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PHILIPPINES

FOR THE PERIOD

MARCH 2, 2020 - APRIL 29, 2020

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Supreme Court
Manila
2023

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 9495. March 2, 2020]

CESAR C. CASTRO, *complainant, vs.* **ATTY. ENRICO G. BARIN,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; IN ADMINISTRATIVE CASES FOR DISBARMENT OR SUSPENSION AGAINST LAWYERS, THE QUANTUM OF PROOF IS CLEARLY PREPONDERANT EVIDENCE AND THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT; CASE AT BAR.—** In administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant. In the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. In the instant case, We find that complainant failed to prove by clear and preponderant evidence that his signature in the affidavit of desistance was forged or falsified by Atty. Barin. We cannot give evidentiary weight to mere assumption in the absence of any evidence to support such claim. Mere suspicion and speculation is not enough.

2. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 15.01, CANON 15 THEREOF; CONFLICT OF INTEREST, EXPLAINED; ACT OF NOTARIZING THE OPPOSING PARTY'S AFFIDAVIT OF**

DESISTANCE IS VIOLATIVE THEREOF; CASE AT BAR.— [T]he Court finds Atty. Barin's act of notarizing complainant's affidavit of desistance violative of Rule 15.01, Canon 15 of the Code of Professional Responsibility. x x x The concept of conflict of interest was discussed in *Hornilla v. Atty. Salunat*, to wit: There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Based on the records, there exists a conflict of interest. Atty. Barin admits that he is the counsel of Ms. Calamiong in the Estafa case filed by herein complainant. His act of notarizing the affidavit of desistance of complainant, which was later submitted to the investigating prosecutor, is a clear violation of the above-cited Rule. Atty. Barin cannot represent both parties in the same case, as the counsel for the accused and the complainant. The affidavit of complainant should have been subscribed and sworn to before the investigating prosecutor to give the latter an opportunity to determine the veracity of its contents and voluntariness of its execution.

R E S O L U T I O N

DELOS SANTOS, *J.*:

For resolution is a Sworn Affidavit [1] for disbarment dated 5 June 2012 filed by Cesar C. Castro (complainant) against Atty. Enrico G. Barin (Atty. Barin) charging the latter with violation of the 2004 Rules on Notarial Practice (2004 Notarial Rules) for his act of preparing and notarizing an affidavit of desistance without the complainant's personal appearance.

Factual Background

In his Complaint-Affidavit, complainant narrates that he filed a criminal complaint for Estafa/Swindling against one Perlita

[1] *Rollo*, p. 1.

G. Calamiong (Ms. Calamiong) docketed as NPS No. 111-17-INV-111-00963 before the Office of the City Prosecutor, Tarlac City, Tarlac (OCP-Tarlac City). During its pendency, complainant went to the OCP-Tarlac City to inquire on the status of his complaint, and was surprised when he was furnished a copy of a motion to withdraw information with an attached affidavit of desistance allegedly notarized by Atty. Barin, counsel of Ms. Calamiong. Complainant denies that he prepared and/or signed both the motion to withdraw and the affidavit of desistance, and alleges forgery on the part of Ms. Calamiong and Atty. Barin. Further, he claims that he did not personally appear before Atty. Barin for the notarization of the affidavit of desistance. Hence, he prays for the disbarment of Atty. Barin.

On 26 September 2012, the Court issued a Resolution[2] requiring Atty. Barin to submit his Comment within 10 days from notice.

In compliance, Atty. Barin submitted his Comment[3] dated 19 November 2012 and refutes complainant's allegation that he falsified the motion to withdraw and the affidavit of desistance. He admits that Ms. Calamiong is a client of his law office and that she sought his advice with regard to the Estafa case filed against her by herein complainant.

He explains that on 15 June 2012, complainant accompanied by Ms. Calamiong, went to his office to personally subscribe on the affidavit of desistance. Atty. Barin further states that complainant presented his Senior Citizen card, and that he required the latter to present additional proof of identification, to which he presented his Philippine passport. After signing the above-mentioned documents, Atty. Barin advised Ms. Calamiong to submit the same to the OCP-Tarlac City, to which she acceded. He asserts that he did not falsify the signature of herein complainant and that complainant personally appeared

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[2] *Id.* at 15-16.

[3] *Id.* at 21-30.

before him to acknowledge the documents. Thus, he prays for the dismissal of the instant case.[4]

In a Resolution[5] dated 30 January 2013, the Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within 90 days from receipt of the record.

On 5 August 2013, the IBP-Commission on Bar Discipline (IBP-CBD) issued a notice[6] requiring both parties to appear for a mandatory conference.

On 6 September 2013, the IBP-CBD issued an Order[7] declaring the mandatory conference closed and terminated. Both parties were then required to file their respective verified position papers within a period of 10 days from receipt thereof.

IBP Report and Recommendation

After hearing, the IBP-CBD issued a Report and Recommendation[8] dated 12 January 2015, through Investigating Commissioner Ricardo M. Espina (Commissioner Espina), finding Atty. Barin liable for violation of Rule 15.01, Canon 15, Code of Professional Responsibility, and recommended the penalty of reprimand. Commissioner Espina held:

> What we find highly irregular, however, is respondent's act of notarizing complainant's affidavit of desistance. This act violates Rule 112, Section 3, Rules of Criminal Procedure. The ensuing *conflict of interest* caused by respondent's act of notarizing complainant's affidavit resulted, by extension, to a violation of Canon 15, Rule 15.01, Code of Professional Responsibility.
>
> xxx x x x xxx
>
> It is clear that the parties' affidavits in the preliminary investigation stage must be subscribed and sworn to before a prosecutor. It is

[4] *Id.* at 26.

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

[6] *Id.* at 63.

[7] *Id.* at 62.

[8] *Id.* at 101-104.

only when there is no available prosecutor that a notary public can take over the responsibility of the investigating prosecutor. Respondent failed to follow this Rule. Worse, his act of notarizing the affidavit of the adverse party (*e.g.*, complainant Castro) and submitting the document to the prosecutor's office benefit his client, Ms. Calamiong, resulted in conflict of interest. This can't be a case of a fresh lawyer's error considering that respondent was admitted to the Bar way back in May 1991.

x x x x x x x x x

WHEREFORE, it is hereby recommended that Respondent Atty. Enrico G. Barin be REPRIMANDED for violation of Canon 15, Rule 15.01, Code of Professional Responsibility, with the WARNING that similar actions in the future will be dealt with appropriately.

RESPECTFULLY SUBMITTED. [9]

Acting on the Report, the IBP Board of Governors issued Resolution No. XXI-2015-285[10] dated April 18, 2015, adopting the findings and recommendation of Commissioner Espina with modification, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED **with modification**, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", considering Respondent's violation of Canon 15 and Rule 15.01 of the Code of Professional Responsibility. Hence, Atty. Enrico G. Barin is hereby **SUSPENDED from the practice of law for three (3) months**.

Aggrieved, Atty. Barin filed a verified Motion for Reconsideration,[11] which was denied by the IBP Board of Governors in Resolution No. XXII-2016-630[12] dated 29 November 2016.

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[9] *Id.* at 103-104.

[10] *Id.* at 117.

[11] *Id.* at 105-108.

[12] *Id.* at 115.

Issue

Whether Atty. Barin violated the Lawyer's Oath, the Code of Professional Responsibility and the 2004 Rules on Notarial Practice, for his acts of notarizing an affidavit of desistance without complainant's personal appearance.

The Court's Ruling

After a careful evaluation of the records of the case, the Court resolves to adopt the findings of the IBP-CBD, except as to the imposable penalty.

In administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant. In the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.[13]

In the instant case, We find that complainant failed to prove by clear and preponderant evidence that his signature in the affidavit of desistance was forged or falsified by Atty. Barin. We cannot give evidentiary weight to mere assumption in the absence of any evidence to support such claim. Mere suspicion and speculation is not enough.

