself.
>
> 2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

An admission of self-defense or defense of a relative frees the prosecution from the burden of proving that the accused committed the act charged against him or her. The burden is shifted to the accused to prove that his or her act was justified:

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[41] *Id.* at 98.

It is settled that when an accused admits [harming] the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he [harmed] the victim. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[42]

For the justifying circumstance of self-defense to be appreciated in the accused's favor, the accused must prove the following: "(1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense."[43] The justifying circumstance of defense of a relative likewise requires the first two (2) requisites, but in lieu of the third requirement, it requires that "in case the provocation was given by the person attacked, that the one making the defense had no part therein."[44]

The first requisite of unlawful aggression is defined as the actual or imminent threat to the person invoking self-defense.[45] This requirement is an indispensable condition of both self-defense and defense of a relative; after all, if there is no unlawful aggression, the assailant would have nothing to prevent or repel.[46]

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[42] *Belbis v. People*, 698 Phil. 706, 719 (2012) [Per J. Peralta, Third Division] citing *People v. Tagana*, 468 Phil. 784, 800 (2004) [Per J. Austria-Martinez, Second Division] and *Marzonia v. People*, 525 Phil. 693, 702-703 (2006) [Per J. Quisumbing, Third Division].

[43] *Id.* at 719-720 citing *People v. Silvano*, 403 Phil. 598, 606 (2001) [Per J. De Leon, Jr., Second Division]; *People v. Plazo*, 403 Phil. 347, 357 (2001) [Per J. Quisumbing, Second Division]; and *Roca v. Court of Appeals*, 403 Phil. 326, 335 (2001) [Per J. Quisumbing, Second Division].

[44] *People v. Eduarte*, 265 Phil. 304, 309 (1990) [Per J. Gutierrez, Jr., Third Division].

[45] *People v. Caratao*, 451 Phil. 588, 602 (2003) [Per J. Azcuna, First Division].

[46] *Velasquez v. People*, 807 Phil. 438, 450-451 (2017) [Per J. Leonen, Second Division] and *People v. Areo*, 452 Phil. 36, 44 (2003) [Per J. Corona, Third Division].

In *People v. Caratao*,[47] this Court emphasized that if unlawful aggression is not proven, "self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present."[48]

As for the second requisite, "reasonable necessity of means employed to prevent or repel such aggression" envisions a rational equivalence between the perceived danger and the means employed to repel the attack.[49] This Court in *People v. Encomienda*[50] recognized that in circumstances that lead to self-defense or defense of a relative, the instinct for self-preservation will outweigh-rational thinking.[51] Thus, "when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and hold the act irresponsible in law for the consequences."[52]

Finally, the third requisite of lack of sufficient provocation requires the person invoking self-defense to not have antagonized the attacker.[53] This Court explained in *People v. Nabora*[54] that a provocation is deemed sufficient if it is "adequate to excite the person to commit the wrong and must accordingly be proportionate to its gravity."[55]

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[47] 451 Phil. 588 (2003) [Per J. Azcuna, First Division].

[48] *Id.* at 602 citing *People v. Saure*, 428 Phil. 916, 928 (2002) [Per J. Puno, First Division] and *People v. Enfectana*, 431 Phil. 64, 77 (2002) [Per J. Quisumbing, Second Division].

[49] *People v. Obordo*, 431 Phil. 691, 712 (2002) [Per J. Kapunan, First Division] citing *People v. Encomienda*, 150-B Phil. 419, 433 (1972) [Per J. Makasiar, First Division].

[50] 150-B Phil. 419 (1972) [Per J. Makasiar, First Division].

[51] *Id.* at 433-434.

[52] *Id.* at 434 citing *People v. Lara*, 48 Phil. 153, 159 (1925) [Per J. Street, *En Banc*].

[53] *Velasquez v. People*, 807 Phil. 438, 451 (2017) [Per J. Leonen, Second Division].

[54] 73 Phil. 434 [Per J. Moran, *En Banc*].

[55] *Id.* at 435.

II

A careful review of the records convinces this Court that accused-appellant failed to substantiate his claim of self-defense and defense of a relative.

Accused-appellant rests his entire defense on his sole and uncorroborated testimony. However, the Regional Trial Court found several inconsistencies in his testimony as to who mauled his sister and who held the knife that he eventually used to stab Villalobos:

> Accused stated that Arthuro Villalobos suddenly grabbed his sister's cellphone and started beating her. However, his statement varied as to who among the victim and his companions had actually mauled his sister and as to who among them were holding a sharp object. The inconsistencies are manifest in the following testimony of the accused:
>
> [ATTY. OLIVEROS]
>
> When you saw that your sister was being mauled by Arthuro and his companion, what did you do?
>
> A
> I told them to stop tama na but they suddenly grabbed something sharp Sir.
>
> Q
> Who among the 2 grabbed sharp object?
>
> A
> Villalobos sir.
>
> . . . . . .
>
> Q
> Now after you stabbed Arturo, what happened to Arturo?
>
> A
> He just shouted aray and I was concerned of the person infront of me who was about to stab me Sir." (*TSN, December 4, 2013, pp. 5-7*)

[ASST. CITY PROS. POSO]

Q
Your sister was mauled by Arturo Villalobos and his companions?
A
Yes Sir they were drinking.

Q

How many were they who mauled your sister?

A
I only saw Arturo Villalobos Sir.

. . . . . .

ASST. CITY PROS. POSO
You told the Court a while ago that 4 persons mauled your sister and now it was only Arturo Villalobos who mauled your sister. Which is which now, which is correct, 4 persons mauled your sister or only Arturo Villalobos?

A
There were 2 and the other 2 were just assisting because they were all drinking Sir.

Q
You are now changing your answer, only 2 mauled your sister?
A
Yes Sir.

Q
So that person behind Arturo Villalobos was not able to inflict injury to your sister Lorna am I correct?

A
Iyon na nga po binugbog nila noong tao sa likod Sir." (*TSN, December 4, 2013, pp. 11-14*)[56]

From this, the Regional Trial Court ruled that accused-appellant was unable to prove the existence of unlawful aggression and, thus, could not validate his claim of self-defense:

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[56] CA *rollo*, pp. 64-65.

> The Court is not persuaded by [the] alleged unlawful aggression perpetrated by the victim, *i.e.* the mauling of the sister of the accused and the victim's attempt to stab him. The defense did not present Lorna, the sister of the accused, to corroborate the latter's testimony. The accused even admitted that they did not [file] a complaint and that Lorna did not submit herself to any medical treatment.[57]

In contrast with accused-appellant's uncorroborated and inconsistent testimony, the Regional Trial Court found Fresado's testimony that accused-appellant attacked Villalobos without provocation to be more believable.[58] The Court of Appeals arrived at the same conclusion, stating:

> Contrary to accused-appellant's asseverations, there is ample evidence on record to hold him guilty beyond reasonable doubt for the crime of murder. The testimony of the lone eyewitness David Fresado (David) is sufficient to prove accused-appellant's complicity. His straightforward narration of the stabbing incident and positive identification of the accused-appellant as the assailant — both of which the defense failed to rebut — earn the Court's *imprimatur*, thus:
>
> . . . . . .
>
> Q After you saw Arthuro Villalobos and Arsenio Cahilig talking with each other, what transpired next?
> A **Greg Antonio suddenly appeared at the left side of Arthuro and Arsenio Sir.**
>
> Q After you saw him suddenly appeared *[sic]* at the left side of Arthuro Villalobos, what happened next?
> A Inakbayan po niya, **I saw him put his arms around the shoulders of Arthuro Villalobos then suddenly stabbed him Sir**.[59] (Emphasis in the original)

This Court sees no reason to reverse the factual findings of the lower courts. After all, when it comes to the credibility of

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[57] *Id.* at 65.

[58] *Id.* at 63.

[59] *Rollo*, pp. 9-10.

witnesses, the trial court's findings and its calibration of their testimonies' probative weight are accorded high respect and even finality. The trial court's unique vantage point allows it to observe the witnesses during trial, putting it in the best position to determine whether a witness is telling the truth.[60]

In *People v. Cirbeto*,[61] this Court underscored that an appellate court can only overturn the trial court's factual findings and replace it with its own factual findings if "there is a showing that the [trial court] overlooked facts or circumstances of weight and substance that would affect the result of the case."[62] This rule "finds an even more stringent application where the findings of the [trial court] are sustained by the [Court of Appeals]."[63]

III

Accused-appellant was charged with murder, which is defined and penalized under Article 248 of the Revised Penal Code:

ARTICLE 248. Murder. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

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[60] *People v. Cirbeto*, G.R. No. 231359, February 7, 2018, <http://elibrary.judiciary.gov.ph/ thebookshelf/showdocs/1/63973> [Per J. Perlas-Bernabe, Second Division].

[61] *Id.*

[62] *Id.*

[63] *Id.*

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

The Regional Trial Court found that Villalobos' killing was attended by treachery and evident premeditation, thereby qualifying it to murder.[64] For its part, the Court of Appeals only appreciated treachery, ruling that there was a want of evidence for evident premeditation.[65]

The Court of Appeals is correct. Only treachery is present here.

Treachery is defined as "the swift and unexpected attack on the unarmed victim without the slightest provocation on his [or her] part."[66] To substantiate its allegation of treachery, the prosecution must prove: "(1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him."[67]

Here, both the Regional Trial Court and the Court of Appeals found that treachery attended accused-appellant's attack on Villalobos. The Court of Appeals held:

Clearly, treachery in this case is evident from the fact that: accused-appellant grabbed the victim's arm by surprise and simultaneously stabbing him with a foot-long knife despite being unarmed. To the Court, these are methods employed which rendered Arthuro helpless

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

[65] *Rollo*, pp. 12-13.

[66] *People v. Abadies*, 436 Phil. 98, 105 (2002) [Per *J.* Ynares-Santiago, *En Banc*].

[67] *Id.*

as it left him with no opportunity to defend himself or even to retaliate; ultimately causing his death.[68] (Citation omitted)

The lower courts' finding of treachery finds substantial basis in Fresado's testimony, which both courts found to be convincing and believable.[69]

Meanwhile, to substantiate the claim of evident premeditation, this Court instructed in *People v. Borbon*[70] that it is indispensable that the facts on "how and when the plan to kill was hatched"[71] are presented into evidence. In *People v. Ordona*,[72] we added that "[t]he requirement of deliberate planning should not be based merely on inferences and presumptions but on clear evidence."[73]

Here, the prosecution failed to establish in its version of the events that accused-appellant and his family members had schemed to kill Villalobos. Fresado's testimony merely showed that Villalobos followed Lorna to Delpan Bridge, and that he was later attacked by accused-appellant, Lorna, and Lorna's husband. The Regional Trial Court merely inferred that there was a plan in place because accused-appellant's act of stabbing Villalobos five (5) times implied that "[s]ufficient time elapsed from the time [accused-appellant] determined to kill the victim up to the time he actually committed the act[.]"[74] In fact, no evidence was presented to show the how and when of the plan to kill Villalobos.

Thus, the Court of Appeals was correct in reversing the Regional Trial Court's finding of evident premeditation:

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[68] *Rollo*, p. 12.

[69] *Id.* at 10.

[70] 469 Phil. 132 (2004) [Per *J.* Callejo, Sr., Second Division).

[71] *Id.* at 145.

[72] 818 Phil. 670 (2017) [Per *J.* Leonen, Third Division].

[73] *Id.* at 672.

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

The prosecution failed to establish by clear and positive evidence the time when the accused-appellant resolved to kill the accused (*sic*) with respect to the time when it was actually accomplished; mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient. Also, mere determination to commit the crime does not of itself establish evident premeditation for it must appear, not only that the accused made a decision to commit the crime prior to the moment of execution, but also that his decision was the result of meditation, calculation or reflection or persistent attempt. Apropos, there is much to be desired from David's testimony on this respect.[75] (Citations omitted)

Nonetheless, because treachery is present in the killing, accused- appellant's conviction for murder is affirmed. Moreover, this Court modifies the awards of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each, in accordance with *People v. Jugueta*.[76]

WHEREFORE, the February 18, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06744 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Greg Antonio *y* Pableo @ Tokmol is found **GUILTY** beyond reasonable doubt of murder and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

Accused-appellant is ordered to pay the heirs of the victim, Arthuro B. Villalobos, civil indemnity, moral damages, and exemplary damages worth ₱100,000.00 each. All damages awarded shall be subject to interest at the rate of six percent (6%) from the finality of this Decision until fully paid.[77]

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[75] *Rollo*, p. 13.

[76] 783 Phil. 806 (2016) [Per *J.* Peralta, *En Banc*].

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

THIRD DIVISION

[G.R. No. 231013. January 29, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PIO SALEN, JR.** ***y*** **SENA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS ARE GIVEN GREAT RESPECT, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS, UNLESS THE LOWER COURTS HAVE OVERLOOKED OR MISCONSTRUED SUBSTANTIAL FACTS WHICH COULD HAVE AFFECTED THE OUTCOME OF THE CASE. —** Great respect is given to the trial court's factual findings, particularly when affirmed by the Court of Appeals. This is the general rule, unless the lower courts have "overlooked or misconstrued substantial facts which could have affected the outcome of the case." This case is no exception. A scrutiny of the records shows no cogent reason for this Court to reverse the Regional Trial Court's findings and assessment of the witnesses' credibility, as affirmed by the Court of Appeals.

2. **CRIMINAL LAW; ROBBERY WITH RAPE; ELEMENTS. —** The elements of robbery with rape are the following: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape. Here, the prosecution has sufficiently showed that the elements of the crime are present.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE VICTIM'S TESTIMONY ALONE, IF CREDIBLE, SUFFICES TO CONVICT. —** AAA testified clearly and unequivocally to how accused-appellant raped then robbed her. While her testimony was uncorroborated, this Court has ruled in a plethora of cases that "[t]he victim's testimony alone, if credible, suffices to convict." The testimony of AAA, whom the trial court found to be a credible witness, was clear and straightforward.

4. CRIMINAL LAW; ROBBERY WITH RAPE; THE LAW DOES NOT DISTINGUISH WHETHER THE RAPE IS COMMITTED BEFORE, DURING, OR AFTER THE ROBBERY, BUT ONLY THAT IT PUNISHES ROBBERY THAT IS ACCOMPANIED BY RAPE. — [F]or the crime of robbery with rape, the law does not distinguish whether the rape was committed before, during, or after the robbery, but only that it punishes robbery that was *accompanied by rape*. The facts do not bear out that the robbery was a mere afterthought, considering that AAA testified that accused-appellant "took time to disable her and then got away with her personal belongings."

5. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL THROWS THE WHOLE CASE OPEN FOR REVIEW SUCH THAT ERRORS IN AN APPEALED JUDGMENT, EVEN IF NOT SPECIFICALLY ASSIGNED, MAY BE CORRECTED *MOTU PROPRIO* BY THE COURT IF THE CONSIDERATION OF THESE ERRORS IS NECESSARY TO ARRIVE AT A JUST RESOLUTION OF THE CASE. — [T]his Court deems it proper to modify the penalty. In criminal cases, an appeal "throws the whole case open for review[.] The underlying principle is that errors in an appealed judgment, even if not specifically assigned, may be corrected *motu proprio* by the court if the consideration of these errors is necessary to arrive at a just resolution of the case." Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*. However, the penalty imposed may not really be sufficient to address the indignity his lust and utter lack of compassion had caused. We can only hope that he will reflect throughout the remainder of his natural life on the wrong he has done, and that he will evolve remorse for his horrendous acts. The award for exemplary damages is adjusted to conform with recent jurisprudence x x x.

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.*:

A man who forces himself on a woman is a criminal.

We shudder at the utter lack of remorse from a man who, after having beaten up and violated an unsuspecting woman—one who simply wanted a jeepney ride to work—topped it off by robbing her. That is sheer evil.

The accused here assails the victim's story by suspecting how she did not attempt to alight from the jeepney he drove, when she had had multiple chances.

Survivors of such cruelty must not be blamed for any action, or lack thereof, when suddenly forced to respond to threat. A rapist is a rapist, and his acts are never the victim's fault.

As proof beyond reasonable doubt exists that the accused robbed the victim after raping her, he must rightfully stay incarcerated.

We affirm his conviction.

For this Court's resolution is an appeal[1] assailing the Decision[2] of the Court of Appeals, which affirmed the Regional Trial Court Decision[3] finding Pio Salen, Jr. *y* Sena (Salen) guilty beyond reasonable doubt of robbery with rape.

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[1] *Rollo*, pp. 13-15.

[2] *Id.* at 2-12. The December 9, 2016 Decision was penned by Associate Justice Jose C. Reyes, Jr. (now a member of this Court), and concurred in by Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a member of this Court) of the Fifth Division of the Court of Appeals, Manila.

[3] CA *rollo*, pp. 44-55. The July 1, 2015 Decision was penned by Presiding Judge Beatrice A. Caunan-Medina of the Regional Trial Court of San Mateo, Rizal, Branch 75.