However, the Court finds Atty. Barin's act of notarizing complainant's affidavit of desistance violative of Rule 15.01, Canon 15 of the Code of Professional Responsibility which reads:

> Canon 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.
>
> Rule 15.01 — A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

The concept of conflict of interest was discussed in *Hornilla v. Atty. Salunat*,[14] to wit:

[13] *Coquia v. Atty. Laforteza*, 805 Phil. 400, 408 (2017).

[14] 453 Phil. 108, 111 (2003).

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used.

Based on the records, there exists a conflict of interest. Atty. Barin admits that he is the counsel of Ms. Calamiong in the Estafa case filed by herein complainant. His act of notarizing the affidavit of desistance of complainant, which was later submitted to the investigating prosecutor, is a clear violation of the above-cited Rule. Atty. Barin cannot represent both parties in the same case, as the counsel for the accused and the complainant. The affidavit of complainant should have been subscribed and sworn to before the investigating prosecutor to give the latter an opportunity to determine the veracity of its contents and voluntariness of its execution. Considering that this is Atty. Barin's first offense, the penalty of suspension of two (2) months from the practice of law is appropriate.

WHEREFORE, the Court finds Atty. Enrico G. Barin guilty of violating Rule 15.01 of Canon 15 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for two (2) months, effective immediately upon receipt of this Resolution, with **WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this Resolution be furnished to the Office of the Bar Confidant, to be appended to Atty. Enrico G. Barin's personal record as attorney. Likewise, let copies of this Resolution be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts in the country for their information and guidance.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Hernando, and *Inting, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-16-2456. March 2, 2020]

RE: ANONYMOUS COMPLAINT AGAINST JUDGE LAARNI N. DAJAO, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 27, SIOCON, ZAMBOANGA DEL NORTE

SYLLABUS

1. LEGAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT; SECTIONS 1 AND 2, CANON 4 THEREOF; JUDGES SHOULD EXHIBIT PROPRIETY AND THE APPEARANCE OF PROPRIETY IN ALL THEIR ACTIVITIES; THEY ARE ENJOINED TO ALWAYS BE TEMPERATE, PATIENT AND COURTEOUS BOTH IN CONDUCT AND LANGUAGE; CASE AT BAR.— Sections 1 and 2 of Canon 4 of the New Code of Judicial Conduct which covers propriety. x x x [A] judge should possess the virtue of *gravitas*. He should be learned in the law, dignified in demeanor, refined in speech and virtuous in character. Besides having the requisite learning in the law, he must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint. In this connection, he should be considerate, courteous and civil to all persons who come to his court. A judge who is inconsiderate, discourteous or uncivil to lawyers, litigants or witnesses who appear in his sala commits an impropriety. In the present case, insulting and insensitive language used by Judge Dajao in the Order he issued x x x is a language not befitting a judge. It must be emphasized that judges are enjoined to always be temperate, patient and courteous both in conduct and language. Here, Judge Dajao's unguarded written words, as well as insinuations of a sexual relationship between the parties involved in the case he was hearing, fell short of the standards expected of a magistrate of the law and constituted vulgar and unbecoming conduct that eroded public confidence in the judiciary.

2. ID.; ID.; CODE OF JUDICIAL CONDUCT; CANON 1 ON INTEGRITY AND CANON 2 ON PROPRIETY PROSCRIBES JUDGES FROM ENGAGING IN SELF-PROMOTION AND INDULGING THEIR VANITY AND PRIDE; CASE AT BAR.— The Supreme Court agrees with the OCA in

declaring that "the act of Judge Dajao in adding "Dr." and "Ph.D" to his name in the subject order gives the impression that he is egotistical, and wants to be recognized by the litigants that other than being a magistrate, the inclusion of a title in the order, other than his official designation as a judge, was unwarranted." Canon 2, Rule 2.02 of the Code of Judicial Conduct provides that "a judge should not seek publicity for personal vainglory." Used in its ordinary meaning, vainglory refers to an individual's excessive or ostentatious pride, especially in one's achievements. Canon 1 on Integrity and Canon 2 on Propriety of the Code of Judicial Conduct proscribes judges from engaging in self-promotion and indulging their vanity and pride. Here, the inclusion of the titles "Dr." and "Ph.D" by Judge Dajao in the questioned Order is a clear example of self-promotion and vanity and disseminates unnecessary publicity.

3. REMEDIAL LAW; RULES OF COURT; DISCIPLINE OF JUDGES; LIGHT CHARGES; VULGAR AND UNBECOMING CONDUCT; ESTABLISHED IN CASE AT BAR.— Section 10 (1), Rule 140 of the Revised Rules of Court classifies vulgar and unbecoming conduct as a light charge, for which a fine of not less than One Thousand Pesos (₱1,000.00) but not exceeding Ten Thousand Pesos (₱10,000.00) may be imposed. We adopt the recommendation of the OCA that Judge Dajao be fined in the amount of Five Thousand Pesos (₱5,000.00), with a severe warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

R E S O L U T I O N

DELOS SANTOS, *J.*:

The Case

This administrative matter pertains to the vulgar and unbecoming conduct of Judge Laarni N. Dajao (Judge Dajao), Presiding Judge of the Regional Trial Court, Branch 27, Siocon, Zamboanga del Norte, constituting violations of Sections 1 and 2, Canon 4 of the New Code of Judicial Conduct.

The Facts

In an anonymous letter-complaint dated 15 January 2014, an unknown person accused Judge Dajao of (1) manifesting a

pattern of unprofessional conduct in terms of language and deed, as observed from a number of his hearings; (2) detailing his name and position in documents as Dr. Laarni N. Dajao, Ph.D (CL-HC); and (3) making malicious and degrading statements in his Order dated 27 November 2013 in Criminal Case Nos. 2013-08-05 (1049), 2013-08-06 (1050) and 2013-08-07 (1051) for illegal possession of firearms and ammunitions, entitled *"People of the Philippines v. Julman Asim."*

The letter-complaint expressed that in the Order dated 27 November 2013, Judge Dajao used words which were malicious, degrading, and disgraceful to the image of the court and the legal profession. In the said Order, the anonymous observer posited that Judge Dajao mentioned "big dick/penis, homophobic *baklita*, idiot, *ugok*, psychopath" and imputed a "sexual relationship with a man who is the accused in his sala, *etc*." The letter-complaint also cited that Judge Dajao placed "Dr." and "Ph.D." beside his name, a questionable act since judges are enjoined to foster humility in their profession. Thus, the complaint prayed that Judge Dajao be reprimanded and disciplined for unprofessional conduct.

In his Comment dated 6 May 2014, Judge Dajao stated that the sole purpose of the complaint was to malign him. He declared that the criminal cases which were the subject of his 27 November 2013 Order were all dismissed without prejudice. As such, Judge Dajao expressed that he could not answer the complaint. Also, Judge Dajao mentioned that he already accepted the apology of the PDEA Regional Director in behalf of the PDEA operatives included in the said Order. Thus, Judge Dajao prayed that the complaint not be acted upon.

The Office of the Court Administrator's Report and Recommendation

In its Report dated 26 January 2016, the Office of the Court Administrator (OCA) found Judge Dajao to be administratively liable for vulgar and unbecoming conduct. The OCA stated that the 27 November 2013 Order of Judge Dajao granted the Omnibus Motion to Quash submitted by the defense. In the same Order, Judge Dajao asserted that a defendant should not

be harassed with various prosecutions based upon the same act by splitting the same into various charges, all emanating from the same law violated, when the prosecution could easily embody them in a single information. The OCA observed that Judge Dajao used intemperate language in the said Order and frowned upon Judge Dajao's act of adding "Dr." and "Ph.D." to his name giving the impression that he is egotistical and wants to be recognized by litigants as having excelled in other fields.

The OCA made this recommendation:

(1) the instant administrative complaint be RE-DOCKETED as a regular administrative matter against Judge Laarni N. Dajao, Presiding Judge, Branch 27, Regional Trial Court, Siocon, Zamboanga del Norte; and

(2) respondent Judge Dajao be found LIABLE for vulgar and unbecoming conduct and be FINED in the amount of Five Thousand Pesos (Php5,000.00), with a STERN WARNING that a repetition of a similar offense shall be dealt with more severely.