In an Information, Salen was charged with the crime of robbery with rape, as defined under Article 294 of the Revised Penal Code. The accusatory portion of the Information read:

> That, on or about the 28th day of December 2010, in the Municipality of Rodri[g]uez, Province of Rizal , Philippines and within the jurisdiction of this honorable Court, the above-named accused, with intent to gain and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously take and divest from AAA an undetermined amount, to the damage and prejudice of the latter, and that, during or on the occasion of such robbery, or by reason thereof, the above-named accused, with violence, force and intimidation, with the use of a screw driver, a deadly weapon, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA, against her will and without her consent.
>
> CONTRARY TO LAW.[4]

During arraignment, Salen pleaded not guilty to the charge. Trial then ensued.[5]

The victim AAA, her sister BBB, and Police Chief Inspector Rhodney Rosario (Chief Inspector Rosario) testified for the prosecution.[6] Their testimonies established the following:

At around 6:00 a.m. on December 28, 2010, AAA rode a jeepney from Siniguelas, Sta. Mesa in Manila to go to work in Recto. She was the lone passenger in that jeepney driven by Salen.[7]

While driving, Salen told AAA that he would pass by Quiapo to buy something. AAA assumed that she would be dropped off in Recto, but Salen kept driving past Quezon City and Payatas, all the way to Montalban, Rizal.[8]

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[4] *Rollo*, p. 3.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

Terrified, AAA implored Salen to stop the jeepney, but he ignored her; the jeepney only pulled to a stop when it reached a grassy place in Amityville Subdivision in Montalban. There, Salen pointed a screwdriver at AAA as he ordered her to have sex with him. When she alighted from the jeepney, AAA tried to wrestle the screwdriver from Salen, but she failed and fell.[9]

AAA struggled as Salen undressed her. He stabbed her and slapped her face, breaking her nose and bruising her eye. He then repeatedly inserted his penis into her vagina.[10]

Once his lust was sated, Salen stabbed and beat her up again. He took all her belongings, including her wallet containing cash, her Samsung cellphone worth ₱7,000.00, her TIN/BIR ID, PhilHealth ID, and even her empty Metrobank ATM card, along with various other identification cards.[11]

AAA played dead as Salen robbed her, up until he left. Once she knew he was gone, the bruised up AAA crawled her way for help and soon found a tricycle driver, who then brought her to Amang Rodriguez Clinic where her injuries were treated.[12]

Later that day, AAA was brought to Camp Crame and was examined by Chief Inspector Rosario. After conducting a genital examination, the medico-legal officer found three (3) deep, healed hymenal lacerations. She also discovered external injuries on AAA's head, neck, extremities, and back. From these injuries, Chief Inspector Rosario opined in her medico-legal report that sexual abuse may have occurred.[13]

The victim's sister, BBB, presented receipts of ₱66,823.69 covering the medical expenses. She also testified that Salen's

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[9] *Id.* at 4.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

mother came to them begging to withdraw the case in exchange for their lot in San Mateo, but AAA and BBB refused.[14]

Salen solely testified in his defense.[15] He claimed that on the day of the incident, at around 8:00 a.m., he was plying his usual route of Punta- Divisoria when AAA boarded his jeepney in V. Mapa, Sta. Mesa. He drove until they reached Commonwealth, which was not within his route anymore. He flirted with AAA, even if she was not responding to him.

Upon reaching Montalban, he parked his jeepney and asked AAA if she wanted to have sex. She supposedly asked him if he loved her, and "why here?"[16] He replied with "*oo naman*,"[17] and they had sex.[18]

After the supposed consensual sex, AAA allegedly asked Salen if he enjoyed it, to which he said yes. According to him, AAA told him that she was also satisfied. Then, when Salen told AAA that he had to leave because of the number coding scheme, AAA alighted from the jeepney without telling Salen where she was going.[19]

Salen further testified that he courted and had sex with AAA even though they had only met for the first time. In his version of the events, he insisted that AAA also enjoyed what happened. This was why, he insisted, he was baffled when she accused him of rape. He even claimed ignorance of who had inflicted the injuries on AAA.[20]

In its July 1, 2015 Decision,[21] the Regional Trial Court found Salen guilty beyond reasonable doubt of robbery with rape.

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[14] *Id.*

[15] *Id.*

[16] *Id.* at 5.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 5 and CA *rollo*, p. 51.

[20] *Id.*

[21] CA *rollo*, pp. 44-55.

It ruled that the prosecution sufficiently established the elements of the crime. It found that AAA positively identified Salen "with certainty."[22] It also found Salen's defense that the sex was consensual because the victim had wanted and enjoyed the sex as "incredible and appalling."[23] The dispositive portion of the Decision read:

> WHEREFORE, judgment is hereby rendered finding accused **PIO SALEN, JR. Y SENA**, **GUILTY** beyond reasonable doubt of Robbery with Rape.
>
> Accordingly, the accused is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** without eligibility of parole pursuant to Republic Act 9346, the accused is also ordered to return the Metrobank ATM, Samsung Cellphone, [TIN/BIR ID], cash and PhilHealth ID taken from the victim AAA. If restitution is no longer possible, accused shall pay the victim of the accused in the amount of Php10,000.00. Accused shall likewise pay the victim in the amount of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, Php66,823.69 as actual damages and Php30,000.00 as exemplary damages.
>
> SO ORDERED.[24] (Emphasis in the original)

In its December 9, 2016 Decision,[25] the Court of Appeals affirmed Salen's conviction. It ruled that the elements of robbery with rape were duly proven. It found no reason to deviate from the Regional Trial Court's findings, as it also found AAA's testimony credible, straightforward, and worthy of credit. Given this, along with the injuries AAA sustained, the Court of Appeals dismissed Salen's insistence that the sex between them was consensual.[26]

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[22] *Id.* at 54.

[23] *Id.*

[24] *Id.* at 55.

[25] *Rollo*, pp. 2-12.

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

In modifying the ruling, the Court of Appeals increased the award of exemplary damages to ₱100,000.00.[27] The dispositive portion of its Decision read:

> **WHEREFORE,** the appeal is **DENIED**. The appealed Decision dated July 1, 2015 of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 75, in Criminal Case No. 12471 is **AFFIRMED**, subject to the **MODIFICATION** that accused-appellant PIO SALEN, Jr. is ordered to pay "AAA" the increased amount of ₱100,000.00 as exemplary damages.
>
> **SO ORDERED.**[28] (Emphasis in the original)

Thus, Salen filed his Notice of Appeal.[29] Giving due course to his appeal per its January 18, 2017 Resolution,[30] the Court of Appeals elevated[31] the case records to this Court.

In its July 3, 2017 Resolution,[32] this Court noted the case records and informed the parties that they may file their supplemental briefs.

The Office of the Solicitor General,[33] on behalf of plaintiff-appellee People of the Philippines, and accused-appellant[34] both manifested that they would no longer file a supplemental brief, adopting the briefs they filed before the Court of Appeals instead.

In his Brief,[35] accused-appellant argues that the Regional Trial Court "gravely erred in giving weight and credence to

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[27] *Id.* at 11.

[28] *Id.* at 11-12.

[29] *Id.* at 13-15.

[30] *Id.* at 16.

[31] *Id.* at 1.

[32] *Id.* at 18.

[33] *Id.* at 20-24.

[34] *Id.* at 25-29.

[35] CA *rollo*, pp. 27-43.

the private complainant's improbable and incredible testimony"[36] and in not objectively appreciating his defense.[37]

Accused-appellant stresses that the Regional Trial Court failed to be objective. The judge's description of accused-appellant's testimony as "revolting" allegedly "reflects prejudgment and bias, indicating that there was a failure to objectively appreciate the defense['s] evidence."[38]

Accused-appellant further asserts that AAA's testimony is incredible. As it was supposedly impossible for the jeepney to go all the way to Montalban without making stops, she could have alighted or cried for help when she noticed suspicious behavior from accused-appellant.[39] He claims that the inherent weakness of his defense is "insufficient to warrant his conviction,"[40] since AAA's uncorroborated testimony is incredulous.[41]

For this Court's resolution is the lone issue of whether or not accused-appellant Pio Salen, Jr. *y* Sena is guilty beyond reasonable doubt of robbery with rape.

This Court dismisses the appeal and affirms accused-appellant's conviction.

Great respect is given to the trial court's factual findings, particularly when affirmed by the Court of Appeals. This is the general rule, unless the lower courts have "overlooked or misconstrued substantial facts which could have affected the outcome of the case."[42]

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[36] *Id.* at 29.

[37] *Id.*

[38] *Id.* at 33.

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

[40] *Id.* at 39.

[41] *Id.*

[42] *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per *J.* Carpio, Second Division] citing *People v. Fernandez*, 561 Phil. 287 (2007) (Per *J.* Carpio,

This case is no exception. A scrutiny of the records shows no cogent reason for this Court to reverse the Regional Trial Court's findings and assessment of the witnesses' credibility, as affirmed by the Court of Appeals.

The crime of robbery with rape is punished under Article 294(1) of the Revised Penal Code, as amended by Republic Act No. 7659:

> ARTICLE 294. *Robbery with violence against or intimidation of persons — Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

The elements of robbery with rape are the following:

> (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.[43]

Here, the prosecution has sufficiently showed that the elements of the crime are present.

AAA testified clearly and unequivocally to how accused-appellant raped then robbed her. While her testimony was uncorroborated, this Court has ruled in a plethora of cases that "[t]he victim's testimony alone, if credible, suffices to convict."[44]

Second Division); *People v. Abulon*, 557 Phil. 428 (2007) [Per *J.* Tinga, *En Banc*); and *People v. Bejic*, 552 Phil. 555 (2007) [Per *J.* Chico-Nazario, *En Banc*].

[43] *People v. Bringcula*, G.R. No. 226400, January 24, 2018, 853 SCRA 142, 150 [Per *C.J.* Peralta, Second Division] citing *People v. Suyu*, 530 Phil. 569, 596 (2006) [Per *J.* Callejo, Sr., First Division].

[44] *People v. Venerable*, 352 Phil. 623, 634 (1998) [Per *J.* Purisima, Third Division] citing *People v. Cura*, 310 Phil. 237 (1995) [Per *J.* Regalado, Second Division]. See also *People v. De Guzman*, 644 Phil. 229 (2010) [Per *J.* Mendoza, Second Division]; *People v. Araojo*, 616 Phil. 275, 288

The testimony of AAA, whom the trial court found to be a credible witness, was clear and straightforward.

Accused-appellant admitted that he had sex with AAA—insisting that it was consensual—and denied robbing her. However, these self-serving, unsubstantiated defenses of denial fail against the victim's positive identification.

What further bolsters the prosecution's case is the medico-legal officer's corroborative testimony. The medico-legal report showed that AAA had sustained "hematoma, abrasions, [and] lacerated and punctured wounds all over her body."[45] These findings corroborate AAA's testimony that "accused-appellant stabbed her with a pointed weapon and inflicted force and violence against her in order for her to submit to him."[46]

The records back the trial court's ruling. Thus, contrary to accused-appellant's contention, there is no reason to believe that the Regional Trial Court's presiding judge was biased.

Finally, for the crime of robbery with rape, the law does not distinguish whether the rape was committed before, during, or after the robbery, but only that it punishes robbery that was *accompanied by rape*. The facts do not bear out that the robbery was a mere afterthought, considering that AAA testified that accused-appellant "took time to disable her and then got away with her personal belongings."[47]

In sum, the prosecution established accused-appellant's guilt beyond reasonable doubt. He was correctly convicted of the special complex crime of robbery with rape under Article 294 of the Revised Penal Code.

(2009) [Per *J.* Velasco, Jr., Third Division); and *People v. ZZZ*, G.R. No. 229862, June 19, 2019, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65253 > [Per *J.* Leonen, Third Division].

[45] *Rollo*, p. 8.

[46] *Id.*

[47] *Id.* at 10.

Nevertheless, this Court deems it proper to modify the penalty. In criminal cases, an appeal "throws the whole case open for review[.] The underlying principle is that errors in an appealed judgment, even if not specifically assigned, may be corrected *motu proprio* by the court if the consideration of these errors is necessary to arrive at a just resolution of the case."[48]

Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*.[49] However, the penalty imposed may not really be sufficient to address the indignity his lust and utter lack of compassion had caused. We can only hope that he will reflect throughout the remainder of his natural life on the wrong he has done, and that he will evolve remorse for his horrendous acts.

The award for exemplary damages is adjusted to conform with recent jurisprudence:[50]

We modify the same in line with the ruling in *People v. Jugueta*, where We held that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages." Also in consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest

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[48] *Dela Cruz v. People*, 776 Phil. 653, 673 (2016) [Per *J*. Leonen, Second Division] citing *People v. Galigao*, 443 Phil. 246 (2003) [Per *J*. Ynares-Santiago, *En Banc*].

[49] REV. PEN. CODE, Art. 63 provides:

ARTICLE 63. *Rules for the Application of Indivisible Penalties.*— . . .

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

. . . . . .

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[50] *People v. Tulagan*, G.R. No. 227363, March 12, 2019. < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020 > [Per *J*. Peralta, *En Banc*].

at the rate of six percent (6%) per annum from the finality of this judgment until said amounts are fully paid.[51] (Citation omitted)

Accordingly, accused-appellant shall pay the victim ₱66,823.69 as actual damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. He is likewise ordered to return the Metrobank ATM card, Samsung cellphone, BIR/TIN ID, cash, and PhilHealth ID taken from the victim AAA. If restitution is no longer possible, accused-appellant shall pay the victim ₱10,000.00.

WHEREFORE, the findings of fact and conclusions of law in the Court of Appeals' December 9, 2016 Decision in CA-G.R. CR-HC No. 07716 are **AFFIRMED with MODIFICATIONS**.

Accused-appellant Pio Salen, Jr. *y* Sena is found **GUILTY** beyond reasonable doubt of robbery with rape, as punished under Article 294 of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the victim AAA actual damages of ₱66,823.69, and civil indemnity, moral damages, and exemplary damages worth ₱75,000.00 each.[52]

Accused-appellant is likewise ordered to return the Metrobank ATM card, Samsung cellphone, BIR/TIN ID, cash, and PhilHealth ID taken from the victim AAA. If restitution is no longer possible, accused-appellant shall pay her ₱10,000.00.

All damages awarded shall be subject to the rate of six percent (6%) per annum from the finality of this Decision until their full satisfaction.[53]

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[51] *Id.*

[52] See *People v. Jugueta,* 783 Phil. 806 (2016) [Per *J.* Peralta, *En Banc*].

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

FIRST DIVISION

[G.R. No. 236596. January 29, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MUSTAFA SALI *y* ALAWADDIN *a.k.a.* "TAPANG/ PANG,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS. — Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In the illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PROCEDURE; FAILURE TO PROVE VALID CAUSES FOR NON-COMPLIANCE THEREWITH CASTS SERIOUS DOUBT IF THE ILLEGAL DRUGS PRESENTED IN COURT ARE THE SAME ILLEGAL DRUGS SEIZED FROM THE ACCUSED, FOR A STRICT ADHERENCE TO THE PROCEDURE IS REQUIRED WHEN EXTREMELY SMALL AMOUNTS OF ILLEGAL DRUGS ARE INVOLVED WHICH ARE HIGHLY SUSCEPTIBLE TO PLANTING AND TAMPERING; CASE AT BAR. — The prosecution failed to establish the chain of custody of the seized sachets of *shabu* from the time they were recovered from Sali up to the time they were presented in court. Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody x x x. To ensure an unbroken chain of custody x x x [is] Section 21 (1) of R.A. No. 9165 x x x. Supplementing the x x x provision x x x [is] Section 21 (a) of the IRR of R.A. No. 9165 x x x. On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause

contained in the IRR x x x. In the present case, the physical inventory and photograph, as evidenced by the Certificate of Inventory, were done at the PDEA, Regional Office 9, Upper Calarian, Zamboanga City, and not where the buy-bust operation was conducted. Although these processes may be excused in cases where the safety and security of the apprehending officers, witnesses required by law and item seized are threatened by immediate danger, the present case is not one of those. The allegation that the physical inventory and photograph were not done in the crime scene because of security reason will not suffice. The prosecution failed to expound what security threats the law enforcement agents were facing at the time of the buy-bust operation. x x x Moreover, it is apparent from the Certificate of Inventory that it was signed by the representatives from the media and the Department of Justice, and by an elected public official, but there is no signature of Sali or his representative. No evidence was proffered to indicate that the inventory was conducted in the presence of Sali or his duly authorized representative. The photographs submitted as evidence could not conclusively determine whether Sali was present during the inventory. Hence, the prosecution failed to prove valid causes for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. Worse, there is no showing that earnest efforts were done to secure the attendance of Sali's representative. The witnesses' testimonies in open court and in the Joint-Affidavit miserably failed to mention the causes for non- compliance with Section 21. x x x The non-observance of the procedure mandated by Section 21 of R.A. No. 9165, as amended, casts serious doubt if the illegal drugs presented in court are the same illegal drugs seized from Sali. It is worthy to note the quantities of the illegal drugs seized which are only 0.0241 gram and 0.0155 gram. They are extremely small amounts which are highly susceptible to planting and tampering. This is the very reason why strict adherence to Section 21 is a must. There being no justifiable reason in this case for non-compliance by the law enforcement agents with Section 21 of R.A. No. 9165, this Court finds it necessary to acquit Sali for the prosecution's failure to prove his guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PERALTA, *C.J.*:

On appeal is the November 21, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 01335-MIN which affirmed the March 31, 2014 Decision[2] of the Regional Trial Court *(RTC)*, 9th Judicial Region, Branch 13, Zamboanga City in Criminal Case Nos. 24967 and 24968, finding accused- appellant Mustafa Sali *y* Alawaddin *a.k.a*. "Tapang/Pang" guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act *(R.A.)* No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information dated July 5, 2010, Sali was charged with violation of Section 5, Article II of R.A. No. 9165, committed as follows:

That on or about June 21, 2010, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there wil[l]fully, unlawfully and feloniously, SELL and DELIVER to IO1 Michael C. Lanza, a member of [the] Philippine Drug Enforcement Agency (PDEA) 9, who acted as poseur-buyer, one (1) small heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0241 gram, which when subjected to qualitative examination gave positive result to the test for Methamphetamine Hydrochloride (SHABU), knowing the same to be a dangerous drug.

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[1] *Rollo,* pp. 3-11; penned by Associate Justice Oscar V. Badelles, and concurred in by Associate Justices Romulo V. Borja and Ruben Reynaldo G. Roxas.

[2] CA *rollo,* pp. 99-106.

CONTRARY TO LAW.[3]

Another Information was filed on the same date before the RTC against Sali for violation of Section 11, Article II of R.A. No. 9165, committed as follows:

That on or about June 21, 2010, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there wil[l]fully, unlawfully and feloniously have in his possession and under his custody and control one (1) small heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0155 gram, which when subjected to qualitative examination gave positive result to the test for Methamphetamine Hydrochloride (SHABU), knowing the same to be a dangerous drug.

CONTRARY TO LAW.[4]

In his arraignment, Sali pleaded not guilty[5] to both charges. He was detained at the Zamboanga City Jail during the trial of the case.

The prosecution presented three (3) witnesses, namely: Intelligence Officer 1 (*IO1*) Michael C. Lanza, IO1 Bracio B. Natividad and IO1 Joel Sacro. The defense, for its part, presented the accused and a certain Sandra Ahil.[6]

Version of the Prosecution

On June 21, 2010, at around 10:00 a.m., a confidential informant (*CI*) reported to Intelligence Officer 3 *(IO3)* Abdulsokor S. Abdulgani of the Philippine Drug Enforcement Agency (*PDEA*) that a certain "Tapang" is engaged in selling drugs in Campo Islam, Zamboanga City. The report was relayed to Senior Police Officer 1 Faigdar A. Jaafar who directed IO3 Abdulgani to form a buy-bust team. During the planning of the operation,

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[3] Records (Criminal Case No. 24967), p. 1.

[4] Records (Criminal Case No. 24968), p. 1.

[5] Records (Criminal Case No. 24967), pp. 28-29.

[6] CA *rollo,* p. 100.

IO1 Lanza was assigned as the poseur-buyer, to be accompanied by the CI, and IO1 Natividad was tasked to serve as back-up. A marked money of two hundred pesos (₱200.00) was given to IO1 Lanza by IO3 Abdulgani to serve as the buy-bust money. Further, IO1 Lanza was instructed that after the consummation of the sale, he would remove his bull cap as a pre-arranged signal to execute the arrest.[7]

At about 1:00 p.m. of the same date, after coordination with the Zamboanga City Police, the buy-bust team proceeded to Campo Islam, Zamboanga City. Upon arrival, IO1 Lanza, together with the CI, walked towards the *sari-sari* store of Sali. At the *sari-sari* store, the CI called out for "Pang" and Sali peeked out of the window. The CI introduced IO1 Lanza to Sali as a buyer and when Sali asked how much, IO1 Lanza responded "200." Sali then drew from his left pocket a coin purse and pulled from it one (1) small sachet containing white crystalline substance and gave it to IO1 Lanza. In return, IO1 Lanza verified if it was indeed *shabu* then gave the two hundred pesos (₱200.00) to Sali. Immediately after the sale was done, IO1 Lanza removed his bull cap, and IO1 Natividad rushed to the scene and arrested Sali. IO1 Lanza introduced themselves as PDEA agents and told Sali that he was under arrest for violation of R.A. No. 9165. Sali was apprised of his constitutional rights in Tagalog. The one (1) small sachet containing white crystalline substance that was subject of the sale was marked as "MCL" and the same was turned over to IO1 Sacro, the investigator.[8] IO1 Sacro marked the said one (1) small sachet with "JPS," his initials, and "06/21/10."[9]

In the meantime, IO1 Natividad, as a matter of procedure, frisked Sali and found another sachet of suspected *shabu,* a coin purse, the marked money, and other paper bills. IO1 Natividad proceeded to mark the suspected *shabu* with his initials "BBN"

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[7] *Rollo,* p. 4.

[8] CA *rollo,* p. 100.

[9] *Rollo,* p. 4.

and turned it over to IO1 Sacro who marked the same with "JPS" "06/21/10." IO1 Sacro was in possession of the contraband until Sali was brought to the police station where IO1 Sacro conducted the inventory of the confiscated items. After the inventory, IO1 Sacro prepared the letter-request for the examination of the suspected drugs which were received by one Police Officer 3 Paner of the Philippine National Police Crime Laboratory, Zamboanga City. The qualitative examinations of the sachet marked as "MCL" "JPS" "06/21/10," weighing 0.0241 gram, and the sachet marked as "BBN" "JPS" "06/21/10," weighing 0.0155 gram, were conducted by Police Senior Inspector Mark Christian N. Maceda.[10] Both sachets were found positive for the presence of Methamphetamine Hydrochloride or *shabu* as shown in Chemistry Report No. D-031-2010.[11] Meanwhile, the urine sample of Sali yielded a positive result for the presence of Methamphetamine Hydrochloride or *shabu* as reflected in Chemistry Report No. CDT-040-2010.[12]

Version of the Defense

Between 12:00 and 1:00 p.m. of June 21, 2010, Sali was at his parents' house in Campo Islam, Zamboanga City, helping with the thanksgiving celebration for his one-year old son, Arjamar. He was with his family, together with his sisters Kah Manis and Kah Sandra. While thereat, he heard his son crying in the bedroom, prompting him to check the room; looking outside, he heard the voices of two (2) male persons in civilian attire, armed with pistols, looking for Mustafa. He went out of the room and was asked by the same persons if he was Mustafa, he answered positively. Immediately thereafter, he was pulled by the said persons outside the house. He was ordered by the same persons to go with them for some questions. Initially, he resisted but he was restrained by handcuffs. He asked for the persons' identities but was only told to go with them or else he

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

[11] Records (Criminal Case No. 24967), p. 12.

[12] *Id.* at 5.

would be hurt. At this point, Sali was very scared and he cried as he also saw his mother crying with the rest of his family seated. Sali was then subjected to a body search but nothing was found. Subsequently, he observed that around eight men were already waiting outside and went to search the house but the search went futile.[13]

Eventually, Sali was brought inside a vehicle and to the police station. He was made to sit down and was told that he was seen with a companion who was always going to Recondo to buy *shabu* but he denied such fact and said that he did not know any of it. Furthermore, Sali was told that he should help the police authorities and if he failed to do so, he would be put in jail. The investigation continued and Sali was subsequently asked to produce fifty thousand pesos (₱50,000.00) for his release. The police officers told Sali to ask his family for the said amount, prompting him to ask his sister Kah Manis but to no avail. Since he cannot produce the said amount, he remained injail.[14]

RTC Ruling

After trial, the RTC handed a guilty verdict on Sali for illegal possession and sale of *shabu*. The dispositive portion of the March 31, 2014 Decision states:

> WHEREFORE, in the light of all the foregoing, [this] Court finds accused MUSTAFA SALI y ALAWADDIN a.k.a. "TAPANG/PANG":
>
> 1. In Criminal Case No. 24967 GUILTY beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) without subsidiary imprisonment in case of insolvency;
>
> 2. In Criminal Case No. 24968 GUILTY beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of TWELVE

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[13] *Rollo,* p. 6.

[14] *Id.*

> YEARS (12) AND ONE (1) DAY TO TWENTY (20) YEARS OF IMPRISONMENT and a fine of THREE HUNDRED THOUSAND PESOS (₱300,000.00) without subsidiary imprisonment in case of insolvency[.]

The methamphetamine hydrochloride (shabu) subject of these cases are ordered turned over to the proper government agency for disposition.

SO ORDERED.[15]

CA Ruling

On appeal, the CA affirmed the RTC Decision. The CA agreed with the findings of the trial court that the prosecution effectively established that the chain of custody of the seized dangerous drugs — from the seizure, marking, submission to the laboratory for testing, and presentation in court — was not compromised. Likewise, all the elements in the prosecution for illegal possession of dangerous drugs were established by the prosecution beyond reasonable doubt. The fact that the contraband was found in Sali's physical possession shows that he freely and consciously possessed the dangerous drugs. The CA was not convinced by Sali's assertion that the markings on the confiscated sachets were insufficient as mere initials, without the signature and name of the suspect and a date, did not make the same unique and distinct. For the appellate court, it agreed with the Office of the Solicitor General that it is not required for the apprehending officer to put his initials and signature on the seized items and any distinguishing mark suffices to set apart as evidence the dangerous drugs or other related items seized from the accused. Lastly, the CA was in the position that even if the police officers did not strictly comply with the requirements of Section 21, Article II of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165, the non-compliance did not affect the evidentiary weight of the drugs seized from Sali and the chain of custody of evidence in the present case is shown to be unbroken.

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[15] Records (Criminal Case No. 24967), p. 113.

Before us, the People and Sali manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Essentially, Sali maintains his position that there is no moral certainty on the *corpus delicti*, lapses in the strict compliance with the requirements of Section 21 of R.A. No. 9165 must be explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.

Our Ruling

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and Sali should be acquitted based on reasonable doubt.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

> (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[16] (Citation omitted)

In the illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.[17] In *People v. Gatlabayan*,[18] "the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect."[19] Thus, the chain

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[16] *People v. Ismael,* 806 Phil. 21, 29 (2017).

[17] *Id.*

[18] 669 Phil. 240, 252 (2011).

[19] *People v. Mirondo,* 771 Phil. 345, 356-357 (2015).

of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[20]

The prosecution failed to establish the chain of custody of the seized sachets of *shabu* from the time they were recovered from Sali up to the time they were presented in court. Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[21] which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Supplementing the above-quoted provision, 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,

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[20] See *People v. Ismael, supra* note 16, at 29.

[21] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall, be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In the present case, the physical inventory and photograph, as evidenced by the Certificate of inventory,[22] were done at

[22] Records, p. 15.

the PDEA, Regional Office 9, Upper Calarian, Zamboanga City, and not where the buy-bust operation was conducted. Although these processes may be excused in cases where the safety and security of the apprehending officers, witnesses required by law and item seized are threatened by immediate danger, the present case is not one of those. The allegation that the physical inventory and photograph were not done in the crime scene because of security reason will not suffice. The prosecution failed to expound what security threats the law enforcement agents were facing at the time of the buy-bust operation.

In the Joint-Affidavit of Arrest of IO1 Lanza and IO2 Natividad, it was mentioned that it was only after Sali was brought to their office, which is at the PDEA, Regional Office 9, when the proper documentation happened and not immediately upon seizure and arrest. There is also no justification contained in the Joint-Affidavit of Arrest of why the physical inventory and photograph were done away from the crime scene. It is hard to imagine that the apprehending officers were able to mark the items seized at the crime scene but were not able to photograph the same.

Moreover, it is apparent from the Certificate of Inventory that it was signed by the representatives from the media and the Department of Justice, and by an elected public official, but there is no signature of Sali or his representative. No evidence was proffered to indicate that the inventory was conducted in the presence of Sali or his duly authorized representative. The photographs submitted as evidence could not conclusively determine whether Sali was present during the inventory.

Hence, the prosecution failed to prove valid causes for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. Worse, there is no showing that earnest efforts were done to secure the attendance of Sali's representative. The witnesses' testimonies in open court and in the Joint-Affidavit miserably failed to mention the causes for non-compliance with Section 21.

The Court stressed in *People of the Philippines v. Vicente Sipin y De Castro*:[23]

> The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

The non-observance of the procedure mandated by Section 21 of R.A. No. 9165, as amended, casts serious doubt if the illegal drugs presented in court are the same illegal drugs seized from Sali. It is worthy to note the quantities of the illegal drugs seized which are only 0.0241 gram and 0.0155 gram. They are extremely small amounts which are highly susceptible to planting and tampering. This is the very reason why strict adherence to Section 21 is a must.

There being no justifiable reason in this case for non-compliance by the law enforcement agents with Section 21 of R.A. No. 9165, this Court finds it necessary to acquit Sali for the prosecution's failure to prove his guilt beyond reasonable doubt.

WHEREFORE, premises considered, the November 21, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01335-MIN which affirmed the March 31, 2014 Decision of the Regional Trial Court, 9th Judicial Region, Branch 13,

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[23] G.R. No. 224290, June 11, 2018 (citations omitted).

Zamboanga City in Criminal Case Nos. 24967 and 24968, finding accused-appellant Mustafa Sali *y* Alawaddin *a.k.a.* "Tapang/ Pang" guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*,is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Mustafa Sali *y* Alawaddin is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Penal Superintendent of the San Ramon Prison and Penal Farm, for immediate implementation. Said Penal Superintendent is ordered to report to this Court within five (5) working days from receipt of this Resolution the action he has taken.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 239772. January 29, 2020]

FILIPINAS PIMENTEL *y* QUILLAO, *accused-appellant, vs.* **PEOPLE OF THE PHILIPPINES**, *plaintiff-appellee*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PROSECUTION HAS THE BURDEN

OF PROVING THE ACCUSED'S GUILT BEYOND REASONABLE DOUBT, AS CONVICTION RESULTS FROM THE STRENGTH OF THE PROSECUTION'S EVIDENCE AND NOT FROM THE WEAKNESS OF THE ACCUSED'S DEFENSE; REQUIREMENT OF PROOF BEYOND REASONABLE DOUBT FOR THE CONVICTION OF AN ACCUSED, EXPLAINED. — Rule 133, Section 2 of the Revised Rules on Evidence requires proof beyond reasonable doubt for the conviction of an accused x x x. In *People v. Ganguso*, this Court explained that the requirement of proof beyond reasonable doubt in a criminal case is anchored on the constitutional guarantees of due process and of an accused's right to be presumed innocent. It held: An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged. Thus, the prosecution is saddled with the burden of proving the accused's guilt beyond reasonable doubt. Conviction results from the strength of the prosecution's evidence and not from the weakness of the accused's defense.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (REPUBLIC ACT NO. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE PROSECUTION MUST SATISFY THE COURT THAT THE DRUG CONFISCATED FROM THE ACCUSED IS THE SAME DRUG PRESENTED IN COURT AS EVIDENCE, WHICH CAN BE ESTABLISHED BY MAINTAINING AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED ILLEGAL DRUG. — The illegal sale of dangerous

drugs is punished under Section 5 of Republic Act No. 9165. Its elements are the following: "(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." On the other hand, the elements for illegal possession of dangerous drugs, as penalized in Section 11 of Republic Act No. 9165, are: "(1) the accused was in possession of an item or object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug." In both the illegal sale and illegal possession of dangerous drugs, the *corpus delicti* is the seized drug itself. The prosecution must satisfy the court that the drug confiscated from the accused is the same drug presented in court as evidence. It can establish this by maintaining an unbroken chain of custody of the seized illegal drug.

3. ID.; ID.; SECTION 21(1), THEREOF; TO SAFEGUARD THE INTEGRITY OF THE CONFISCATED ITEMS USED AS EVIDENCE, THE SEIZED ITEMS MUST BE INVENTORIED AND PHOTOGRAPHED IMMEDIATELY AFTER SEIZURE OR CONFISCATION, IN THE PRESENCE OF THE ACCUSED OR HIS/HER REPRESENTATIVE OR COUNSEL, AN ELECTED PUBLIC OFFICIAL, A REPRESENTATIVE FROM THE MEDIA, AND A REPRESENTATIVE FROM THE DEPARTMENT OF JUSTICE (DOJ). — Section 21(1) of Republic Act No. 9165, as amended by Republic Act No. 10640, lays the specific requirements for the custody and disposition of seized illegal drugs x x x. Based on Section 21(1), the procedure to safeguard the integrity of the confiscated items used as evidence can be summarized as follows: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused of his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

4. ID.; ID.; ID.; ID.; COMPLIANCE WITH THE CHAIN OF CUSTODY REQUIREMENTS ENSURES THE INTEGRITY OF THE SEIZED ILLICIT DRUG, AND FORECLOSES OPPORTUNITIES FOR PLANTING, CONTAMINATING, OR

TAMPERING OF EVIDENCE IN ANY MANNER; NONCOMPLIANCE WITH THE CHAIN OF CUSTODY REQUIREMENTS RESULTS IN A CONCOMITANT FAILURE ON THE PART OF THE PROSECUTION TO ESTABLISH THE IDENTITY OF THE *CORPUS DELICTI*, LEADING TO THE PROSECUTION'S FAILURE TO PROVE THE ACCUSED'S GUILT BEYOND REASONABLE DOUBT. — Compliance with the chain of custody requirements ensures the integrity of the seized illicit drug in four (4) respects: [F]irst, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Conversely, noncompliance results in "a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*[,]" leading to the prosecution's failure to prove the accused's guilt beyond reasonable doubt. In *People v. Lorenzo*, this Court emphasized that moral certainty is not only required in proving the elements of illegal sale and dangerous drugs, but also in proving the identity of the seized drug.

5. ID.; ID.; ID.; ID.; NONCOMPLIANCE WITH THE CHAIN OF CUSTODY 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. — [W]hile strict compliance with Section 21 is the expected standard, the law recognizes that this may not be possible at all times. Thus, Section 21(1) of Republic Act No. 10640 provides a saving clause: "[T]hat 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."