The Court's Ruling

We adopt the findings and recommendation of the OCA.

In the Order dated 27 November 2013, which is the subject matter of this administrative case, issued by Judge Dajao pertaining to three criminal cases for illegal possession of firearms and ammunitions, the pertinent portions provide:

WHEREAS:

1. On November 14, 2013, the defense submitted their Motion to Quash dated September 9, 2013, x x x.

x x x x x x x x x

3. Meanwhile, accused Julman Asim executed a Counter-affidavit dated November 11, 2013, herewith re produced *in toto*, *viz.*:

x x x x x x x x x

> 16. While I was blindfolded, the PDEA agent investigated me by asking if I know Judge Dajao and if I have a relationship with Judge Dajao. After denying their insinuation, they continued asking questions if I am [a] lover of Judge Dajao. They even

commented that maybe I have a big dick (penis) and forced me to admit that I have an intimate relationship with Judge Dajao;

x x x x x x x x x

After a careful evaluation, this court finds for the defense.

x x x x x x x x x

WHEREFORE, premises considered:

1. All the aforementioned cases *vis.*:
   1.1 — Criminal Case no. 2013-08-05 (1049)
   1.2 — Criminal Case no. 2013-08-06 (1050)
   1.3 — Criminal Case no. 2013-08-07 (1051)

are: Dismissed, without prejudice. x x x.

2. The prosecutor is directed to file relevant and ordinate information, taking into consideration all the objects listed in the Omnibus Motion to Quash x x x.

3. The PDEA operatives, by agent II Jury Rocamora — the team leader — pursuant to the principle of the chain of command, is strictly ordered to:

x x x x x x x x x

3.4 Refrain from thundering pre-emptive, assaultive, incursive and sub[-]judice; even threatening comments/remarks upfront the face of the court and its judge, touching on the merits of their cases docketed in this court. Wait till the issues raised are properly and completely passed upon by this court. Any doubts or questions must be referred to the handling prosecutor. PDEA Agent II Rocamora, **notwithstanding his delusion of being a special law enforcement officer**, must understand and acknowledge that he has no standing in court, except as a witness for the prosecution.

4. Assistant Regional Prosecutor Dennis F. Araojo, to remember:

x x x x x x x x x

4.2 **By fiction of law, his vital witness — Agent II Jury Rocamora, is an idiot**. Prosecutor Araojo must and should prevail over him in the management and prosecution of PDEA-handled cases. **Idiot notwithstanding, Agent II Rocamora is a brilliant, highly evolved psychopath** who

is very familiar with military high-end psy-ops such as preemptions and deflection **(See notes, as an illustrative example of deflection. Be cautious in your analysis. Since it is an esoteric perspective, it has to be spiritually discerned). With sophisticated weaponry and tranced trained-to-obey men at his disposal, if left to his own devices, Agent II Rocamora is a very high security risk, even to the PDEA itself**.

x x x x x x x x x

5. Accused Julsam Asim, being a detention prisoner, is ordered released from the custody of the Bureau of Jail Management and Penology (BJMP), unless being held for some other lawful cause.

- -

Notes:

x x x x x x x x x

2. If we follow the articulation of the Counter-Affidavit of accused Asim, x x x **Agent II Rocamora has [a] strange way of unveiling his hidden desires to**:

x x x x x x x x x

6.1 know and have a relationship with Julman Asim aka Baolo;
6.2 be loved by Baolo and be his lover in return;
6.3 do a big dick (penis) with and force Baolo to have an intimate relationship with him; and
6.4 have a sexual relationship with Baolo.

Unlike the literal imputations against Judge Dajao, the positioning of Agent II Rocamora is literary. However, as it were, Agent II Rocamora's courting of Baolo is quite literal-wanton cruelties x x x. **Cruelties without compunction is basic attribute of a psychopath (sadistic). No amount of deflecting can hide PDEA Agent II Rocamora's true self: a Homophobic Baklita**.

SO ORDERED.

GIVEN IN CHAMBERS this 27th day of November, 2013 at Siocon, Zamboanga del Norte, Philippines.

DR. LAARNI N. DAJAO Ph. D (CL-HC)
Presiding Judge

(Emphasis supplied)

Sections 1 and 2 of Canon 4 of the New Code of Judicial Conduct[1] which covers propriety state:

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

Moreover, a judge should possess the virtue of *gravitas*. He should be learned in the law, dignified in demeanor, refined in speech and virtuous in character. Besides having the requisite learning in the law, he must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint. In this connection, he should be considerate, courteous and civil to all persons who come to his court. A judge who is inconsiderate, discourteous or uncivil to lawyers, litigants or witnesses who appear in his sala commits an impropriety.[2]

In the present case, insulting and insensitive language used by Judge Dajao in the Order he issued such as "idiot," "psychopath," "big dick (penis)," "sadistic," and "homophobic baklita" is a language not befitting a judge. It must be emphasized that judges are enjoined to always be temperate, patient and courteous both in conduct and language. Here, Judge Dajao's unguarded written words, as well as insinuations of a sexual relationship between the parties involved in the case he was hearing, fell short of the standards expected of a magistrate of the law and constituted vulgar and unbecoming conduct that eroded public confidence in the judiciary.

In *Spouses Jacinto v. Judge Vallarta*,[3] we held that from the standpoint of conduct and demeanor expected of members of

[1] A.M. No. 03-05-01-SC which took effect on 1 June 2004.

[2] *De La Cruz v. Carretas*, 559 Phil. 5, 15 (2007).

[3] 493 Phil. 255, 265 (2005).

the bench, a resort to intemperate language only detracts from the respect due them and becomes self-destructive. The judicial office circumscribes the personal conduct of a magistrate and imposes a number of restrictions. This is a price that judges have to pay for accepting and occupying their exalted positions in the administration of justice. Irresponsible or improper conduct on their part erodes public confidence in the judiciary. Thus, it is their duty to avoid any impression of impropriety in order to protect the image and integrity of the judiciary.

Also, we agree with the OCA in declaring that "the act of Judge Dajao in adding "Dr." and "Ph.D" to his name in the subject order gives the impression that he is egotistical, and wants to be recognized by the litigants that other than being a magistrate, the inclusion of a title in the order, other than his official designation as a judge, was unwarranted."

Canon 2, Rule 2.02 of the Code of Judicial Conduct provides that "a judge should not seek publicity for personal vainglory." Used in its ordinary meaning, vainglory refers to an individual's excessive or ostentatious pride, especially in one's achievements. Canon 1 on Integrity and Canon 2 on Propriety of the Code of Judicial Conduct proscribes judges from engaging in self-promotion and indulging their vanity and pride.[4]

Here, the inclusion of the titles "Dr." and "Ph.D" by Judge Dajao in the questioned Order is a clear example of self-promotion and vanity and disseminates unnecessary publicity. In *Office of the Court of Administrator v. Floro, Jr.*,[5] we held that judges are held to a higher standard and must act within the confines of the code they observe. Judges should not use the courtroom as platform for announcing their qualifications especially to an audience of lawyers and litigants who very well might interpret such publicity as a sign of insecurity. Verily, the public looks upon judges as the bastion of justice — confident, competent and true. And to discover that this is not so, as the judge appears so unsure of his capabilities that he

[4] See *Uy v. Javellana*, 694 Phil. 159, 186 (2012).

[5] See 520 Phil. 591, 617-618 (2006).

has to court the litigants and their lawyers' approval, definitely erodes public confidence in the judiciary.

Further, it should be borne in mind that it is the express mandate of the Canons of Judicial Ethics that "justice should not be bounded by the individual idiosyncrasies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgment, or spectacular or sensational in the conduct of his court."[6]

Section 10 (1), Rule 140 of the Revised Rules of Court classifies vulgar and unbecoming conduct as a light charge, for which a fine[7] of not less than One Thousand Pesos (₱1,000.00) but not exceeding Ten Thousand Pesos (₱10,000.00) may be imposed. We adopt the recommendation of the OCA that Judge Dajao be fined in the amount of Five Thousand Pesos (₱5,000.00), with a severe warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

WHEREFORE, we find respondent Judge Laarni N. Dajao, Presiding Judge of the Regional Trial Court, Branch 27, Siocon, Zamboanga del Norte, **GUILTY** of **VULGAR and UNBECOMING CONDUCT** and impose on him a **FINE** in the amount of Five Thousand Pesos (₱5,000.00), with a severe warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Hernando, and *Inting, JJ.*, concur.