6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF ACCUSED; RIGHT TO REMAIN SILENT AND

RIGHT AGAINST SELF-INCRIMINATION; THE RIGHT TO REMAIN SILENT IS NOT LIMITED TO PROTECTING THE ACCUSED FROM UNCOUNSELED STATEMENTS MADE WHILE IN CUSTODY, BUT ALSO INCLUDES HIS OR HER POSITIVE ACTS, SUCH AS SIGNING AN INVENTORY, AS BOTH THE STATEMENTS AND ACTS OF THE ACCUSED MAY BE USED AGAINST HIM OR HER LATER ON IN A CRIMINAL PROCEEDING; FAILURE TO COMPLY WITH THE STATUTORY REQUIREMENTS MAY BE EXCUSED IF THE PROSECUTION CAN SHOW THAT THE ACCUSED WAS NOT ONLY INFORMED OF HIS OR HER MIRANDA RIGHTS, BUT THAT HE OR SHE AVAILED OF SUCH RIGHTS. — The statutory requirements that accused-appellant in this case claims the arresting officers failed to account for—photographing her during the physical inventory and requiring her signature in the Certificate of Inventory—must be balanced with every accused's right to remain silent and right against self-incrimination. These rights are enshrined in Article III, Section 12(1) and 17 of the Constitution's Bill of Rights: SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. … SECTION 17. No person shall be compelled to be a witness against himself. The right to remain silent is not limited to protecting the accused from uncounseled statements made while in custody, but also includes his or her positive acts, such as signing an inventory. After all, both the accused's statements and acts may be used against him or her later on in a criminal proceeding. As such, the failure to comply with the mentioned statutory requirements may be excused if the prosecution can show that the accused was not only informed of his or her Miranda rights, but that he or she availed of such rights.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (REPUBLIC ACT NO. 9165); SECTION 21 (1), THEREOF; IN PLANNED BUY-BUST OPERATIONS, THE PRESENCE OF THE THIRD-PARTY WITNESSES MUST BE SECURED NOT ONLY DURING THE PHYSICAL INVENTORY

AND PHOTOGRAPHING OF THE SEIZED DRUGS, BUT MORE IMPORTANTLY AT THE TIME OF THE WARRANTLESS ARREST, AS THEIR PRESENCE AT THE TIME OF SEIZURE AND CONFISCATION GUARANTEES THE LEGITIMACY OF THE BUY-BUST OPERATION, BELIE ANY DOUBT AS TO THE SOURCE, IDENTITY, AND INTEGRITY OF THE SEIZED DRUGS, AND WOULD ALSO CONTROVERT THE USUAL DEFENSE OF FRAME-UP. — Here, accused-appellant's defense is of frame-up, insisting that no buy-bust operation had taken place, as evidenced by her missing signature in the Certificate of Inventory and her absence in the photographs taken during the physical inventory. The prosecution, through PO1 Garcia's testimony, countered that accused-appellant not only refused to sign the Certificate of Inventory, but also "refused to have her picture taken and evaded whenever police officers tried to take a photo with her." It added that PO1 Garcia apprised accused-appellant of her constitutional right to remain silent. What the prosecution failed to do, however, was to show that accused-appellant had indeed chosen to avail of her constitutional rights when she refused to be photographed and sign the Certificate of Inventory. Had there been third-party witnesses present during the actual buy-bust operation, their testimonies could have easily cured this defect. However, here, the barangay official and media representative were only shown to have signed the Certificate of Inventory and did not witness the actual arrest and seizure. They were only called in to the place of inventory 20 minute after the purported buy-bust operation was over. In *People v. Tomawis*, this Court emphasized that in planned buy-bust operations, because the seized items must be physically inventoried and photographed immediately upon seizure, the third-party witnesses must be present as early as during the actual transaction. Their insulating presence serves the two-fold purpose of guaranteeing the legitimacy of the buy-bust operation and the integrity of the seized illicit drug: The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the

insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165. The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. x x x.

8. ID.; ID.; ID.; TRIAL COURTS MUST EMPLOY HEIGHTENED SCRUTINY, CONSISTENT WITH THE REQUIREMENTS OF PROOF BEYOND REASONABLE DOUBT, IN EVALUATING CASES INVOLVING MINUSCULE AMOUNTS OF DRUGS, AS THE SAME CAN READILY BE PLANTED AND TAMPERED. — Securing the third-party witnesses' presence in this case is all the more needed since the arresting officers confiscated five (5) sachets of *shabu* with a total weight of 0.198 gram. In *People v. Holgado*, this Court stressed the importance of proving strict compliance with Section 21, particularly if the dangerous drugs seized were only minuscule. It also enjoined trial courts to employ heightened scrutiny in dealing with them, as their nature makes them susceptible to evidence tampering and planting: Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirements of proof beyond reasonable doubt, in evaluating case involving minuscule amounts of drugs. These can readily be planted and tampered.

9. ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY 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; NONCOMPLIANCE WITH THE REQUIREMENTS OF R.A. NO. 9165 NEGATES THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE

OF OFFICIAL DUTIES. — The minuscule amount seized in this case, coupled with the absence of the required witnesses during the arrest, should have prompted the trial court to closely scrutinize the prosecution's evidence. It should not have allowed the arresting officers to seek refuge under the presumption of regularity in the performance of official duties, since noncompliance with Section 21 negates the presumption of regularity. In *People v. Kamad,* this Court explained: 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. 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.

10. ID.; ID.; ID.; ID.; A REASONABLE DOUBT ON THE IDENTITY OF THE ILLEGAL DRUGS SEIZED WARRANTS THE ACQUITTAL OF THE ACCUSED-APPELLANT. — The prosecution failed to comply with the requirements of the Comprehensive Dangerous Drugs Act, and to provide justifiable grounds for such noncompliance. This creates reasonable doubt on the identity of the illegal drugs seized, ultimately warranting accused-appellant's acquittal.

11. REMEDIAL LAW; COURTS; TRIAL COURTS ARE CAUTIONED FROM DETERMINING QUESTIONS OF FACT BASED NOT ON THE PREVAILING REALITIES, BUT BASED ON THEIR HERMENEUTICALLY SEALED ASSUMPTIONS; IN RENDERING JUDGMENT, TRIAL COURTS MUST DELIBERATELY LOOK BEYOND THEIR PRIVILEGED ASSUMPTIONS TO RESOLVE THE ISSUES SET BEFORE THEM WITH PROBITY AND JUSTICE. — [T]his Court cautions trial courts from determining questions of fact based not on the prevailing realities, but based on their hermeneutically

sealed assumptions. In its ruling, the trial court here discredited accused-appellant's defense of frame-up, claiming that it was physically impossible for another person to enter a tricycle when two (2) people were already inside it, or for another person to stand on the sidecar's platform. The trial court is grossly mistaken. In *Dumayag v. People*, the accused was charged with reckless imprudence after the tricycle with eight (8) passengers he had been driving collided with a passenger bus. There, the tricycle was already considered overloaded with eight (8) passengers. Yet, this Court takes judicial notice that tricycles are widely known to carry much more than eight (8) passengers, especially in areas where transportation is scarce and people have to be creative in bending the laws of physics and set aside personal safety just to get to where they need to be. Trial courts should always be mindful of their implicit status in society and the privilege this affords them. With such privilege as their norm, they might unconsciously adopt a standpoint so far removed from the realities of the cases brought before them. Hence, in rendering judgment, trial courts must deliberately look beyond their privileged assumptions to resolve the issues set before them with probity and justice.

APPEARANCES OF COUNSEL

Raymundo P. Sanglay for accused-appellant.
Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

LEONEN, *J.*:

Courts should meticulously consider the factual intricacies of each buy-bust case covered by the Comprehensive Dangerous Drugs Act. This is especially so when only a minuscule amount of illicit drugs was seized from the accused. The absence of the required third-party witnesses during the actual arrest and seizure creates a gap in the chain of custody, producing doubt on the legitimacy of the buy-bust operation and the identity of the seized illicit drug.

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the Regional Trial Court's conviction of Filipinas Pimentel *y* Quillao (Pimentel) for the crimes of illegal sale and illegal possession of dangerous drugs.

On November 6, 2014, Pimentel was charged in two (2) separate Informations for violating Sections 5 and 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act.[4] The accusatory portions of the Informations against her read:

Criminal Case No. 10744:

"That on or about the 20th day of October, 2014, in the City of San Juan, La Union, Philippines and within the jurisdiction of the Honorable Court, the above[-]named accused, without first securing the necessary permit, license or authority from the proper government agency, did then and there, willfully, unlawfully and feloniously, deliver and sell one (1) heat-sealed transparent plastic sachet containing zero point zero forty-five (0.045) gram to PO1 Yvonne Garcia who posed as poseur buyer, and in consideration of said shabu used genuine five hundred (₱500.00) Philippine Currency bill[.]

Contrary to law."

Criminal Case No. 10745:

"That on or about the 20th day of October, 2014, in the City of San Fernando, La Union, Philippines and within the jurisdiction of this Honorable Court, the above[-]named accused, without first securing the necessary permit, license or authority from the proper

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[1] *Rollo*, pp. 11-53. Filed under Rule 45 of the Revised Rules of Court.

[2] *Id.* at 55-79. The January 23, 2018 Decision in CA-G.R. CR-HC No. 09194 was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Ma. Luisa C. Quijano-Padilla of the Sixth Division, Court of Appeals, Manila.

[3] *Id.* at 81-83. The April 26, 2018 Resolution was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Amy C. Lazaro-Javier and Ma. Luisa C. Quijano-Padilla of the Former Sixth Division, Court of Appeals, Manila.

[4] *Id.* at 56.

government agency, did then and there, willfully, unlawfully and feloniously, have in her possession, control, and custody, four (4) heat[-]sealed plastic sachets containing methamphetamine hydrochloride, a dangerous drug, with a total weight of zero point one hundred fifty three (0.153) gram.

Contrary to law."[5] (Citation omitted)

Pimentel pleaded not guilty to both charges. Upon her motion, the criminal cases were consolidated. Trial on the merits soon followed.[6]

The prosecution presented Police Officer 3 Gilbert Andulay (PO3 Andulay), Police Officer 1 Yvonne Garcia (PO1 Garcia), and Police Senior Inspector Maria Theresa Amor Manuel (PSI Manuel) as its witnesses.[7] The prosecution dispensed with the testimonies of Sheryll Nisperos and Alma Onido after the parties had stipulated that the two (2) women signed the Certificate of Inventory at the site of arrest.[8]

The prosecution alleged that at around 6:50 p.m. on October 20, 2014, a confidential informant went to the San Fernando City Police Station in La Union to report a certain Filipinas, also known as "Inas," who was selling illicit drugs. The police officers verified the information in the Order of Battle and found that Inas was included in the Philippine Drug Enforcement Agency's watch list of illegal drug personalities.[9]

Consequently, the police officers organized a buy-bust operation. PO1 Garcia was assigned as the poseur-buyer, while PO3 Andulay acted as her immediate back-up and the rest of the team as perimeter security. PO1 Garcia received a ₱500.00 bill with serial number UK211439 as buy-bust money, which she marked with her initials, YCG. The police officers also

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

[6] *Id.* at 57.

[7] *Id.* at 57-62.

[8] *Id.* at 62.

[9] *Id.* at 58.

decided that PO1 Garcia would ring PO3 Andulay's cellphone to signal that the transaction had pushed through.[10]

Per PO1 Garcia's instruction, the confidential informant called Inas to arrange a meeting at around 7:20 p.m. that day at a waiting shed in Monumento, Barangay Madayegdeg in San Fernando City.[11]

By 7:30 p.m., the buy-bust team and the informant went to the target site. PO1 Garcia and the informant stood inside the waiting shed while the others positioned themselves strategically around the site.[12]

After a few minutes, a woman approached the informant and PO1 Garcia and introduced herself as "Tita Inas." This woman would later be identified as Pimentel. Upon PO1 Garcia's request, Pimentel showed her one (1) transparent heat-sealed plastic sachet containing white crystalline substance. PO1 Garcia then handed over the buy-bust money to Pimentel and, upon the sale, rang PO3 Andulay. At this, the team rushed to the waiting shed and helped PO1 Garcia arrest Pimentel.[13]

After apprising Pimentel of her constitutional rights, PO1 Garcia frisked her, and recovered four (4) more heat-sealed transparent plastic sachets with white crystalline substance. She also recovered the buy-bust money and a cellphone from Pimentel's left pocket.[14]

About 20 minutes[15] after arresting Pimentel, barangay officials and a member of the media came to the target site to witness PO1 Garcia mark and inventory the seized items. They also later signed the Certificate of Inventory. Photographs of the marking and inventory were also taken. Afterward, the police

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[10] *Id.*

[11] *Id.*

[12] *Id.* at 58-59.

[13] *Id.* at 59.

[14] *Id.*

[15] *Id.* at 61.

officers brought Pimentel to the police station and later to the City Health Office.[16]

PO1 Garcia claimed that Pimentel was not in any of the photographs because she refused to have her picture taken. She further claimed that Pimentel also refused to sign the Certificate of Inventory.[17]

The seized items were brought together with a Request for Laboratory Examination to the Philippine National Police Regional Crime Laboratory Office. There, they were turned over to one Police Officer 2 Langit, who then handed them to the forensic chemist, Police Senior Inspector Manuel. Upon examination, the seized items tested positive for methamphetamine hydrochloride.[18]

For its part, the defense presented Pimentel and Genalyn Ordoño (Ordoño) as its witnesses.

Pimentel testified that at around 4:00 p.m. on October 20, 2014, she and one Mika were on board a tricycle, passing by Catbangen Elementary School, when three (3) armed persons in civilian clothes blocked their path and boarded the tricycle, bringing them to the Canaoay Police Sub-station.[19]

The strangers turned out to be police officers. They forced Pimentel and Mika into the police station, where they frisked the women and searched their bags. About 30 minutes later, one (1) of the officers told Pimentel that they found things in the tricycle that they claimed belonged to her.[20]

A few hours later, aboard a white car with four (4) police officers, Pimentel was brought somewhere near her house in Barangay Catbangen. Three (3) police officers got off the car and went into the alley where Pimentel's house was. Moments

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[16] *Id.* at 59.

[17] *Id.* at 61.

[18] *Id.* at 59-60.

[19] *Id.* at 63.

[20] *Id.*

later, they came back to the car with a certain Bobot. They instructed him to call one Vilma Ducusin (Ducusin).[21]

After a few minutes, Ducusin arrived and boarded the vehicle, while Bobot got down and walked away. Pimentel and Ducusin were brought back to the Canaoay Police Sub-station, where Pimentel was placed inside a cell while Ducusin was frisked.[22]

The police officers later brought Pimentel to the waiting shed in Monumento and directed her to sit and wait.[23] While in the shed, one (1) of the officers supposedly told her that had it not been for their superiors, Pimentel would have been set free because they had nothing on her.[24]

Pimentel later saw some barangay officials and a member of the media arrive. She heard them talking with the police about an inventory. One (1) of the police officers then approached her and asked her for the buy-bust money. Pimentel was then brought to the police station in Tanqui, San Fernando City.[25]

Ordoño, the second defense witness and Pimentel's daughter-in-law, testified that on October 20, 2014, she was sitting outside Pimentel's house when two (2) strangers came and asked her where Pimentel's house was. However, before Ordoño could respond, they made their way inside the house, with three (3) other persons behind them. Among these people was PO1 Garcia, whom Ordoño knew as she would sell shells to the officer. Ordoño, Pimentel's son, and his partner were barred from getting in.[26]

Ordoño rushed to the highway to wait for her husband, and when he arrived, they both went to the Lighthouse Baptist Church

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

[22] *Id.* at 64.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

near Pimentel's house. There, Ordoño saw a white car and when someone opened its door, she saw Pimentel seated inside.[27]

On December 7, 2016, the Regional Trial Court found Pimentel guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs.[28]

The Regional Trial Court held that the prosecution was able to account for all the links in the chain of custody. It gave credence to PO3 Garcia's testimony that Pimentel actually witnessed the marking and inventory, despite her not being in any of the photos presented as evidence and her signature not appearing on the Certificate of Inventory.[29]

The trial court also brushed aside Pimentel's defense of frame-up, pointing out flaws in her story. It noted, among others, that no other person could have boarded the tricycle with Pimentel and another passenger already inside. It also claimed that it was impossible for another person to stand on the outside platform of the sidecar.[30] Similarly, it also found inconsistencies in Ordoño's testimony, which raised doubts on her credibility.[31]

The dispositive portion of the Regional Trial Court Decision read:

> WHEREFORE, in light of the foregoing, judgment is hereby rendered finding the accused FILIPINAS PIMENTEL y QUILLAO:
>
> (1) GUILTY beyond reasonable doubt in Criminal Case No. 10744 for Violation of Section 5 Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00); and
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> (2) GUILTY beyond reasonable doubt in Criminal Case No. 10745 for Violation of Section 11 Article II of Republic Act No. 9165 and is

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[27] *Id.*

[28] *Id.* at 55.

[29] *Id.* at 66.

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

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

sentenced to suffer the indeterminate penalty of imprisonment for a period of Twelve (12) Years and One Day to Fourteen (14) Years and Eight (8) Months and to pay a Fine in the amount of Three Hundred Thousand Pesos (₱300,000.00).

The subject items are declared forfeited in favor of the government and to be disposed of in accordance with R.A. No. 9165 and related rules and regulations.

SO ORDERED.[32] (Citation omitted)

Pimentel moved for reconsideration, but the Regional Trial Court denied her motion.[33] Hence, she appealed before the Court of Appeals.[34]

On January 23, 2018, the Court of Appeals, in its January 23, 2018 Decision,[35] upheld Pimentel's conviction.

The Court of Appeals dismissed Pimentel's claim that her absence in the photos resulted in the arresting officers' failure to comply with Section 21 of Republic Act No. 9165. It emphasized that what Section 21 required was the photographing of seized items in the accused's presence and not the photographing of the accused during inventory.[36]

The Court of Appeals likewise ruled that the apprehending officers' failure to indicate the buy-bust money's serial number in the Certificate of Inventory was not fatal to the prosecution's case, as the integrity of the seized items was duly preserved.[37]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, the appeal is **DISMISSED**. The Decision dated December 7, 2016 by the Regional Trial Court, Branch 26, of San

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[32] *Id.* at 55-56.