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[6] See *In the Matter of the Alleged Improper Conduct of Sandiganbayan Associate Justice Anacleto D. Badoy, Jr., Taking an Ambulance but Proceeding to the GMA TV Station for an Interview Instead of Proceeding Forthwith to the Hospital*, 443 Phil. 296, 312 (2003).

[7] Section 11 (C) (1), Rule 140 of the Revised Rules of Court.

SECOND DIVISION

[G.R. No. 191759. March 2, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERALD MORENO *y* TAZON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; DENIAL IS INHERENTLY WEAK; FOR THE DEFENSE OF ALIBI TO PROSPER, THE REQUIREMENTS OF TIME AND PLACE MUST BE STRICTLY MET; REQUIREMENTS, NOT ESTABLISHED IN CASE AT BAR.— Denial is inherently a weak defense which cannot outweigh positive testimony. A categorical statement that has the earmarks of truth prevails over a bare denial which can easily be fabricated and is inherently unreliable. For the defense of *alibi* to prosper, the accused must prove that he was at some other place at the time of the commission of the crime and it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. These requirements of time and place must be strictly met. Appellant asserts that he was asleep at the time of the commission of the crime. He insists that he has never met Mijares before and just saw him for the first time when he assisted in getting a taxicab so he may be rushed to the hospital. However, in the same breath, appellant himself admitted that only a wall separated his house and the crime scene. Such admission negated physical impossibility of him being at the crime scene, making his *alibi* simply unbelievable. While the testimonies of his mother, Victoria, and his brother, Crispulo, supposedly corroborated his claim that he was in a different place when the stabbing took place, such testimonies did not bolster appellant's defenses of *alibi* and denial. This Court has consistently assigned less probative weight to a defense of *alibi* when it is corroborated by relatives. For corroboration to be credible, the same must be offered preferably by disinterested witnesses. Evidently, Victoria and Crispulo were not disinterested witnesses both being appellant's relatives. Their testimonies are rendered suspect because the former's relationship to them makes it likely that they would

freely perjure themselves for his sake. Hence, by all accounts, appellant failed to meet the requirements for his defense of *alibi* to prosper.

2. ID.; ID.; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES CANNOT DESTROY THEIR CREDIBILITY. — The inconsistencies in Adelriza's and SPO1 Olavario's testimonies on the number of persons present when she identified the appellant, Adelriza stated that the appellant was the only person present, while SPO1 Olavario maintained that there were other people present, referred to a minor detail which did not diminish the probative value of the testimonies at issue. After all, it is well-settled that immaterial and insignificant details did not discredit a testimony on the very material and significant point bearing on the very act of the perpetrator. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. Here, it remains that Adelriza was able to categorically identify the appellant as the very culprit of the crime.

3. ID.; ID.; ID.; THE DIFFERENCE BETWEEN THE WITNESS' DESCRIPTION OF THE VICTIM'S ASSAILANT AND THAT OF ACCUSED'S ACTUAL APPEARANCE, PARTICULARLY AS TO HEIGHT, WAS INCONSEQUENTIAL.— This Court has consistently ruled that witnesses frequently concentrate on the facial features and movements of the accused. Victims of violence tend to strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed and not unduly concentrate on extraneous factors and physical attributes unless they are striking. The appellate court correctly pointed out that any difference between Adelriza's description of the victim's assailant and that of appellant's actual appearance, particularly as to height, was inconsequential because she cannot be expected to give an accurate estimate of his height. We thus adhere to the finding of the appellate court that Adelriza's immediate description of the assailant matched squarely with the actual appearance of appellant.

4. ID.; ID.; WAYS OF CONDUCTING OUT-OF-COURT IDENTIFICATION OF THE OFFENDER; TOTALITY OF CIRCUMSTANCES TEST TO DETERMINE THE ADMISSIBILITY OF SUCH IDENTIFICATION, REITERATED AND APPLIED; FACTORS TO BE CONSIDERED, ENUMERATED.— In *People v. Teehankee, Jr.*, this Court explained the procedure for out-of-court identification and the test to determine the admissibility of such identifications in this manner: Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru lineups where a witness identifies the suspect from a group of persons lined up for the purpose x x x. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances** test where they consider the following factors, *viz*[.]: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure. Applying the totality of circumstances test, We find appellant's out-of court identification to be reliable and thus admissible. To recall, Adelriza after being awakened when a hard object hit her head and after she switched on the lights inside the room, had a clear and direct view of the attack on her husband and the perpetrator. Moreover, she described with certainty the assailant to the police cartographer barely hours from the time of the incident, which description matched the facial features of the appellant, whom she subsequently identified as the assailant. In other words, the interval between the time she witnessed the crime and her identification of the appellant, was merely a matter of hours, leaving no room for her recollection to be tainted. Verily, it was Adelriza's own description that led to the apprehension of the appellant. There was no evidence on record indicating any hint of a suggestion from the police officer who presented the appellant to Adelriza. Hence, the identification of the appellant as the culprit of the crime stands.

5. ID.; CRIMINAL PROCEDURE; ARREST; QUESTIONS ABOUT THE LEGALITY OF AN ARREST MUST BE MADE BEFORE ARRAIGNMENT AND FAILURE TO OBJECT TO ILLEGALITY CONSTITUTES A WAIVER; PRINCIPLES, APPLIED.— About the legality of appellant's arrest, it bears stressing that questions on arrest shall be made before arraignment and failure to object to the illegality of arrest constitutes a waiver on the part of the accused. It is settled that any objection to the manner of arrest must be opportunely raised before he enters his plea; otherwise, the objection is deemed waived. Here, the records clearly show that the objection was only raised on appeal. x x x Even assuming that appellant's arrest was irregular, still, it is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.

6. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES THAT MUST BE ESTABLISHED TO BE APPRECIATED.— We agree that treachery attended the attack on Mijares. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself/herself arising from the defense which the offended party might make. In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: *(1)* the employment of means, method, or manner of execution that would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, and *(2)* the means, method, or manner of execution was deliberately or consciously adopted by the offender. The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.

7. ID.; ID.; ID.; ID.; APPELLANT'S SUDDEN ATTACK ON THE VICTIM WAS TREACHEROUS THEREBY QUALIFYING THE KILLING TO MURDER.— Appellant's sudden attack on Mijares while asleep in his own home amply demonstrates treachery in the commission of the crime. Mijares had no inkling of the impending attack that night; or any peril to his person as he felt secured in his home. Mijares was not able to put up an effective defense. Although he kicked and

pushed the appellant out of their room, this did not negate the presence of treachery. x x x Further, We find that the appellant consciously and deliberately adopted the particular means, methods or form of attack in order to ensure the execution of the crime. He stabbed Mijares several times so that he would not be a risk to himself. He lodged a bladed weapon on the victim's chest and back. Indeed, the attack on Mijares was treacherous thereby qualifying the killing to murder.

8. ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY, MORAL, TEMPERATE, AND EXEMPLARY DAMAGES, AWARDED. — It is jurisprudentially settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. x x x Pursuant to *Jugueta*, We sustain the award of ₱75,000.00 as civil indemnity but increase the moral damages from ₱50,000.00 to ₱75,000.00. In addition, an award of exemplary damages in the amount of ₱75,000.00 is proper. However, in lieu of actual damages, We award temperate damages in the amount of ₱50,000.00. The settled rule is that when the amount of actual damages proven by receipts during the trial is less than the sum allowed by the court as temperate damages, the award of temperate damages in lieu of actual damages, which is of a lesser amount, is justified. x x x In the present case, Mijares' heirs were able to prove, and were awarded, actual damages in the amount of ₱31,500.00. Since, prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in cases where the penalty imposed is *reclusion perpetua*, this Court finds it proper to award temperate damages to Mijares' heirs, in lieu of actual damages. Considering too that Mijares' heirs spent for attorney's fees to prosecute the case against the appellant, the award of ₱50,000.00 is sustained. Article 2208 of the Civil Code enumerates the legal grounds warranting the grant of attorney's fees and expenses of litigation, and this case qualifies since exemplary damages are awarded and the Court deems it just and equitable that attorney's fees be recovered.