[33] *Id.* at 69.

[34] *Id.* at 55.

[35] *Id.* at 55-79.

[36] *Id.* at 75-76.

[37] *Id.* at 77.

Fernando City, La Union in Criminal Case Nos. 10744 and 10745 is hereby **AFFIRMED**.

SO ORDERED.[38] (Emphasis in the original)

Pimentel filed a Motion for Reconsideration,[39] which the Court of Appeals denied in its April 26, 2018 Resolution.[40]

In her Petition for Review on *Certiorari*,[41] accused-appellant Pimentel questions whether the buy-bust operation actually happened, pointing out flaws in the prosecution's story. Contrary to its tale that the sale was made with the use of phone calls, Pimentel asserts that the cellphone she allegedly used had no SIM card when it was presented in court, which meant that she could not have used it.[42]

Accused-appellant also argues that PO1 Garcia's testimony that she transacted with the police officer in a place with no light, checked the sachet only by pricking the substance with her nails, and placed the seized items on the cement prior to marking and inventory was unbelievable as her acts were contrary to human behavior.[43]

Even if the conduct of the buy-bust operation were true, accused-appellant maintains that the arresting officers failed to comply with Section 21 of the Comprehensive Dangerous Drugs Act. She insists on her absence in the photographs and her signature not appearing in the Certificate of Inventory. She claims that there was no evidence that the barangay officials and media representative who witnessed the marking and inventory were given copies of the Certificate of Inventory.[44]

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[38] *Id.* at 78.

[39] *Id.* at 84-88.

[40] *Id.* at 81-83.

[41] *Id.* at 13-53.

[42] *Id.* at 22-24.

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

[44] *Id.* at 32.

She also asserts that the prosecution failed to account for how PO1 Garcia preserved the seized items for more than three (3) hours from their confiscation up to their submission to the laboratory, creating a large gap in the chain of custody.[45]

Accused-appellant likewise avers that the Court of Appeals erred in not allowing her to adduce the tricycle driver's testimony. She claims that it would have corroborated her testimony that she was brought to the Canaoay Police Sub-station as early as 4:00 p.m. of October 20, 2014, while also refuting PO1 Garcia's testimony that she was arrested in a buy-bust operation at around 7:30 p.m. that same day.[46]

Finally, accused-appellant claims that the admission of Ducusin's testimony, who was acquitted[47] of illegal sale and possession of dangerous drugs, would have corroborated her testimony that there was no buy-bust sale and that she was in the same car with Ducusin before she was brought to the Canaoay Police Station.[48]

On the other hand, in its Brief,[49] respondent People of the Philippines maintains that nothing was illogical with PO1 Garcia's testimony. It reasons that it was accused-appellant herself who wanted to meet in a dark place; besides, the waiting shed itself was not totally dark, enabling PO1 Garcia to see the sachet's contents. It was also not unusual for PO1 Garcia to place the seized items on the waiting shed floor, so as to prevent the seized sachets from commingling with the sachet Pimentel sold her.[50]

Respondent also highlights that in testifying that she was eight (8) meters from where the police marked and inventoried

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[45] *Id.* at 36.

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

[47] *Id.* at 102-112.

[48] *Id.* at 44-49.

[49] *Id.* at 149-188. The Office of the Solicitor General adopted (*rollo*, pp. 143-148) its Brief as its comment to the Petition before this Court.

[50] *Id.* at 162-165.

the seized items, accused-appellant contradicted her claim that she was absent during the marking and inventory.[51]

Finally, respondent emphasizes that the police officers were able to establish all the links constituting the chain of custody.[52]

The sole issue for this Court's resolution is whether or not the prosecution proved beyond reasonable doubt the guilt of accused-appellant Filipinas Pimentel *y* Quillao for the crimes of illegal sale and illegal possession of dangerous drugs.

The appeal must be granted.

Rule 133, Section 2 of the Revised Rules on Evidence requires proof beyond reasonable doubt for the conviction of an accused:

> SECTION 2. *Proof beyond reasonable doubt*. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

In *People v. Ganguso*,[53] this Court explained that the requirement of proof beyond reasonable doubt in a criminal case is anchored on the constitutional guarantees of due process[54] and of an accused's right to be presumed innocent.[55] It held:

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond

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

[52] *Id.* at 176.

[53] 320 Phil. 324 (1995) [Per *J.* Davide, Jr., First Division].

[54] CONST., Art. III, Sec. 1 provides:

> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[55] CONST., Art. III, Sec. 14 (2) provides:

> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against

reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[56] (Citations omitted)

Thus, the prosecution is saddled with the burden of proving the accused's guilt beyond reasonable doubt. Conviction results from the strength of the prosecution's evidence and not from the weakness of the accused's defense.[57]

The illegal sale of dangerous drugs is punished under Section 5[58] of Republic Act No. 9165. Its elements are the following: "(1) proof that the transaction or sale took place and

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him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[56] *People v. Ganguso*, 320 Phil. 324, 335 (1995) [Per *J.* Davide, Jr., First Division].

[57] *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per *J.* Leonen, Second Division].

[58] Republic Act No. 9165 (2002), Sec. 5 provides:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

(2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."[59]

On the other hand, the elements for illegal possession of dangerous drugs, as penalized in Section 11[60] of Republic Act No. 9165, are: "(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug."[61]

In both the illegal sale and illegal possession of dangerous drugs, the *corpus delicti* is the seized drug itself. The prosecution must satisfy the court that the drug confiscated from the accused is the same drug presented in court as evidence. It can establish this by maintaining an unbroken chain of custody of the seized illegal drug.

Section 21 (1) of Republic Act No. 9165, as amended by Republic Act No. 10640, lays the specific requirements for the custody and disposition of seized illegal drugs:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[59] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J.* Del Castillo, Second Division], citing *People v. Darisan, et al.*, 597 Phil. 479, 485 (2009) [Per *J.* Corona, First Division].

[60] Republic Act No. 9165 (2002), Sec. 11 provides:

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

[61] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J.* Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per *J.* Corona, First Division].

> (1) *The apprehending team*, having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment *shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof*: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.[62] (Emphasis supplied)

Based on Section 21 (1), the procedure to safeguard the integrity of the confiscated items used as evidence can be summarized as follows:

> (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.[63]

Compliance with the chain of custody requirements ensures the integrity of the seized illicit drug in four (4) respects:

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[62] Republic Act No. 9165 (2002), Sec. 21 (1) as amended by Republic Act No. 10640 (2013).

[63] *People v. Tanes*, G.R. No. 240596, April 3, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65152> [Per *J.* Caguioa, Second Division].

[F]irst, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.[64]

Conversely, noncompliance results in "a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*[,]"[65] leading to the prosecution's failure to prove the accused's guilt beyond reasonable doubt. In *People v. Lorenzo*,[66] this Court emphasized that moral certainty is not only required in proving the elements of illegal sale and dangerous drugs, but also in proving the identity of the seized drug.[67]

However, while strict compliance with Section 21 is the expected standard, the law recognizes that this may not be possible at all times. Thus, Section 21 (1) of Republic Act No. 10640 provides a saving clause: "[T]hat 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."

The statutory requirements that accused-appellant in this case claims the arresting officers failed to account for — photographing her during the physical inventory and requiring her signature in the Certificate of Inventory — must be balanced with every accused's right to remain silent and right against self-incrimination. These rights are enshrined in Article III, Sections 12 (1) and 17 of the Constitution's Bill of Rights:

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[64] *People v. Holgado*, 741 Phil. 78, 93 (2014) [Per J. Leonen, Third Division].

[65] *People v. Morales*, 630 Phil. 215, 229 (2010) [Per J. Del Castillo, Second Division].

[66] 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division].

[67] *Id.*

SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

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SECTION 17. No person shall be compelled to be a witness against himself.

The right to remain silent is not limited to protecting the accused from uncounseled statements made while in custody, but also includes his or her positive acts, such as signing an inventory. After all, both the accused's statements and acts may be used against him or her later on in a criminal proceeding.

As such, the failure to comply with the mentioned statutory requirements may be excused if the prosecution can show that the accused was not only informed of his or her Miranda rights, but that he or she availed of such rights.

Here, accused-appellant's defense is of frame-up, insisting that no buy-bust operation had taken place, as evidenced by her missing signature in the Certificate of Inventory and her absence in the photographs taken during the physical inventory.

The prosecution, through PO1 Garcia's testimony, countered that accused-appellant not only refused to sign the Certificate of Inventory, but also "refused to have her picture taken and evaded whenever police officers tried to take a photo with her."[68] It added that PO1 Garcia apprised accused-appellant of her constitutional right to remain silent.[69]

What the prosecution failed to do, however, was to show that accused-appellant had indeed chosen to avail of her constitutional rights when she refused to be photographed and sign the Certificate of Inventory.

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[68] *Rollo*, p. 61.

[69] *Id.* at 59.

Had there been third-party witnesses present during the actual buy-bust operation, their testimonies could have easily cured this defect. However, here, the barangay official and media representative were only shown to have signed the Certificate of Inventory[70] and did not witness the actual arrest and seizure. They were only called in to the place of inventory 20 minutes after the purported buy-bust operation was over.[71]

In *People v. Tomawis*,[72] this Court emphasized that in planned buy-bust operations, because the seized items must be physically inventoried and photographed immediately upon seizure, the third-party witnesses must be present as early as during the actual transaction. Their insulating presence serves the two-fold purpose of guaranteeing the legitimacy of the buy-bust operation and the integrity of the seized illicit drug:

> The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.
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> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

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[70] *Id.* at 62.

[71] *Id.* at 61.

[72] G.R. No. 228890, April 18, 2018, 862 SCRA 131 [Per *J.* Caguioa, Second Division].

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[73]

Securing the third-party witnesses' presence in this case is all the more needed since the arresting officers confiscated five (5) sachets of *shabu* with a total weight of 0.198 gram. In *People v. Holgado*,[74] this Court stressed the importance of proving strict compliance with Section 21, particularly if the dangerous drugs seized were only minuscule. It also enjoined trial courts to employ heightened scrutiny in dealing with them, as their nature makes them susceptible to evidence tampering and planting:

> Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirements of proof beyond reasonable doubt, in evaluating case involving minuscule amounts of drugs. These can readily be planted and tampered.[75]

The minuscule amount seized in this case, coupled with the absence of the required witnesses during the arrest, should have prompted the trial court to closely scrutinize the prosecution's evidence. It should not have allowed the arresting officers to seek refuge under the presumption of regularity in the performance of official duties, since noncompliance with Section 21 negates the presumption of regularity.

In *People v. Kamad*,[76] this Court explained:

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[73] *Id.* at 150.

[74] 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[75] *Id.* at 100.

[76] 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

> 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. 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.[77] (Citation omitted)

The prosecution failed to comply with the requirements of the Comprehensive Dangerous Drugs Act, and to provide justifiable grounds for such noncompliance. This creates reasonable doubt on the identity of the illegal drugs seized, ultimately warranting accused-appellant's acquittal.

Finally, this Court cautions trial courts from determining questions of fact based not on the prevailing realities, but based on their hermeneutically sealed assumptions.

In its ruling, the trial court here discredited accused-appellant's defense of frame-up, claiming that it was physically impossible for another person to enter a tricycle when two (2) people were already inside it, or for another person to stand on the sidecar's platform.[78]

The trial court is grossly mistaken.

In *Dumayag v. People*,[79] the accused was charged with reckless imprudence after the tricycle with eight (8) passengers he had been driving collided with a passenger bus. There, the tricycle was already considered overloaded with eight (8) passengers. Yet, this Court takes judicial notice that tricycles

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[77] *Id.* at 311.

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

[79] 699 Phil. 328 (2010) [Per J. Mendoza, Third Division].

are widely known to carry much more than eight (8) passengers, especially in areas where transportation is scarce and people have to be creative in bending the laws of physics and set aside personal safety just to get to where they need to be.

Trial courts should always be mindful of their implicit status in society and the privilege this affords them. With such privilege as their norm, they might unconsciously adopt a standpoint so far removed from the realities of the cases brought before them. Hence, in rendering judgment, trial courts must deliberately look beyond their privileged assumptions to resolve the issues set before them with probity and justice.

WHEREFORE, the January 23, 2018 Decision and April 26, 2018 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 09194 are **REVERSED** and **SET ASIDE**. Accused-appellant Filipinas Pimentel *y* Quillao is **ACQUITTED** of the charges against her. She is ordered immediately **RELEASED** from detention, unless she is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Correctional Institution for Women, Mandaluyong City for immediate implementation. The Superintendent is directed to report to this Court the action taken within five (5) days from receipt of this Decision.

The Regional Trial Court is directed to turn over the seized sachets of *shabu* to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 248395. January 29, 2020]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ROBERTO REY E. GABIOSA, SR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; ENSURES THE PROTECTION OF THE INDIVIDUAL FROM ARBITRARY SEARCHES AND ARRESTS INITIATED AND PERPETRATED BY THE STATE. — Article III, Section 2 of the 1987 Constitution — one of two provisions in the Bill of Rights preserving the citizens' right to privacy — protects every citizen's right against unreasonable searches and seizures. It preserves, in essence, the right of the people "to be let alone" *vis-à-vis* the far-reaching and encompassing powers of the State, with respect to their persons, houses, papers, and effects. It thus ensures protection of the individual from arbitrary searches and arrests initiated and perpetrated by the State. The rationale for the right, particularly of the right to be secure in one's home, was explained in the early case of *US. v. Arceo* x x x.

2. ID.; ID.; ID.; ID.; STATE-SANCTIONED INTRUSION IS, AS A GENERAL RULE, UNREASONABLE EXCEPT WHEN THE STATE OBTAINS A WARRANT FROM A JUDGE WHO ISSUES THE SAME ON THE BASIS OF PROBABLE CAUSE. — Despite the sanctity that the Constitution accords a person's abode, however, it still recognizes that there may be circumstances when State-sanctioned intrusion to someone's home may be justified, and as a consequence, also reasonable. This is also why the right only protects the individual against ***unreasonable*** searches or seizures — because while State-sanctioned intrusion is, as a general rule, unreasonable, the Constitution itself lays down the main exception on when it becomes reasonable: when the State obtains a warrant from a judge who issues the same on the basis of probable cause. Thus, the fundamental protection given by the search and seizure clause is that between person and police must stand the

protective authority of a magistrate clothed with power to issue or refuse to issue search warrants or warrants of arrest.

3. **ID.; ID.; ID.; ID.; SEARCH WARRANT; REQUISITES; THE INTRUSION ON A CITIZEN'S PRIVACY, WHETHER IT BE IN HIS OWN PERSON OR IN HIS HOUSE, MUST BE BASED ON PROBABLE CAUSE DETERMINED PERSONALLY BY THE JUDGE. —** [A] warrant that justifies the intrusion, to be valid, must satisfy the following requirements: (1) it must be issued upon "probable cause;" (2) probable cause must be determined personally by the judge; (3) such judge must examine under oath or affirmation the complainant and the witnesses he may produce; and (4) the warrant must particularly describe the place to be searched and the persons or things to be seized. At the heart of these requisites, however, is that the intrusion on a citizen's privacy — whether it be in his own person or in his house—must be based on probable cause determined personally by the judge. In other words, the magistrate authorizing the State-sanctioned intrusion must therefore himself or herself be personally satisfied that there is probable cause to disturb the person's privacy.

4. **ID.; ID.; ID.; ID.; ID.; THERE IS NO NEED TO EXAMINE BOTH THE APPLICANT AND THE WITNESS IF EITHER ONE OF THEM IS SUFFICIENT TO ESTABLISH PROBABLE CAUSE. —** [T]he CA, in invalidating the search warrant subject of this case, focused on a word used by the Constitution — "and" — and then ruled that it was the intent of the Constitution that ***both*** the applicant ***and*** the witnesses he or she may present must first be examined by the judge before any warrant may be issued. x x x [T]his conclusion of the CA is neither supported by jurisprudence, nor by the spirit which animates the right. As early as 1937, in the case of *Alvarez v. Court of First Instance of Tayabas*, the Court explained that ultimately, the purpose of the proceeding is for the judge to determine that probable cause exists. Thus, there is no need to examine both the applicant and the witness/es if either one of them is sufficient to establish probable cause. x x x If, despite the use of "and," the examination of the applicant or complainant would suffice as long as probable cause was established, then the Court does not see any reason why the converse — the judge examined the witness only and not the applicant — would not be valid as well. Again, the purpose of the examination is to satisfy the judge that probable

cause exists. Hence, it is immaterial in the grander scheme of things whether the judge examined the complainant only, or the witness only, and not both the complainant and the witness/es. The primordial consideration here is that the judge is convinced that there is probable cause to disturb the particular individual's privacy. Therefore, to the mind of the Court, the CA erred in placing undue importance on the Constitution's use of the word "and" instead of "or" or "and/or."

5. ID.; ID.; ID.; ID.; ID.; SINCE PROBABLE CAUSE IS DEPENDENT LARGELY ON THE FINDINGS OF THE JUDGE WHO CONDUCTED THE EXAMINATION AND WHO HAD THE OPPORTUNITY TO QUESTION THE APPLICANT AND HIS WITNESSES, THEN HIS FINDINGS DESERVE GREAT WEIGHT. — The conclusions of the CA x x x are unsupported and even contrary to what transpired based on the transcript of the examination which, in turn, was quoted by the CA in its Decision. In the examination, x x x it is clear that the judge asked questions to satisfy himself that PO1 Geverola was indeed testifying based on his own personal knowledge of the facts because he personally dealt with Gabiosa. PO1 Geverola's answer that someone else was watching Gabiosa was in response to the query regarding his certainty that Gabiosa was still in possession of the items. It did not affect, much less discredit, PO1 Geverola's testimony regarding his previous dealing with Gabiosa. The CA also took issue with the fact that Judge Balagot did not ask further questions on the location of Gabiosa's house. It is important to note, however, that there was a sketch attached to the application — as also noted by the CA — and PO1 Geverola testified in the examination that the sketch reflects the location of the house. He was even able to particularly describe the house as "a two-storey [house], concrete, and with gate colored red." Since probable cause is dependent largely on the findings of the judge who conducted the examination and who had the opportunity to question the applicant and his witnesses, then his findings deserve great weight. The reviewing court can overturn such findings only upon proof that the judge disregarded the facts before him or ignored the clear dictates of reason. x x x Given the foregoing, the CA thus erred in ascribing grave abuse of discretion on the part of the RTC in upholding the validity of the search warrant. Judge Balagot made sure that the witness had personal knowledge

of the facts by asking specifics, and asked how he obtained knowledge of the same and how he was sure that the facts continue to exist. The questions propounded by Judge Balagot, taken and viewed as a whole, were therefore probing and not merely superficial and perfunctory. It was thus reversible error on the part of the CA to have set aside the search warrant.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jasper Lumacad for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) filed by the People of the Philippines, through the Office of the Solicitor General (OSG), assailing the Decision[2] dated February 13, 2019 and Resolution[3] dated July 10, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 08536-MIN, both of which declared Search Warrant No. 149-2017 (search warrant) issued by Judge Arvin Sadiri B. Balagot (Judge Balagot) against Roberto Rey E. Gabiosa, Sr. (Gabiosa) null and void.

The Facts

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

On January 20, 2017, Police Superintendent Leo Tayabas Ajero (P/Supt Ajero), the Officer-in-Charge of the Kidapawan City, Police Station, applied for the issuance of a search warrant against petitioner before the Executive Judge Arvin Sadiri B. Balagot (Judge Balagot).

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[1] *Rollo,* pp. 27-46.

[2] *Id.* at 51-61. Penned by Associate Justice Tita Marilyn Payoyo-Villordon, with Associate Justices Evalyn M. Arellano-Morales and Loida S. Posadas-Kahulugan concurring.

[3] *Id.* at 62-65. Penned by Associate Justice Loida S. Posadas-Kahulugan and concurred in by Associate Justices Walter S. Ong and Evalyn M. Arellano-Morales.

In support of his application, P/Supt Ajero attached the Affidavit of his witness, Police Officer 1 Rodolfo M. Geverola (PO1 Geverola). The material averments of the said affidavit are as follows:

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> 2. That sometime on January 7, 2017, our intelligence Section received information from informant that Roberto Rey Gabiosa Alias Jojo, a resident of Apo Sandawa Homes Phase 1, Brgy. Poblacion, Kidapawan City is selling illegal drugs particularly Methamphetamine Hydrochloride otherwise known as shabu in his house located at the aforementioned place;
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> 3. That after we conducted casing and monitoring, we noticed that there were male persons come and go (*sic*) to his house and some of them are really noted as drug users and so I and other Intel Operatives look(*ed*) for potential person to be used as Action Agent who can buy shabu from Roberto Rey Gabiosa Alias Jojo in order to help us in the conduct of test buy against him until such time that I (*was*) able to recruit one (1) Action Agent.
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> 4. That on or about 7:20 in the evening of January 18, 2017, I together with our Action Agent on board with (*sic*) service vehicle wherein I was the driver and proceeded to the house of Roberto Rey Gabiosa Alias Jojo at Apo Sandawa Homes Phase I, Brgy. Poblacion, Kidapawan City in order to buy shabu from him.
>
> 5. That upon our arrival at the place, I parked my driven service vehicle from the gate of the house of Roberto Rey Gabiosa Alias Jojo and my Action Agent called the target person through cellphone and later one (1) male person more or less 55 years old went out from the house and came nearer to the gate bringing umbrella who was told by the action agent to me as Roberto Rey Gabiosa Alias Jojo and then I together with my Action Agent alighted from the service vehicle and then we have conversation with Roberto Rey Gabiosa Alias Jojo and we agreed that we will be buying shabu from him in the amount of One Thousand Pesos (Php 1,000.00) and at that instance, he gave to me one (1) piece small sachet containing a suspected shabu and then also I gave to him the payment of One Thousand Pesos and then, I confirmed that he really (*is*) selling illegal drugs.

6. That the house of Roberto Rey Gabiosa Alias Jojo is a two storey [house and] made of concrete. It is half concrete and half steel fence and with steel gate color(*ed*) red.

7. That I submitted the one (1) piece small sachet containing a suspected shabu being sold by Roberto Rey Gabiosa Alias Jojo to me to the Provincial Crime Laboratory Field Office, Osmena Drive, Kidapawan City for qualitative examination and it turned out positive for Methamphetamine Hydrochloride, a dangerous drug as per Chemistry Report Number PC-D-004-2017 dated January 18, 2017.

On the basis of the above-quoted Affidavit, Judge Balagot conducted a preliminary examination to PO1 Geverola, which was administered, in this manner —

Q: Now, you alleged here that in the evening of January 18, 2017, together with your informant you went to the house of Roberto Rey Gabiosa; is this true?
A: Yes, sir.

Q: Upon reaching to his house, what did you do?
A: We were driving a four-wheeled vehicle and went to that place at that time.

Q: And then?
A: I was with our informant, we stopped in the house of the target.

Q: After that, what happened else? (*sic*)
A: Our Alpha called up and he said that the target went outside the house.

Q: How did your informant or alpha called (*sic*) Gabiosa?
A: Through cellphone.

Q: And Gabiosa went out from his house?
A: Yes, sir.

Q: And after that, what else happened?
A: We went down and we were just nearby and we talked to him that we will (*sic*) buy an item.

Q: Now, were you the one who personally go (*sic*) to Roberto Gabiosa?
A: Yes, sir.

Q: He did not suspect that you are a police officer?
A: No, sir.

Q: What was the amount you purchased from Mr. Gabiosa?
A: I gave ₱1,000.00 and in return he gave me the shabu.

Q: Can you describe the house of Roberto Gabiosa?
A: The house of Roberto Gabiosa is a two-storey, concrete, and with gate colored red.

Q: There is a sketch attached to the application; is this the sketch reflecting the location of Mr. Gabiosa?
A: Yes, sir.

Q: What did you do with that thing that Gabiosa delivered to you after giving him the ₱1,000.00?
A: We made a request for crime laboratory examination.

Q: What is the result?
A: Positive, your Honor.

Q: Now, the test buy, two days ago: do you have reason to believe that Gabiosa has still in possession of the illegal drug?
A: Yes, sir.

Q: Why do you say so?
A: We have a man (and) who is observing him.

Q: What car did you use in going to his house?
A: Colored red, Suzuki four-wheeled vehicle.

x x x x x x x x x

Judge Balagot, then, issued Search Warrant No. 149-2017 after finding a probable cause for such issuance. Thereafter, the aforementioned search warrant was served against petitioner.

Petitioner, however, questioned the validity of the search warrant issued against him. Thus, on March 13, 2017, petitioner filed a *Motion to Quash (Search Warrant dated 20 January 2017) and Suppression of Evidence* claiming that the issuance of the search warrant is grossly violative of his fundamental constitutional and human right.[4]

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[4] *Id.* at 52-55.

Ruling of the Regional Trial Court

In a Resolution[5] dated September 26, 2017, the Regional Trial Court (RTC) denied the *Motion to Quash (Search Warrant dated 20 January 2017) and Suppression of Evidence* (Motion to Quash) filed by Gabiosa. The RTC ruled against Gabiosa's contention that the search warrant was invalid as the judge did not examine the complainant but only his witness. The RTC explained that the judge was not mandatorily required to examine both the complainant and his witness.[6] The RTC added that "[w]hat is important is the existence of probable cause and the witness has personal knowledge of the fact as basis for the court or judge in issuing the search warrant."[7] In other words, the RTC opined that the judge need not examine the complainant if the probable cause was already established upon examination of one of the witnesses.

On Gabiosa's contention that the search warrant was invalid because the questions propounded by the judge were mere rehash of the averments in the affidavit supporting the application, the RTC ruled the same to be equally untenable. The RTC expounded:

> Based on the requirements as enumerated above, the judge must examine the witness under oath or affirmation. The rule does not prescribe what particular form of questions the judge must ask from the witness. What is important is that the judge must satisfy himself personally that there is probable cause to warrant the issuance of a warrant of arrest. Thus, asking the witness the same questions which will illicit (*sic*) the same facts as stated in his affidavit will not matter for as long as the examination is under oath and the [witness'] answers were based on his personal knowledge or observations. The phrase used by law is "examination under oath or affirmation" simply means that the judge can even asked (*sic*) the witness under oath even if he or she has no affidavit submitted or if he or she has

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[5] *Id.* at 66-70. Penned by Presiding Judge Jose T. Tabosares.

[6] *Id.* at 68.

[7] *Id.*

submitted one, to just asked (*sic*) him to affirm the same is enough if probable cause is established.[8]

Gabiosa then sought reconsideration of the RTC's denial of the Motion to Quash. However, in its Resolution[9] dated December 21, 2017, the RTC likewise denied Gabiosa's motion for reconsideration.

Undeterred, Gabiosa filed a Petition for *Certiorari*[10] with the CA, alleging that the RTC gravely abused its discretion in denying his motion to quash.

Ruling of the CA

In its Decision[11] dated February 13, 2019, the CA granted Gabiosa's Petition for *Certiorari*. The dispositive portion of the said Decision reads:

> **ACCORDINGLY**, the instant Petition for *Certiorari* is **GRANTED**. The Resolution dated September 26, 2017 of the Regional Trial Court of Kidapawan City in Criminal Case No. 4005-2017 is **SET ASIDE**.
>
> The Search Warrant No. 149-2017 is, hereby, declared null and void, and the search conducted on its authority is also rendered void. Consequent thereto, any evidence gathered by virtue of the aforementioned search warrant are inadmissible for any purpose in any proceeding.
>
> SO ORDERED.[12]

In granting Gabiosa's Petition for *Certiorari*, the CA reasoned that the text of the Constitution used the word "and" instead of "or" or "and/or," which thus "shows its clear intent to really require both applicant and the witness to be personally examined by the issuing judge."[13] The CA added that for a search warrant

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[8] *Id.* at 69.

[9] *Id.* at 71. Penned by Presiding Judge Jose T. Tabosares.

[10] *Id.* at 72-93.

[11] *Supra* note 2.

[12] *Rollo*, p. 60.

[13] *Id.* at 57.

to be valid, the complainant and such witnesses as the latter may produce must be personally examined by the judge.[14]

The CA likewise ruled that the search warrant was invalid because Judge Balagot, the judge who issued the warrant, supposedly failed to propound probing and searching questions to the witness. According to the CA, the questions propounded were superficial and perfunctory.[15]

The People of the Philippines, through the OSG, filed a motion for reconsideration of the above Decision. However, in a Resolution dated July 10, 2019, the CA denied the said motion.

Hence, the instant Petition.

Issue

For resolution of the Court is the issue of whether the CA erred in granting the Petition for *Certiorari* filed by Gabiosa.

The Court's Ruling

The Petition is granted. The Court rules that the CA erred in granting the Petition for *Certiorari*, considering that the RTC did not gravely abuse its discretion in affirming the validity of the search warrant.

In ruling that the search warrant was invalid, and that consequently, the RTC committed grave abuse of discretion in upholding its validity, the CA relied heavily on statutory construction. The CA's main basis for its ruling is the use of the word "and" in the constitutional provision on searches and seizures. Thus:

> The right against unreasonable searches and seizures is one of the fundamental constitutional rights. This right has been indoctrinated in our Constitution since 1899 through the Malolos Constitution and has been incorporated in the various organic laws governing the Philippines during the American colonization, the 1935 Constitution, and the 1973 Constitution. Given the significance of this right, the

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[14] *Id.* at 58.

[15] *Id.* at 59.

courts are mandated to be vigilant in preventing its stealthy encroachment or gradual depreciation and ensure that the safeguards put in place for its protection are observed.

Accordingly, the Constitution sets strict requirements that must be observed. Section 2, Article III of the Constitution, thus, provides —

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge *after examination under oath or affirmation of the complainant* ***and*** *the witnesses he may produce*, and particularly describing the place to be searched and persons or things to be seized.

From the provision above, it is noteworthy that the Constitution supplied the conjunction "and" instead of "or" or "and/or" between the complainant/applicant and the witness, which shows its clear intent to really require both applicant and the witness to be personally examined by the issuing judge.

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Based on the foregoing, the intention of our laws to require the issuing judge to examine personally both the applicant and the witness he/she may produce becomes very clear. In statutory construction, the word "and" implies conjunction or union, which plainly means that both, and not either, of the applicant and the witness are required to be personally examined by the judge.[16] (Italics in the original; emphasis and underscoring supplied)

The above reasoning of the CA is contrary to established jurisprudence, and defeats the very purpose of the constitutional right involved in this case.

The right against unreasonable searches and seizures

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[16] *Id.* at 57, 59.

Article III, Section 2 of the 1987 Constitution — one of two provisions in the Bill of Rights preserving the citizens' right to privacy[17] — protects every citizen's right against unreasonable searches and seizures. It preserves, in essence, the right of the people "to be let alone" *vis-à-vis* the far-reaching and encompassing powers of the State, with respect to their persons, houses, papers, and effects. It thus ensures protection of the individual from arbitrary searches and arrests initiated and perpetrated by the State. The rationale for the right, particularly of the right to be secure in one's home, was explained in the early case of *US. v. Arceo*,[18] where the Court elucidated:

> The inviolability of the house is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.
>
> The privacy of the home — the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, except in the rare cases — has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled. Both the common and the civil law guaranteed to man the right of absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. The poorest and most humble citizen or subject may, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against its owner's will; none of the forces dare to cross the threshold even the humblest tenement without its owner's consent.
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> "A man's house is his castle," has become a maxim among the civilized peoples of the earth. His protection therein has become a

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[17] The other one being Article III, Section 3 on the right to privacy of communication and correspondence.

[18] 3 Phil. 381 (1904).

matter of constitutional protection in England, America, and Spain, as well as in other countries.[19]

Despite the sanctity that the Constitution accords a person's abode, however, it still recognizes that there may be circumstances when State-sanctioned intrusion to someone's home may be justified, and as a consequence, also reasonable. This is also why the right only protects the individual against ***unreasonable*** searches or seizures — because while State-sanctioned intrusion is, as a general rule, unreasonable, the Constitution itself lays down the main exception on when it becomes reasonable: when the State obtains a warrant from a judge who issues the same on the basis of probable cause. Thus, the fundamental protection given by the search and seizure clause is that between person and police must stand the protective authority of a magistrate clothed with power to issue or refuse to issue search warrants or warrants of arrest.[20]

In turn, a warrant that justifies the intrusion, to be valid, must satisfy the following requirements: (1) it must be issued upon "probable cause;" (2) probable cause must be determined personally by the judge; (3) such judge must examine under oath or affirmation the complainant and the witnesses he may produce; and (4) the warrant must particularly describe the place to be searched and the persons or things to be seized.[21]

At the heart of these requisites, however, is that the intrusion on a citizen's privacy — whether it be in his own person or in his house—must be based on probable cause determined personally by the judge. In other words, the magistrate authorizing the State-sanctioned intrusion must therefore himself or herself be personally satisfied that there is probable cause to disturb the person's privacy.

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[19] *Id.* at 387.

[20] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 169 (2009 Edition).

[21] *People v. Tiu Won Chua*, 453 Phil. 177, 184 (2003).

The CA's construction of the right against unreasonable searches and seizures was inaccurate

Against the foregoing legal backdrop, the CA, in invalidating the search warrant subject of this case, focused on a word used by the Constitution — "and" — and then ruled that it was the intent of the Constitution that ***both*** the applicant ***and*** the witnesses he or she may present must first be examined by the judge before any warrant may be issued.

As stated at the very outset, this conclusion of the CA is neither supported by jurisprudence, nor by the spirit which animates the right.