9. ID.; ID.; ID.; UNEARNED INCOME; FACTORS TO BE CONSIDERED TO DETERMINE THE COMPENSABLE AMOUNT; AWARD OF UNEARNED INCOME,

INCREASED. — Anent unearned income, the RTC awarded ₱603,288.00 without elaborating on its basis. To determine the compensable amount of lost earnings, We consider (1) the number of years for which the victim would otherwise have lived (life expectancy); and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed by applying the formula (2/3 x [80 - age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily computed at fifty percent (50%) of the gross earnings. Thus, the formula used by this Court in computing loss of earning capacity is: Net Earning Capacity = [2/3 x (80 - age at time of death) x (gross annual income - reasonable and necessary living expenses)]. Here, it was sufficiently established that the victim, at the time of his death, was 32 years old and was employed as a bookkeeper at the Philippine Amusement and Gaming Corp. with a monthly basic salary of ₱7,182.00 or ₱86,184.00 in a year. x x x We are thus impelled to modify the award of unearned income from ₱603,288.00 to ₱1,378,944.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Francisco Paredes & Morales for accused-appellant.

D E C I S I O N

HERNANDO, *J.*:

On appeal is the August 27, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. C.R.-H.C. No. 03204, affirming the Decision[2] of the Regional Trial Court (RTC), Branch 53, Manila

[1] *Rollo*, pp. 2-13; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Andres B. Reyes, Jr. (now a member of this Court) and Vicente S.E. Veloso.

[2] Records, pp. 223-233; penned by Judge Reynaldo A. Alhambra.

in Criminal Case No. 01-197519 which found appellant Gerald Moreno *y* Tazon (appellant) guilty beyond reasonable doubt of the crime of Murder.

The Information[3] alleged:

> That on or about the 16th day of November 2001, in the City of Manila, Philippines, said accused, did then and there, willfully, unlawfully and feloniously x x x at about 2:15 a.m., with intent to kill, with treachery and evident premeditation, attack, assault and use personal violence upon the person of one CECIL MIJARES *Y* LEOCADIO by then and there stabbing him with a bladed weapon on his body, thereby inflicting upon said CECIL MIJARES *Y* LEOCADIO mortal stab wounds at the back and chest which were the direct and immediate cause of his death, thereafter.
>
> CONTRARY TO LAW.

Version of the Prosecution

On November 16, 2001, at around 2:15 in the morning, Adelriza Mijares ("**Adelriza**") was awakened from her sleep when a hard object hit her head. When she turned on the lights, a man, wearing khaki shorts and white t-shirt, leap on their bed and repeatedly stabbed her husband, Cecil Mijares ("**Mijares**"), on the leg and chest. Mijares was able to kick the man out of the room and even close the door. Immediately thereafter, Mijares collapsed and fell on the floor. Adelriza shouted for help and their neighbor, Virgie Perey ("**Virgie**"), came to their rescue. Virgie sought assistance from their neighbors, Noli Corrales and Michael Buenaflor, in bringing Mijares to the Philippine General Hospital (PGH). Unfortunately, Mijares died while undergoing treatment.[4]

Senior Police Officer 1 Raul Olavario ("**SPO1 Olavario**") and other police officers from the Western Police District, Homicide Division, arrived at the PGH after receiving a report about a stabbing incident in their area of jurisdiction. SPO1 Olavario

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[3] Records, p. 1.

[4] *Id.* at 224, TSN, May 14, 2002, pp. 5-12.

interviewed Adelriza and conducted a physical examination of the cadaver. He observed multiple stab wounds on different parts of Mijares' body, particularly at the front and at the back. After the examination, SPO1 Olavario asked Adelriza to accompany them to the crime scene. Upon arrival, the police officers discovered that four pieces of glass jalousies at the front window of Adelriza's house were removed and the window screen was broken. They likewise saw bloodstains on the floor where Mijares collapsed.[5] The police officers and Adelriza proceeded to the police station where Adelriza executed a Sworn Statement[6] dated November 16, 2001. At this point, Adelriza still did not know the name of her husband's killer but she vividly remembered his face after having witnessed the stabbing. A police cartographer prepared a sketch of the suspect based on Adelriza's description.[7]

In the afternoon of the same day, the police received a call from Virgie informing them that appellant, who fitted the description of the suspect, was in the vicinity of his house. According to Virgie, she heard rumors that appellant was responsible for the killing of Mijares.[8] Acting on Virgie's tip, SPO1 Olavario invited appellant to the police station for an interview regarding the killing that transpired to which appellant acceded.[9] The police officers then summoned Adelriza to the police station. Upon her arrival, she positively identified appellant as the person who stabbed her husband. It was only at this point that she learned of Moreno's name.[10]

SPO1 Olavario thus arrested appellant and informed him of his constitutional right to remain silent and to have a competent counsel of his choice. Appellant however did not respond. Hence,

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[5] TSN, September 10, 2002, pp. 4-20.

[6] Records, pp. 11-16.

[7] *Id.* at 224.

[8] *Id.* at 18.

[9] *Id.* at 225.

[10] *Id.* at 224.

SPO1 Olavario merely asked for his name and then prepared the Crime Report, Booking and Arrest Sheet and Referral to Inquest.[11]

Version of the Defense

The defense vehemently denied the version of the prosecution and interposed that at the time of the incident, appellant was sleeping at his house on Diamante St., Sta. Ana, Manila where his mother, father, siblings and son likewise lived. He was awakened by a loud noise and when he inquired about it from his father, he was told that there was a robbery in the vicinity. He then went out of their gate where their neighbor, Junior Santos, told him to get a taxicab. When it arrived, he assisted his neighbors to carry Mijares into the taxicab to be brought to the hospital. Thereafter, he went back to sleep and was only awakened at around 11:00 in the morning when armed police officers were already inside his room. The police officers invited him to the police station for an investigation and he voluntarily went with them.[12]

Appellant insisted that he never knew Mijares and he saw the victim for the first time when he assisted in carrying him to the taxicab. During the time of the incident, he was wearing a gray t-shirt and black pants contrary to Adelriza's description of the clothes of her husband's killer. However, he could not impute any reason as to why Adelriza would ever testify against him.[13]

Victoria Moreno ("**Victoria**"), appellant's mother, and Crispulo Moreno III ("**Crispulo**"), his brother, corroborated appellant's whereabouts.[14]

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[11] *Id.* at 225; TSN, September 10, 2002, pp. 4-20.

[12] *Id.* at 227-228; TSN, December 2, 2003.

[13] *Id.*

[14] TSN, February 10, 2004, April 20, 2004, October 4, 2004, January 11, 2005, March 15, 2005.

Ruling of the Regional Trial Court

Appellant pleaded "not guilty."[15] After trial, the RTC rendered a Decision[16] finding appellant guilty of Murder, treachery having attended the attack. The trial court disposed the case in this wise:

> **WHEREFORE**, in view of the foregoing, judgment is hereby rendered finding accused Gerald Moreno *y* Tazon **GUILTY** beyond reasonable doubt of the crime of Murder and is hereby sentenced to ***Reclusion Perpetua*** and ordered to pay [the] heirs of Cecil Mijares the following amounts: **PHP75,000.00** as indemnity for his death; **PHP603,288.00** as unearned income; **PHP31,500.00** as actual damages; **PHP50,000.00** as reimbursement for attorney's fees; and **PHP50,000.00** as moral damages.
>
> Cost against the accused.
>
> SO ORDERED.[17]

The trial court rejected appellant's defenses of *alibi* and denial; his alleged lack of motive in committing the crime; his arguments that the uncorroborated testimony of Adelriza was insufficient to convict him; and that his identification outside a police line-up was irregular. Ultimately, the RTC ratiocinated that the clear, positive and credible testimony of Adelriza that appellant was the culprit sufficiently removed any reasonable doubt on his guilt.