As early as 1937, in the case of *Alvarez v. Court of First Instance of Tayabas*,[22] the Court explained that ultimately, the purpose of the proceeding is for the judge to determine that probable cause exists. Thus, there is no need to examine both the applicant and the witness/es if either one of them is sufficient to establish probable cause. The Court explained at length:

> x x x Another ground alleged by the petitioner in asking that the search warrant be declared illegal and cancelled is that it was not supported by other affidavits aside from that made by the applicant. In other words, it is contended that the search warrant cannot be issued unless it be supported by affidavits made by the applicant and the witnesses to be presented necessarily by him. Section 1, paragraph 3, of Article III of the Constitution provides that no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. Section 98 of General Orders, No. 58 provides that the judge or justice must, before issuing the warrant, examine under oath the complainant and any witnesses he may produce and take their depositions in writing. It is the practice in this jurisdiction to attach the affidavit of at least the applicant or complainant

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[22] 64 Phil. 33 (1937).

to the application. It is admitted that the judge who issued the search warrant in this case, relied exclusively upon the affidavit made by agent Mariano G. Almeda and that he did not require nor take the deposition of any other witness. Neither the Constitution nor General Orders, No. 58 provides that it is of imperative necessity to take the depositions of the witnesses to be presented by the applicant or complainant in addition to the affidavit of the latter. **The purpose of both in requiring the presentation of depositions is nothing more than to satisfy the committing magistrate of the existence of probable cause. Therefore, if the affidavit of the applicant or complainant is sufficient, the judge may dispense with that of other witnesses.** Inasmuch as the affidavit of the agent in this case was insufficient because his knowledge of the facts was not personal but merely hearsay, it is the duty of the judge to require the affidavit of one or more witnesses for the purpose of determining the existence of probable cause to warrant the issuance of the search warrant. **When the affidavit of the applicant or complainant contains sufficient facts within his personal and direct knowledge, it is sufficient if the judge is satisfied that there exists probable cause**; when the applicant's knowledge of the facts is mere hearsay, the affidavit of one or more witnesses having a personal knowledge of the facts is necessary.[23] (Emphasis and underscoring supplied)

If, despite the use of "and," the examination of the applicant or complainant would suffice as long as probable cause was established, then the Court does not see any reason why the converse — the judge examined the witness only and not the applicant — would not be valid as well. Again, the purpose of the examination is to satisfy the judge that probable cause exists. Hence, it is immaterial in the grander scheme of things whether the judge examined the complainant only, or the witness only, and not both the complainant and the witness/es. The primordial consideration here is that the judge is convinced that there is probable cause to disturb the particular individual's privacy. Therefore, to the mind of the Court, the CA erred in placing undue importance on the Constitution's use of the word "and" instead of "or" or "and/or."

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

In addition, it would be a fruitless exercise to insist that the judge should have examined the complainant as well when, as here, he admittedly did not have personal knowledge of the circumstances that constitute the probable cause. Based on the affidavit submitted, it was Police Officer 1 Rodolfo M. Geverola (PO1 Geverola) and his "Action Agent" who had personal knowledge of the circumstances as they were the ones who conducted the surveillance and test buy. Even if, for instance, Judge Balagot examined the complainant, Police Superintendent Leo Tayabas Ajero (P/Supt Ajero), he would have obtained nothing from the latter because of his lack of personal knowledge. P/Supt Ajero was the complainant only because he was the Officer-in-Charge of the Kidapawan City Police Station,[24] but it was never alleged that he participated in any of the prior surveillance conducted.

The CA likewise erred in holding that Judge Balagot failed to ask probing questions and searching questions

As an additional basis in declaring the search warrant invalid, the CA stated:

> Moreover, a cursory reading of the transcript of the preliminary examination conducted by the issuing judge shows that Judge Balagot failed to propound probing and searching questions on the witness. The questions therein were superficial and perfunctory.
>
> This Court notes that when Judge Balagot asked PO1 Geverole (*sic*) where the residence of petitioner is located, the latter merely answered that he forgot the specific block. Judge Balagot, however, did not make follow up questions in order to determine whether the witness really knows the actual location of petitioner's house. At the very least, Judge Balagot should have required PO1 Geverole (*sic*) to describe how to locate petitioner's residence or to explain the sketch that was attached in the application. Additionally, when Judge Balagot asked the witness how can he be certain that petitioner

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[24] *Rollo*, p. 44.

is still in possession of the illegal drugs, the latter plainly answered that he is certain because they have a man observing the petitioner. PO1 Geverole's (*sic*) answer, therefore, confirms that the information that petitioner was still in possession of the illegal drugs is not based on his own personal knowledge.[25]

The conclusions of the CA, however, are unsupported and even contrary to what transpired based on the transcript of the examination which, in turn, was quoted by the CA in its Decision. In the examination, as quoted above, it is clear that the judge asked questions to satisfy himself that PO1 Geverola was indeed testifying based on his own personal knowledge of the facts because he personally dealt with Gabiosa. PO1 Geverola's answer that someone else was watching Gabiosa was in response to the query regarding his certainty that Gabiosa was still in possession of the items. It did not affect, much less discredit, PO1 Geverola's testimony regarding his previous dealing with Gabiosa.

The CA also took issue with the fact that Judge Balagot did not ask further questions on the location of Gabiosa's house. It is important to note, however, that there was a sketch attached to the application — as also noted by the CA — and PO1 Geverola testified in the examination that the sketch reflects the location of the house. He was even able to particularly describe the house as "a two-storey [house], concrete, and with gate colored red."[26]

Since probable cause is dependent largely on the findings of the judge who conducted the examination and who had the opportunity to question the applicant and his witnesses, then his findings deserve great weight.[27] The reviewing court can overturn such findings only upon proof that the judge disregarded

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[25] *Id.* at 59-60.

[26] *Id.* at 54.

[27] *People v. Choi*, 529 Phil. 538, 551 (2006).

the facts before him or ignored the clear dictates of reason.[28] As the Court explained in the case of *People v. Choi*:[29]

> The searching questions propounded to the applicant and the witnesses depend largely on the discretion of the judge. Although there is no hard-and-fast rule governing how a judge should conduct his examination, it is axiomatic that the examination must be probing and exhaustive, not merely routinary, general, peripheral, perfunctory or pro-forma. The judge must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application. The questions should not merely be repetitious of the averments stated in the affidavits or depositions of the applicant and the witnesses. If the judge fails to determine probable cause by personally examining the applicant and his witnesses in the form of searching questions before issuing a search warrant, grave abuse of discretion is committed.
>
> The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As the term implies, probable cause is concerned with probability, not absolute or even moral certainty. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial. No law or rule states that probable cause requires a specific kind of evidence. No formula or fixed rule for its determination exists. Probable cause is determined in the light of conditions obtaining in a given situation. The entirety of the questions propounded by the court and the answers thereto must be considered by the judge.[30]

Given the foregoing, the CA thus erred in ascribing grave abuse of discretion on the part of the RTC in upholding the validity of the search warrant. Judge Balagot made sure that the witness had personal knowledge of the facts by asking specifics, and asked how he obtained knowledge of the same and how he was sure that the facts continue to exist. The questions propounded by Judge Balagot, taken and viewed as a whole,

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[28] *Id.* at 551-552.

[29] 529 Phil. 538 (2006).

[30] *Id.* at 548-549.

were therefore probing and not merely superficial and perfunctory. It was thus reversible error on the part of the CA to have set aside the search warrant.

WHEREFORE, the petition is hereby **GRANTED**. The assailed Decision dated February 13, 2019 and Resolution dated July 10, 2019 of the Court of Appeals are **SET ASIDE**. The Resolution dated September 26, 2017 of Branch 23, Regional Trial Court of Kidapawan City in Criminal Case No. 4005-2017 denying Roberto Rey E. Gabiosa, Sr.'s Motion to Quash Search Warrant and to Suppress Evidence is hereby **REINSTATED**.

SO ORDERED.

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

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INDEX

Treachery — For treachery to qualify the killing to murder, the following elements must be proven: (1) that at the time of the attack, the victim was not in a position to defend himself [or herself], and (2) that the offender consciously adopted the particular means, method or form of attack employed by him or her. (People *vs.* Pitulan, G.R. No. 226486, Jan. 22, 2020) p. 177

— The essence of treachery is "in the suddenness of the attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself or herself and thereby ensuring the commission of the offense without risk to the offender arising from the defense which the offended party might make." (*Id.*)

AGRICULTURAL TENANCY ACT OF THE PHILIPPINES (R.A. NO. 1199), AS AMENDED

Application of — According to R.A. No. 1199, as amended, otherwise known as the Agricultural Tenancy Act of the Philippines, an agricultural leasehold tenancy exists "when a person who, either personally or with the aid of labor available from members of his immediate farm household, undertakes to cultivate a piece of agricultural land susceptible of cultivation by a single person together with members of his immediate farm household, belonging to or legally possessed by, another in consideration of a fixed amount in money or in produce or in both." (Romero, *et al*. *vs.* Sombrino, G.R. No. 241353, Jan. 22, 2020) p. 306

— The absence of any of the requisites does not make an occupant, cultivator, or a planter a *de jure* tenant which entitles him to security of tenure under existing tenancy laws; however, if all the aforesaid requisites are present and an agricultural leasehold relation is established, the same shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished; the agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided; in case of death or

misapprehension of facts. (Romero, *et al. vs.* Sombrino, G.R. No. 241353, Jan. 22, 2020) p. 306

— As a rule, this Court is not a trier of facts; only questions of law distinctly set forth in the petition ought to be raised before this Court; factual findings of the trial and appellate courts will not be disturbed by this Court unless they are grounded entirely on speculations, surmises, or conjectures, among others. (National Power Corporation *vs.* Heirs of Salvador Serra Serra, *et al.*, G.R. No. 224324, Jan. 22, 2020) p. 159

— As the Labor Arbiter, the NLRC, and the CA uniformly ruled against the validity, regularity, and due execution of the employee's resignation letter and affidavit of quitclaim, the court finds no reason to deviate from that findings; it is binding on the court in the absence of arbitrariness or grave abuse of discretion. (Al-Masiya Overseas Placement Agency, Inc., *et al. vs.* Viernes, G.R. No. 216132, Jan. 22, 2020) p. 123

— It bears stressing that in a petition for review on *certiorari*, the Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous; the Court is not a trier of facts, and this rule applies with greater force in labor cases; questions of fact are to be resolved by the labor tribunals. (*Id.*)

— The rule that only questions of law are the proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court applies with equal force to expropriation cases; unless the value of the expropriated property is grounded entirely on speculations, surmises or conjectures, such issue is beyond the scope of the Court's judicial review in a Rule 45 petition. (National Transmission Corporation, as Transferee-in-Interest of the National Power Corporation *vs.* Spouses Taglao, G.R. No. 223195, Jan. 29, 2020) p. 693

— The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45; this

— The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer 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, as in this case, gives rise to the presumption that he has appropriated the same for his own use, in violation of the trust reposed in him by his client. (*Id.*)

Negligence of counsel — It is worth emphasizing that the rule which states that the mistakes of counsel bind the client may not be strictly followed where observance of it would result in outright deprivation of the client's liberty or property, or where the interests of justice so require; in rendering justice, procedural infirmities take a backseat against substantive rights of litigants; if the strict application of the rules would tend to frustrate rather than promote justice, the Court is not without power to exercise its judicial discretion in relaxing the rules of procedure. (Latogan *vs.* People, G.R. No. 238298, Jan. 22, 2020) p. 271

— The negligence of the counsel binds the client, even mistakes in the application of procedural rules; the only exception to this doctrine is "when the reckless or gross negligence of the counsel deprives the client of due process of law"; in such a case, the counsel's error must be so *palpable* and *maliciously exercised* that it would viably be the basis for disciplinary action. (Spouses Abrogar *vs.* Land Bank, G.R. No. 221046, Jan. 22, 2020) p. 140

BANKS

Banking institutions — The banking industry is one impressed with great public interest as it affects economies and plays a significant role in businesses and commerce; the public reposes its faith and confidence upon banks, such that even the humble wage-earner has not hesitated to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn

CERTIORARI

Petition for — As the remedies of appeal and *certiorari* are *mutually exclusive, certiorari* will *not* prosper if appeal is an available remedy to a litigant, even if the ground is grave abuse of discretion. (Spouses Abrogar *vs.* Land Bank, G.R. No. 221046, Jan. 22, 2020) p. 140

— It is settled that a special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. (*Id.*)

— Mere disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion; the Office of the Ombudsman has both the constitutional and statutory mandate to act on criminal complaints against erring public officials and employees; as an independent constitutional body, the Office of the Ombudsman is given a wide latitude to conduct investigations and to prosecute cases to fulfill its role "as the champion of the people" and "preserver of the integrity of the public service." (Beltran, *et al*. *vs.* Sandiganbayan (Second Division), *et al*., G.R. No. 201117, Jan. 22, 2020) p. 18

— Since the remedy of an ordinary appeal was undeniably available to petitioners, the CA correctly dismissed their Petition for *Certiorari* for being the wrong mode of appeal; in an attempt to justify their plea for the liberal application of the Rules, petitioners insist that they should not be bound by their former counsel's negligence in choosing to file the wrong remedy because it would deprive them of their property without due process of law; this argument, however, is untenable. (Spouses Abrogar *vs.* Land Bank, G.R. No. 221046, Jan. 22, 2020) p. 140

— The extraordinary remedy of *certiorari* is not a substitute for a lost appeal; it is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. (*Id.*)

has the authority to "(a) identify other officers belonging to the CES in keeping with the conditions imposed by law; and (b) prescribe requirements for entrance to the third-level." (Dangerous Drugs Board *vs.* Matibag, G.R. No. 210013, Jan. 22, 2020) p. 71

CSC Revised Rules on Contempt — The CSC wields the power to punish for contempt; the Court has never nullified the rules of procedure of Constitutional Commissions on ground that their respective enabling laws supposedly do not authorize them to prescribe penalties for contemptuous conduct. (Eusebio *vs.* Civil Service Commission, G.R. No. 223623, Jan. 29, 2020) p. 728

— Under Section 4 of the CSC Revised Rules on Contempt, a fine of ₱1,000.00 may be imposed on the contemnor for each day of defiance of, disobedience to, or non-enforcement of, a final ruling of the CSC; if the contempt consists in the violation of an injunction or omission to do an act which is within the power of respondent to perform, he or she, in addition, shall be liable for damages as a consequence thereof. (*Id.*)

— Under Section 6, Article IX-A of the 1987 Constitution, the CSC *en banc* may promulgate its own rules concerning pleadings and practice before any of its offices so long as such rules do not diminish, increase, or modify substantive rights. (*Id.*)

COMPLEX CRIMES

Penalty — Article 48 of the Revised Penal Code requires that the penalty for a complex crime is the maximum penalty of the graver offense; the penalty for homicide is *reclusion temporal* while the penalty for direct assault is *prision correccional*; the proper penalty to be imposed for the complex crime of direct assault with homicide is *reclusion temporal*, subject to the Indeterminate Sentence Law. (People *vs.* Pitulan, G.R. No. 226486, Jan. 22, 2020) p. 177

second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. (*Id*.)

— Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner; conversely, noncompliance results in a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*, leading to the prosecution's failure to prove the accused's guilt beyond reasonable doubt. (*Id*.)

— Courts must employ heightened scrutiny, consistent with the requirements of proof beyond reasonable doubt, in evaluating case involving minuscule amounts of drugs; these can readily be planted and tampered. (*Id*.)

— In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, as amended by RA 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal. (People *vs.* Esguerra *a.k.a.* "RR," G.R. No. 243986, Jan. 22, 2020) p. 365

— In *People v. Lorenzo*, this Court emphasized that moral certainty is not only required in proving the elements of illegal sale and dangerous drugs, but also in proving the identity of the seized drug. (Pimentel *y* Quillao *vs.* People, G.R. No. 239772, Jan. 29, 2020) p. 820

— In *People v. Tomawis*, this Court emphasized that in planned buy-bust operations, because the seized items must be physically inventoried and photographed immediately upon seizure, the third-party witnesses must be present as early as during the actual transaction;

— The chain of custody over the seized drug remained unbroken, and the integrity and evidentiary value of the *corpus delicti* had been properly preserved; hence, accused-appellant's conviction must stand. (People *vs.* Esguerra *a.k.a.* "RR," G.R. No. 243986, Jan. 22, 2020) p. 365

— The chain of custody rule warrants that unnecessary doubts concerning the identity of the evidence are removed. (People *vs.* Suating *alias* "*Bok*", G.R. No. 220142, Jan. 29, 2020) p. 666

— The initial link in the chain of custody is the marking of the confiscated illicit drugs; marking precludes any contamination, switching or planting of evidence; through it, the evidence is separated from the *corpus* of other similar and correlated evidence, starting from confiscation until its disposal at the close of criminal proceedings. (*Id.*)

— The non-observance of the procedure mandated by Section 21 of R.A. No. 9165, as amended, casts serious doubt if the illegal drugs presented in court are the same illegal drugs seized. (People *vs.* Sali *a.k.a.* "Tapang/Pang," G.R. No. 236596, Jan. 29, 2020) p. 807

— The prosecution failed to comply with the requirements of the Comprehensive Dangerous Drugs Act, and to provide justifiable grounds for such noncompliance; this creates reasonable doubt on the identity of the illegal drugs seized, ultimately warranting accused-appellant's acquittal. (Pimentel *y* Quillao *vs.* People, G.R. No. 239772, Jan. 29, 2020) p. 820

— To be at par with the rule on the chain of custody, the marking of the confiscated articles should be undertaken: (1) in the *presence* of the accused; and (2) *immediately* upon seizure; this effectively guarantees that the articles seized are the same items that entered the chain and are eventually the ones offered in evidence. (People *vs.* Suating *alias* "*Bok*", G.R. No. 220142, Jan. 29, 2020) p. 666

— To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account

as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (*Id.*)

— The elements for illegal possession of dangerous drugs, as penalized in Section 11 of Republic Act No. 9165, are: "(1) the accused was in possession of an item or object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug." (Pimentel *y* Quillao *vs.* People, G.R. No. 239772, Jan. 29, 2020) p. 820

Illegal possession of drug paraphernalia — For a conviction for illegal possession of drug paraphernalia to prosper, it is primordial to show that the accused was in possession or control of any equipment, paraphernalia, and the like, which was fit or intended for smoking, consuming, and administering, among other acts, dangerous drugs into the body; and such possession was not authorized by law. (People *vs.* Dadang *a.k.a.* "Manoy," G.R. No. 242880, Jan. 22, 2020) p. 326

Illegal sale and possession of dangerous drugs — The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: *(a)* the identity of the buyer and the seller, the object, and the consideration; and *(b)* the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: *(a)* the accused was in possession of an item or object identified as a prohibited drug; *(b)* such possession was not authorized by law; and *(c)* the accused freely and consciously possessed the said drug. (People *vs.* Fornillos @ "Intoy", G.R. No. 231991, Jan. 27, 2020) p. 448

Illegal sale of dangerous drugs — In a prosecution for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be established: (1) proof that the transaction or sale took place; (2) presentation in court of the *corpus delicti* or the illicit drug as evidence; and (3) identification of the buyer and

must similarly be proven as the same one confiscated from the accused. (People *vs.* Suating *alias* "*Bok*", G.R. No. 220142, Jan. 29, 2020) p. 666

— Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs.* Sali *a.k.a.* "Tapang/ Pang," G.R. No. 236596, Jan. 29, 2020) p. 807

Witnesses rule — The absence of the required witnesses does not *per se* make the seized articles inadmissible as evidence but the prosecution must prove that it has acceptable reason for such failure, or a showing that it exerted genuine and sufficient effort to secure their presence. (People *vs.* Suating *alias* "*Bok*", G.R. No. 220142, Jan. 29, 2020) p. 666

CONTEMPT

Indirect contempt — Indirect contempt is committed through any of the acts enumerated under Section 3, Rule 71 of the Rules of Court; indirect contempt is only punished after a written petition is filed and an opportunity to be heard is given to the party charged. (Britania *vs.* Hon. Gepty in her capacity as Presiding Judge, Regional Trial Court, Branch 75, Valenzuela City, *et al.*, G.R. No. 246995, Jan. 22, 2020) p. 386

Power of — The power to declare a person in contempt of court and in dealing with him or her accordingly is an inherent power lodged in courts of justice, to be used as a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein, and the administration of justice from callous misbehavior, offensive personalities, and contumacious refusal to comply with court orders; this contempt power, however plenary it may seem, must be exercised judiciously and sparingly with utmost self-restraint with the end in view of utilizing the same for correction and preservation of the dignity

prosecutor in preparing the information; it is preparatory to a trial; an accused's right to a preliminary investigation is purely statutory; it is not a right guaranteed by the Constitution; even if there are alleged irregularities in an investigation's conduct, this neither renders the information void nor impairs its validity. (Arroyo *vs.* Sandiganbayan Fifth Division, *et al.*, G.R. No. 210488, Jan. 27, 2020) p. 400

— At the preliminary investigation, the Ombudsman determines probable cause which merely involves weighing of facts and circumstances and relying on common sense, without resorting to technical rules of evidence; a preliminary investigation is simply an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it. (*Id.*)

Probable cause — In *Leviste v. Almeda*: to move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence; in fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. (Arroyo *vs.* Sandiganbayan Fifth Division, *et al.*, G.R. No. 210488, Jan. 27, 2020) p. 400

— Jurisprudence has consistently ruled in favor of non-interference in the Ombudsman's determination of the existence of probable cause, unless there is a clear showing of grave abuse of discretion; this policy is based on respect for the Ombudsman's mandate and on practical grounds. (*Id.*)

— Probable cause is defined as 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 was prosecuted. (*Id.*)

— The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate; they are not to be awarded every time a party wins a suit; the power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification; even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause. (Sian represented by Romualdo A. Sian *vs.* Spouses Somoso, the former being substituted by his surviving son, Anthony Voltaire B. Somoso, *et al*., G.R. No. 201812, Jan. 22, 2020) p. 46

Exemplary damages — The rule in our jurisdiction is that exemplary damages are awarded in addition to moral damages; in the case of *Mahinay v. Velasquez, Jr.*, the Court pronounced: If the court has no proof or evidence upon which the claim for moral damages could be based, such indemnity could not be outrightly awarded; the same holds true with respect to the award of exemplary damages where it must be shown that the party acted in a wanton, oppressive or malevolent manner. (Sian represented by Romualdo A. Sian *vs.* Spouses Somoso, the former being substituted by his surviving son, Anthony Voltaire B. Somoso, *et al*., G.R. No. 201812, Jan. 22, 2020) p. 46

Moral damages — Traditionally, the term malicious prosecution has been associated with unfounded criminal actions; jurisprudence has also recognized malicious prosecution to include baseless civil suits intended to vex and humiliate the defendant despite the absence of a cause of action or probable cause; however, it should be stressed that the filing of an unfounded suit is not a ground for the grant of moral damages; otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff. (Sian represented by Romualdo A. Sian *vs.* Spouses Somoso, the former being

an opportunity to seek a reconsideration of the action or ruling complained of. (Soliva *vs.* Dr. Tanggol, in his capacity as Chancellor of Mindanao State University - Iligan Institute of Technology (MSU-IIT), G.R. No. 223429, Jan. 29, 2020) p. 707

— In administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself; in such proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. (*Id.*)

EMPLOYMENT, TERMINATION OF

Abandonment — Abandonment, as a just cause for termination, requires "a deliberate and unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his or her work." (Seventh Fleet Security Services, Inc. *vs.* Loque, G.R. No. 230005, Jan. 22, 2020) p. 203

— The following elements must therefore concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. (*Id.*)

Constructive dismissal — An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee as to leave him or her with no option but to forego his or her continued employment. (Al-Masiya Overseas Placement Agency, Inc., *et al*. *vs.* Viernes, G.R. No. 216132, Jan. 22, 2020) p. 123

— In cases of constructive dismissal, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment. (*Id.*)

— It can be inferred that various situations, whereby the employer intentionally places the employee in a situation which will result in the latter's being coerced into severing his ties with the former, can result in constructive dismissal. (*Id.*)

— Similar to the case of *Torreda*, herein respondent was made to copy and sign a prepared resignation letter and this was made as a condition for the release of her passport and plane ticket; in light of these, the Court finds that, indeed, it was logical for respondent to consider herself constructively dismissed; the impossibility, unreasonableness, or unlikelihood of continued employment has left respondent with no other viable recourse but to terminate her employment. (*Id.*)

Floating status or temporary off-detail of employees — "Floating status" or temporary "off-detail" of employees, the Court, applying Article 301 [286] of the Labor Code by analogy, considers this situation as a form of temporary retrenchment or lay-off; Article 301 [286] of the Labor Code reads: ART. 301. [286] *When Employment not Deemed Terminated*. The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, . . .; in all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty. (Seventh Fleet Security Services, Inc. *vs*. Loque, G.R. No. 230005, Jan. 22, 2020) p. 203

— Placing an employee on floating status for more than six months without being deployed to a specific assignment is tantamount to constructive dismissal. (*Id.*)

— The placement of an employee on "floating status" must not exceed six months; otherwise, the employee may be considered constructively dismissed; the burden of proving that there are no posts available to which the security guard can be assigned rests on the employer; however,

the mere lapse of six months in "floating status" should not automatically result to constructive dismissal; the peculiar circumstances of the employee's failure to assume another post must still be inquired upon. (*Id.*)

Resignation — The employer still has the burden of proving that the resignation is voluntary despite the employer's claim that the employee resigned, which petitioners failed to discharge. (Prime Stars International Promotion Corporation, *et al. vs.* Baybayan, *et al.*, G.R. No. 213961, Jan. 22, 2020) p. 98

Separation pay — As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay; in exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds"; in both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee. (Herma Shipping and Transport Corporation *vs.* Cordero, G.R. No. 244144, Jan. 27, 2020) p. 516

— In the cases of *Philippine Long Distance Telephone Company v. NLRC* and subsequently, *Toyota Motor Phils. Corp. Workers Association v. NLRC*, the Court stressed that "separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character." (*Id.*)

EVIDENCE

Authentication and proof of documents — Under Section 20, Rule 132 of the Revised Rules on Evidence, before a private document is admitted in evidence, it must be authenticated either by the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, or who after its execution, saw it and recognized the signatures,

produces absolute certainty; moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind; the conscience must be satisfied that the accused is responsible for the offense charged. (*Id.*)

— Proof beyond reasonable doubt, "or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment," is crucial in overthrowing the presumption of innocence; in the event that the prosecution falls short of meeting the standard of evidence called for, it would be needless for the defense to offer evidence on its behalf; the presumption of innocence stands, and the accused is accordingly acquitted of the charge. (People *vs.* Suating *alias* "*Bok*", G.R. No. 220142, Jan. 29, 2020) p. 666

— This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged; the burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. (Pimentel *y* Quillao *vs.* People, G.R. No. 239772, Jan. 29, 2020) p. 820

Public document — A notarized document has in its favor the presumption of regularity and the truthfulness of its contents; a notarized document, being a public document, is evidence of the fact which gave rise to its execution. (Republic of the Philippines, represented by the Department of Public Works and Highways *vs.* Macabagdal, represented by Eulogia Macabagdal-Pascual, G.R. No. 203948, Jan. 22, 2020) p. 58

Substantial evidence — Time and again, the Court has ruled that in administrative proceedings, complainants bear the burden of proving the allegations in their complaints by substantial evidence or that amount of relevant evidence that a reasonable mind might accept

of like properties, its size, shape, location, as well as the tax declarations thereon. (*Id.*)

FAMILY CODE

Marriage — A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding; the subject provision should not make a distinction; in both instances, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law. (Galapon *vs.* Republic, G.R. No. 243722, Jan. 22, 2020) p. 351

— In the recent case of *Manalo*, the Court *en banc* extended the scope of Article 26(2) to even cover instances where the divorce decree is obtained *solely* by the Filipino spouse; the Court's ruling states, in part: to reiterate, the purpose of paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. (*Id.*)

— Petitioner sufficiently established the authenticity and validity of the divorce decree obtained abroad; the divorce decree obtained by foreign spouse, with or without petitioner's conformity falls within the scope of Article 26(2) and merits recognition in this jurisdiction. (*Id.*)

INDETERMINATE SENTENCE LAW (R.A. NO. 4103)

Application of — In imposing a prison sentence for an offense punishable by a law other than the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence, the minimum term of which shall not be less than the minimum fixed by law and the maximum of which shall not exceed the maximum term prescribed by the same. (People *vs.* Dadang *a.k.a.* "Manoy," G.R. No. 242880, Jan. 22, 2020) p. 326

relationship. (Comscentre Phils., Inc., *et al. vs.* Rocio, G.R. No. 222212, Jan. 22, 2020) p. 147

— In *Bañez v. Valdevilla,* the Court elucidated that the jurisdiction of labor tribunals is comprehensive enough to include claims for all forms of damages "arising from the employer-employee relations"; thus, the Court decreed therein that labor tribunals have jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code. (Comscentre Phils., Inc., *et al. vs.* Rocio, G.R. No. 222212, Jan. 22, 2020) p. 147

— In *Supra Multi-Services, Inc. v. Labitigan*, while we recognized that Article 224 of the Labor Code had been invariably applied to claims for damages filed by an employee against the employer, we held that the law should also apply with equal force to an employer's claim for damages against its dismissed employee, provided that the claim arises from or is necessarily connected with the fact of termination and should be entered as a counterclaim in the illegal dismissal case. (*Id.*)

LABOR RELATIONS

Doctrine of strained relations — If reinstatement is not viable, separation pay may be awarded in lieu of reinstatement; considering that Loque no longer asked to be reinstated, the Court takes it as an *indicia* of strained relations between Loque and Seventh Fleet which makes reinstatement no longer appropriate; thus, the award of backwages and separation pay in lieu of reinstatement is proper in this case; however, a re-computation of the backwages and separation pay is in order considering that backwages and separation pay must be computed until the finality of the decision ordering the payment of separation pay. (Seventh Fleet Security Services, Inc. *vs.* Loque, G.R. No. 230005, Jan. 22, 2020) p. 203

Management prerogative — There is no question that employers enjoy management prerogative when it comes to the formulation of business policies, including those that

deed, attesting the deed to be his own before some competent officer; the notary declares that the executor of the document has personally attested before him or her the same to be the executor's free act. (Ladrera *vs.* Atty. Osorio, A.C. No. 10315, Jan. 22, 2020) p. 1

Liability of — Atty. Osorio's want of care in the performance of his notarial duties constituted a transgression of Canon 1 of the Code of Professional Responsibility which requires lawyers to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes, and of the Lawyer's Oath which commands him to obey the laws and to do no falsehood nor consent to the doing of any in court. (Ladrera *vs.* Atty. Osorio, A.C. No. 10315, Jan. 22, 2020) p. 1

— The required personal appearance and competent evidence of identity allow the notary public to verify the identity of the principal himself or herself and determine whether the instrument, deed, or document is his or her voluntary act; competent evidence of identity is necessary for filling in the details of the notarial register. (*Id.*)

OBLIGATIONS AND CONTRACTS

Forbearance of money — The difference between the final amount as adjudged by the court and the initial payment made by the government should earn legal interest; accrual of legal interest should begin from the issuance of the writ of possession since it is from this date that the fact of deprivation of property can be established. (National Power Corporation *vs.* Heirs of Salvador Serra Serra, *et al.*, G.R. No. 224324, Jan. 22, 2020) p. 159

OMBUDSMAN ACT OF 1989 (R.A. NO. 6770)

Office of the Special Prosecutor — In *Dumangcas, Jr. v. Marcelo,* this Court held that even a one-line marginal note by the Ombudsman is sufficient to approve or disapprove the Office of the Special Prosecutor's recommendations: it may appear that the Ombudsman's one-line note lacks any factual or evidentiary grounds as it did not set forth the same; the state of affairs,

dead; (6) which tends to cause dishonor, discredit or contempt of the person defamed. (*Id.*)

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensability of disability — As to the extent of compensability, the entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract, and the medical findings in accordance with the rules. (Wilhelmsen Smith Bell Manning, Inc., *et al. vs.* Villaflor, G.R. No. 225425, Jan. 29, 2020) p. 745

— For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, the two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's contract. (*Id.*)

— Regarding the company-designated physician's duty to issue a final medical assessment on the seafarer's disability grading to determine the extent of compensation: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days; the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. (*Id.*)

employee who suffers from disability could still perform his work notwithstanding the disability he incurred. (Multinational Ship Management, Inc./Singa Ship Agencies, Pte. Ltd., *et al*. *vs.* Briones, G.R. No. 239793, Jan. 27, 2020) p. 740

Work-related injury — It is not necessary that the nature of the employment be the sole and only reason for the illness or injury suffered by the seafarer; it is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had. (Wilhelmsen Smith Bell Manning, Inc., *et al*. *vs.* Villaflor, G.R. No. 225425, Jan. 29, 2020) p. 745

— One "arising out of and in the course of employment"; jurisprudence is to the effect that compensable illness or injury cannot be confined to the strict interpretation of said provision in the POEA-SEC as even pre-existing conditions may be compensable if aggravated by the seafarer's working condition. (*Id.*)

PLEADINGS

Filing and service — Even if a party represented by counsel has been actually notified, said notice is not considered notice in law; the reason is simple, the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. (Calleon *vs.* HZSC Realty Corporation, G.R. No. 228572, Jan. 27, 2020) p. 441

— Section 2, Rule 13 of the Rules of Court provides that "if any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." (*Id.*)

belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape; here, the prosecution has sufficiently showed that the elements of the crime are present. (*Id.*)

SALES

Brokerage service — When there is a close, proximate, and causal connection between the broker's efforts and the principal's sale of his property or joint venture agreement, in this case the broker is entitled to a commission. (Ignacio, doing business under the name and style Teresa R. Ignacio Enterprises *vs.* Ragasa, *et al.*, G.R. No. 227896, Jan. 29, 2020) p. 759

Double sale — Although it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants. (Spouses German *vs.* Spouses Santuyo, *et al.*, G.R. No. 210845, Jan. 22, 2020) p. 82

— For Article 1544 to apply, the following requisites must concur: this provision connotes that the following circumstances must concur: "(a) the two or more sales transactions in the issue must pertain to exactly the same subject matter, and *must be valid sales transactions*; (b) the two or more *buyers at odds over the rightful ownership* of the subject matter must each represent conflicting interests; and (c) the two or more buyers at odds over the rightful ownership of the subject matter *must each have bought from the very same seller*." (*Id.*)

— Generally, persons dealing with registered land may safely rely on the correctness of the certificate of title, without having to go beyond it to determine the property's condition; however, when circumstances are present that

— In *People v. Cirbeto*, this Court underscored that an appellate court can only overturn the trial court's factual findings and replace it with its own factual findings if "there is a showing that the trial court overlooked facts or circumstances of weight and substance that would affect the result of the case." (People *vs.* Antonio @ Tokmol, G.R. No. 229349, Jan. 29, 2020) p. 773

— It is settled that the trial court's factual findings, especially when affirmed by the appellate court, are entitled to great respect and generally should not be disturbed on appeal unless certain substantial facts were overlooked which, if considered, may affect the outcome of the case. (People *vs.* Adalia, G.R. No. 235990, Jan. 22, 2020) p. 242

— The determination of witnesses' credibility is left to the trial courts, which have the unique opportunity to observe their conduct in court; the trial courts' findings are generally binding on this Court and will not be overturned without a showing of any fact or circumstance that was overlooked, misunderstood, or misapplied, which may change the results of a case. (People *vs.* Pitulan, G.R. No. 226486, Jan. 22, 2020) p. 177

— The trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same. (People *vs.* Fornillos @ "Intoy", G.R. No. 231991, Jan. 27, 2020) p. 448

— When it comes to the credibility of witnesses, the trial court's findings and its calibration of their testimonies' probative weight are accorded high respect and even finality; the trial court's unique vantage point allows it to observe the witnesses during trial, putting it in the best position to determine whether a witness is telling the truth. (People *vs.* Antonio @ Tokmol, G.R. No. 229349, Jan. 29, 2020) p. 773

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