Ruling of the Court of Appeals

Undeterred, appellant appealed his conviction before the CA.[18] The appellate court, finding no reversible error, upheld the trial court's Decision. The CA held that the lone, positive and credible testimony of the eyewitness was sufficient to support appellant's conviction.[19] Any inconsistencies in the testimony

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[15] Records, pp. 46-47.

[16] *Id.* at 223-233.

[17] *Id.* at 233.

[18] *Id.* at 240.

[19] *Rollo*, pp. 7-8.

of Adelriza did not destroy the strength of her testimony. The appellate court stressed that there is no rule requiring for a police-line up in the identification of offenders and that the same is not indispensable for the proper and fair identification of offenders.[20] The CA also held that the defense of *alibi* cannot prevail over, and is worthless in the face of the positive identification by a credible witness. Moreover, appellant's *alibi* was inherently weak as he failed to prove that it was physically impossible for him to have been present at the scene of the crime. The appellate court disregarded the argument that he was illegally arrested because the objection was not raised before arraignment and was deemed waived. In sum, the CA did not depart from the trial court's ruling. The dispositive portion of the appellate court's Decision stated:

> *WHEREFORE*, all the foregoing considered, the 25 August 2006 decision of the Regional Trial Court of Manila (Branch 53) in Criminal Case No. 01-197519 finding accused-appellant Gerald Tazon Moreno guilty beyond reasonable doubt of murder is ***AFFIRMED***.
>
> SO ORDERED.[21]

Aggrieved, appellant brought the case before Us, raising the same arguments he had at the CA.

Issue

Appellant raised the sole error: The trial court has committed a serious reversible error when it pronounced the guilt of the appellant on the supposition that the quantum of proof constitutionally required to sustain a conviction was proven.[22]

THE COURT'S RULING

The appeal has no merit.

Positive testimony despite minor inconsistencies prevails over the defenses of denial and alibi

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[20] *Id.* at 9.

[21] *Id.* at 12.

[22] *Id.* at 62.

Appellant claims that the trial court erred in ruling that the positive testimony of the prosecution's witness prevailed over his defense of *alibi*. He alleges that contrary to the conclusion of the trial court, his defense was not at all an *alibi* to account his whereabouts, rather it was an attestation of his plain denial of the crime charged.[23] He asserts that there were inconsistencies and inaccuracies in the uncorroborated testimony of the eyewitness that tarnished its veracity and diminished its probative value to prove his guilt.[24]

The arguments of the appellant deserve scant consideration.

Denial is inherently a weak defense which cannot outweigh positive testimony. A categorical statement that has the earmarks of truth prevails over a bare denial[25] which can easily be fabricated and is inherently unreliable.[26] For the defense of *alibi* to prosper, the accused must prove that he was at some other place at the time of the commission of the crime and it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. These requirements of time and place must be strictly met.[27]

Appellant asserts that he was asleep at the time of the commission of the crime. He insists that he has never met Mijares before and just saw him for the first time when he assisted in getting a taxicab so he may be rushed to the hospital. However, in the same breath, appellant himself admitted that only a wall separated his house and the crime scene.[28] Such admission negated physical impossibility of him being at the crime

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[23] *Id.*

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

[25] *People v. Mat-an*, G.R. No. 215720, February 21, 2018, 856 SCRA 282, 295.

[26] *People v. Pulgo*, 813 Phil. 205, 219 (2017), citing *People v. Aquino*, 724 Phil. 739, 755 (2014).

[27] *People v. Aquino, id.* at 754.

[28] Records, pp. 227-228; TSN, December 2, 2003.

scene,[29] making his *alibi* simply unbelievable. While the testimonies of his mother, Victoria, and his brother, Crispulo, supposedly corroborated his claim that he was in a different place when the stabbing took place,[30] such testimonies did not bolster appellant's defenses of *alibi* and denial.

This Court has consistently assigned less probative weight to a defense of *alibi* when it is corroborated by relatives. For corroboration to be credible, the same must be offered preferably by disinterested witnesses.[31] Evidently, Victoria and Crispulo were not disinterested witnesses both being appellant's relatives. Their testimonies are rendered suspect because the former's relationship to them makes it likely that they would freely perjure themselves for his sake.[32] Hence, by all accounts, appellant failed to meet the requirements for his defense of *alibi* to prosper.

Concerning the supposed inconsistencies and contradictory statements in the eyewitness' testimony in open court,[33] this Court finds them immaterial and did not diminish appellant's guilt.

The inconsistencies in Adelriza's and SPO1 Olavario's testimonies on the number of persons present when she identified the appellant, Adelriza stated that the appellant was the only person present, while SPO1 Olavario maintained that there were other people present,[34] referred to a minor detail which did not diminish the probative value of the testimonies at issue. After all, it is well-settled that immaterial and insignificant details did not discredit a testimony on the very material and significant point bearing on the very act of the perpetrator. As long as the testimonies of the witnesses corroborate one another on material

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[29] *Rollo*, p. 10.

[30] Records, pp. 228-229.

[31] *Id.*

[32] *People v. Nelmida*, 694 Phil. 529, 564-565 (2012).

[33] *Rollo*, pp. 65-68.

[34] *Id.* at 67.

points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.[35] Here, it remains that Adelriza was able to categorically identify the appellant as the very culprit of the crime.

Moreover, courts cannot expect the testimonies of the witnesses to be impeccable.[36] In *People v. Givera*,[37] the Court explained that minor inconsistencies and discrepancies in the testimonies actually tend to strengthen the credibility of the witness because they discount the possibility of them being rehearsed, *viz.*:

> In any event, these discrepancies are minor and insignificant and do not detract from the substance of her testimony. This Court has time and again said that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen their credibility because they discount the possibility of their being rehearsed testimony.[38] (Underscoring supplied)

Appellant also points out that his physical appearance varies from the description given by Adelriza of her husband's assailant. He argues that such contradictory observation proves the unreliability of Adelriza's testimony and provides reasonable doubt on his guilt.[39]

The arguments of appellant fail to impress Us.

This Court has consistently ruled that witnesses frequently concentrate on the facial features and movements of the accused. Victims of violence tend to strive to see the appearance of the

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[35] *People v. Mat-an*, *supra* note 25 at 295.

[36] *People v. Alviz*, 703 Phil. 58, 71-72 (2013).

[37] 402 Phil. 547 (2001).

[38] *Id.* at 565-566.

[39] *Rollo*, pp. 64-66.

perpetrators of the crime and observe the manner in which the crime is being committed and not unduly concentrate on extraneous factors and physical attributes unless they are striking.[40] The appellate court correctly pointed out that any difference between Adelriza's description of the victim's assailant and that of appellant's actual appearance, particularly as to height, was inconsequential because she cannot be expected to give an accurate estimate of his height. We thus adhere to the finding of the appellate court that Adelriza's immediate description of the assailant matched squarely with the actual appearance of appellant.[41]

Ultimately, Adelriza's positive, categorical and consistent identification of the appellant as the perpetrator of the crime prevails over the rehashed defenses of denial and *alibi* by the appellant.

Police line-up, conduct of arrest and rights of the accused in custodial investigations

Appellant likewise questions the legality of his identification and arrest and the conduct of custodial investigation. He alleges that the procedure was irregular and that he was deprived of his constitutional right to have a counsel present.[42]

The arguments do not hold water.

A police line-up is not indispensable for the proper and fair identification of offenders. The important consideration is for the victim to positively declare that the persons charged were the malefactors.[43]

In *People v. Teehankee, Jr.*,[44] this Court explained the procedure for out-of-court identification and the test to determine the admissibility of such identifications in this manner:

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[40] *People v. Aquino*, 385 Phil. 887, 904 (2000).

[41] *Rollo*, p. 8.

[42] *Id.* at 72-77.

[43] *Id.* at 9.

[44] 319 Phil. 128 (1995).

Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru lineups where a witness identifies the suspect from a group of persons lined up for the purpose x x x. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances** test where they consider the following factors, *viz*[.]: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.[45]

Applying the totality of circumstances test, We find appellant's out-of-court identification to be reliable and thus admissible. To recall, Adelriza after being awakened when a hard object hit her head and after she switched on the lights inside the room, had a clear and direct view of the attack on her husband and the perpetrator. Moreover, she described with certainty the assailant to the police cartographer barely hours from the time of the incident, which description matched the facial features of the appellant, whom she subsequently identified as the assailant. In other words, the interval between the time she witnessed the crime and her identification of the appellant, was merely a matter of hours, leaving no room for her recollection to be tainted.

Verily, it was Adelriza's own description that led to the apprehension of the appellant. There was no evidence on record indicating any hint of a suggestion from the police officer who presented the appellant to Adelriza. Hence, the identification of the appellant as the culprit of the crime stands.

About the legality of appellant's arrest, it bears stressing that questions on arrest shall be made before arraignment and failure to object to the illegality of arrest constitutes a waiver

[45] *Id.* at 180.

on the part of the accused. It is settled that any objection to the manner of arrest must be opportunely raised before he enters his plea; otherwise, the objection is deemed waived.[46] Here, the records clearly show that the objection was only raised on appeal.[47]

The Court ruled in *People v. Kulais and Samson*:[48]

> [A]ppellant is now estopped from questioning any defect in the manner of his arrest as he failed to move for the quashing of the information before the trial court. **Consequently, any irregularity attendant to his arrest was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of "not guilty" and by participating in the trial. x x x**[49] (Emphasis supplied)

Even assuming that appellant's arrest was irregular, still, it is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.[50]

There was no violation of appellant's right to counsel during custodial investigation. The records show that appellant was informed of his constitutional rights when he was arrested. Since he chose to remain silent, he was not interrogated and no statement or evidence was extracted from him; neither was any evidence presented in court that was supposedly obtained from him during custodial investigation.[51]

Crime committed and Proper indemnities

We agree that treachery attended the attack on Mijares. There is treachery when the offender commits any of the crimes against

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[46] *People v. Pepino*, 777 Phil. 29, 46-47 (2016), citing *People v. Trestiza*, 676 Phil. 420, 455 (2011).

[47] CA *rollo*, pp. 56-59.

[48] 313 Phil. 863 (1995).

[49] *Id.* at 869.

[50] *People v. Bringcula*, G.R. No. 226400, January 24, 2018.

[51] *Rollo*, pp. 11-12.

the person, employing means, methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself/herself arising from the defense which the offended party might make.[52] In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: *(1)* the employment of means, method, or manner of execution that would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, and *(2)* the means, method, or manner of execution was deliberately or consciously adopted by the offender.[53] The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[54]

Appellant's sudden attack on Mijares while asleep in his own home amply demonstrates treachery in the commission of the crime. Mijares had no inkling of the impending attack that night; or any peril to his person as he felt secured in his home. Mijares was not able to put up an effective defense. Although he kicked and pushed the appellant out of their room, this did not negate the presence of treachery. In *People v. Baltazar*,[55] We ruled that treachery must still be appreciated even if the victim was able to retaliate as a result of his reflexes, so long as he did not have the opportunity to repel the initial assault, *viz.*:

Although appellant contends that there were defensive wounds on his arms, these do not show that the victim was able to put up an effective defense. This Court finds these wounds to be merely the result of a reflex action on the victim's part, in a vain attempt to avoid the thrusts of the knife.

Apropos to this is the case of *People v. Go-od*, where even the fact that a victim was able to stab one of his assailants was held as not negating the presence of treachery:

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[52] Revised Penal Code, Article 14 (16).

[53] *People v. Amora*, 748 Phil. 608, 621 (2014).

[54] *People v. Warriner*, 736 Phil. 425, 436 (2014).

[55] 455 Phil. 320 (2003).

> **The fact that the victim was able to grab one of the bolos after he had already been hit and used the same to stab one of his assailants does not negate the presence of treachery in the commission of the crime. The characteristic and unmistakable manifestation of treachery is the deliberate and unexpected attack on the victim without any warning and without giving him the opportunity to defend or repel the *initial* assault**, x x x Ygot stabbed Nestor Go-od after he himself had already been wounded by the attack which as we have already mentioned was so sudden and unexpected that it did not give Aladino Ygot an opportunity to offer an effective defense nor to repel the initial attack.[56] (Emphasis Ours)

Further, We find that the appellant consciously and deliberately adopted the particular means, methods or form of attack in order to ensure the execution of the crime. He stabbed Mijares several times so that he would not be a risk to himself. He lodged a bladed weapon on the victim's chest and back.[57] Indeed, the attack on Mijares was treacherous thereby qualifying the killing to murder.

The RTC, as affirmed by the CA, awarded ₱75,000.00 as civil indemnity, ₱603,288.00 as unearned income, ₱31,500.00 as actual damages, ₱50,000.00 as reimbursement for attorney's fees, and ₱50,000.00 as moral damages.[58]

It is jurisprudentially settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[59]

In *People v. Jugueta*,[60] this Court held that for crimes like murder where the penalty imposed is *reclusion perpetua*, the

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[56] *Id.* at 333.

[57] Records, p. 31.

[58] *Id.* at 233.

[59] *People v. Dadao*, 725 Phil. 298, 315-316 (2014).

[60] 783 Phil. 806 (2016).

nature and amount of damages that may be awarded are: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, among others.[61]

Pursuant to *Jugueta*, We sustain the award of ₱75,000.00 as civil indemnity but increase the moral damages from ₱50,000.00 to ₱75,000.00. In addition, an award of exemplary damages in the amount of ₱75,000.00 is proper.

However, in lieu of actual damages, We award temperate damages in the amount of ₱50,000.00. The settled rule is that when the amount of actual damages proven by receipts during the trial is less than the sum allowed by the court as temperate damages,[62] the award of temperate damages in lieu of actual damages, which is of a lesser amount, is justified. Conversely, if the amount of actual damages proven exceeds ₱50,000.00, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted. The rationale for this rule is that it would be anomalous and unfair for the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount which is less than that given as temperate damages to those who were not able to present any evidence at all.[63]

In the present case, Mijares' heirs were able to prove, and were awarded, actual damages in the amount of ₱31,500.00.[64] Since, prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in cases where the penalty imposed is *reclusion perpetua*, this Court finds it proper to award temperate damages to Mijares' heirs, in lieu of actual damages.

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[61] *Id.* at 848.

[62] Previous jurisprudence pegs the amount of ₱25,000.00 as temperate damages in murder cases. This amount was increased to ₱50,000.00 in the prevailing case of *People v. Jugueta* (*supra* note 60).

[63] *People v. Racal*, 817 Phil. 665, 685-686 (2017).

[64] Records, p. 232.

Considering too that Mijares' heirs spent for attorney's fees to prosecute the case against the appellant, the award of ₱50,000.00 is sustained.[65] Article 2208 of the Civil Code[66] enumerates the legal grounds warranting the grant of attorney's fees and expenses of litigation, and this case qualifies since exemplary damages are awarded and the Court deems it just and equitable that attorney's fees be recovered.[67]

Anent unearned income, the RTC awarded ₱603,288.00 without elaborating on its basis. To determine the compensable amount of lost earnings, We consider (1) the number of years for which the victim would otherwise have lived (life expectancy); and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed by applying the formula (2/3 x [80 – age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily computed at fifty percent (50%) of the gross earnings. Thus, the formula used by this Court in computing loss of earning capacity is: Net Earning Capacity = [2/3 x (80 – age at time of death) x (gross annual income – reasonable and necessary living expenses)].[68]

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[65] *Id.*

[66] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

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(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[67] *Lim v. Tan*, 801 Phil. 13, 25 (2016).

[68] *National Power Corp. v. Heirs of Noble Casionan*, 592 Phil. 451, 465-467 (2008), citing *Lambert v. Heirs of Ray Castillon*, 492 Phil. 384, 392-393 (2005).

Here, it was sufficiently established that the victim, at the time of his death, was 32 years old and was employed as a bookkeeper at the Philippine Amusement and Gaming Corp. with a monthly basic salary of ₱7,182.00 or ₱86,184.00 in a year.[69] We thus apply the formula for loss of income capacity in this wise:

Net Earning Capacity = life expectancy x [gross annual income – living expenses]

= 2/3 [80 – age of the victim at time of death] x [gross annual income – 50% of gross annual income]

= 2/3 [80 – 32 years] x [₱86,184.00 – ₱43,092.00]

$$= \frac{2\ (48)}{3} \times ₱43,092.00$$

= 32 x ₱43,092.00

= **₱1,378,944.00**

We are thus impelled to modify the award of unearned income from ₱603,288.00 to ₱1,378,944.00.

Finally, all damages awarded shall earn six percent (6%) interest per *annum* from the date of finality of this Decision until full payment.

WHEREFORE, the appeal is hereby **DISMISSED.** The August 27, 2009 Decision of the Court of Appeals in CA-G.R. C.R.-H.C. No. 03204 finding appellant Gerald Moreno *y* Tazon guilty of Murder and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATIONS**, thus:

1) Moral damages is hereby increased from ₱50,000.00 to ₱75,000.00;

2) Unearned income due to loss of income capacity is hereby increased from ₱603,288.00 to ₱1,378,944.00;

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[69] Folder of Exhibits, Exh. "R".

3) Actual damages in the amount of ₱31,500.00 is deleted;

4) Temperate damages in the amount of ₱50,000.00 is awarded in lieu of actual damages;

5) Exemplary damages in the amount of ₱75,000.00 is likewise awarded.

All damages awarded shall then earn six percent (6%) interest per *annum* from the date of finality of this Decision until full payment.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo,[*] *Inting,* and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. 202889. March 2, 2020]

RODOLFO CARANTO, *petitioner, vs.* **ANITA AGRA CARANTO,** *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.— The allegations of Rodolfo are a mere rehash of his arguments before the CA and essentially raise questions of fact, beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Rule 45 of the Rules of Court lays down the rule that

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[*] Per February 19, 2020 Raffle vice Associate Justice Andres B. Reyes, Jr. who recused due to prior participation in the Court of Appeals.

only questions of law should be raised in petitions filed under the said rule since factual questions are not the proper subject of an appeal by *certiorari*. Thus, the Court will not entertain questions of fact, as the factual findings of the appellate court are considered final, binding, or conclusive on the parties and upon this Court, especially when supported by substantial evidence. In *Century Iron Works, Inc. v. Bañas*, the Court differentiated a question of law from a question of fact x x x. However, there are 10 recognized exceptional circumstances wherein the Court admits and reviews questions of fact. These are enumerated in *Medina v. Mayor Asistio, Jr.* as follows: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurb 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. x x x Rodolfo's arguments are essentially questions of fact. x x x A close perusal of Rodolfo's arguments in the petition shows that these are a mere rehash of his claims in his appeal before the appellate court, which it already thoroughly passed upon. x x x Indubitably, the Court will not review the factual findings of the appellate court as there is not even a scintilla of evidence that the instant petition falls under any of the exceptions laid down in *Medina*. To stress, the burden of proof lies upon Rodolfo who failed to convince the Court that a review of the factual findings is necessary. His mere assertion and claim that the case falls under the exceptions is not enough. x x x [C]onsidering that the issues were factual in nature as it involved the determination of whether Rodolfo sufficiently proved his claim by preponderance of evidence, the Court sees no reason to warrant the exercise of its judicial discretion to review the same.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE, DEFINED; IN CIVIL CASES, THE BURDEN OF PROOF RESTS UPON THE PLAINTIFF, WHO IS REQUIRED TO ESTABLISH HIS CASE BY A PREPONDERANCE OF EVIDENCE.— In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his/her case by a preponderance of evidence. Preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as it is worthier of belief than that which is offered in opposition thereto. Preponderance of evidence refers to the probability to truth of the matters intended to be proven as facts. As such, it concerns a determination of the truth or falsity of the alleged facts based on the evidence presented by a party, who in this case is Rodolfo.

APPEARANCES OF COUNSEL

Roberto C. Bermejo for petitioner.
Lacebal & De Ramos Law Offices for respondent.

D E C I S I O N

HERNANDO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] assailing the April 18, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 90285 and its July 31, 2012 Resolution[3] which partly affirmed the October 22, 2007

[1] *Rollo*, pp. 18-31.

[2] *Id.* at 34-49; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Leoncia R. Dimagiba.

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

Decision[4] of the Regional Trial Court (RTC), Branch 212 of Mandaluyong City in Civil Case No. MC01-1454, and denied petitioner Rodolfo Caranto's (Rodolfo) Motion for Reconsideration,[5] respectively.

The Factual Antecedents

Respondent Anita Agra Caranto (Anita) is the registered owner of a 347-square-meter parcel of land situated in Barangay Hagdang Bato, Mandaluyong City which is covered by Transfer Certificate of Title (TCT) No. 7884.[6] Sometime in 2001, Rodolfo filed a Complaint[7] for cancellation of title and reconveyance against Anita seeking to: (a) cancel the title of the subject land; (b) reconvey one-half of the same to him; and (c) pay the sum equal to 25% of the value of the recoverable property as attorney's fees as well as costs of suit.

Rodolfo alleged that he is the son of Juan C. Caranto, Sr. and Guillerma Lopez-Caranto. He has a sister named Rizalina Caranto (Rizalina), and a brother named Juan Caranto (Juan) who was Anita's husband.

On May 12, 1972, Juan executed a Special Power of Attorney[8] in favor of Rizalina authorizing her to execute a deed of extrajudicial settlement involving the subject property that was previously covered by TCT No. 277297. A few months later or on September 18, 1972, the siblings executed an Extrajudicial Settlement of the Estate of the Deceased Guillerma O. Lopez-Caranto[9] which stated, among others, the following:

> 8. That the parties herein have therefor agreed, as they do hereby agree, to divide and settle the aforementioned estate between and among them in the following manner, to wit:

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[4] *Id.* at 113-119; penned by Judge Rizalina T. Capco-Umali.

[5] CA *rollo*, pp. 124-129.

[6] Records, pp. 9-10.

[7] *Id.* at 2-5.

[8] *Id.* at 220-221.

[9] *Id.* at 216-219.

(a) Property to be adjudicated to Juan L. Caranto: The parcel of land specified and described in paragraph 5(a) hereinabove (TCT No. 277297-Rizal); [subject property]

(b) Property to be adjudicated to Rizalina Caranto Balaoeg: The parcel of land specified and described in paragraph 5(b) hereinabove (TCT No. 23542—Rizal);

(c) Property to be adjudicated to Rodolfo L. Caranto: The parcel of land specified and described in paragraph 5(c) and the three (3) door residential apartment described in paragraph 5(d) hereinabove. (TCT No. 59009—Rizal)

(d) Properties to be adjudicated to Juan L. Caranto, Rizalina Caranto Balaoeg and Rodolfo L. Caranto, in equal one-third undivided interest each:

The parcels of land specified and described in paragraph 5(e) — TCT 23453 (Rizal); 5(f) — OCT 0-304 (La Union) and 5(g) — Tax Dec. No. 27418 (La Union).[10]

Juan died intestate on May 22, 1983. Afterwards, on August 14, 1993, Anita executed an Affidavit of Self-Adjudication[11] adjudicating upon herself the subject property. As a result, TCT No. 277297 (later referred to as TCT No. 391576)[12] was cancelled and TCT No. 7884 was issued in the name of Anita.

When Rodolfo learned about Anita's Affidavit of Self-Adjudication, he filed a Notice of Adverse Claim to protect his share in the subject property. He also filed a criminal complaint for falsification of public documents against Anita before the Office of the City Prosecutor of Mandaluyong City. In his September 3, 1998 Resolution,[13] the city prosecutor recommended the filing of an Information for falsification against Anita.

Rodolfo alleged that the Affidavit of Self-Adjudication was a total falsity because at the time of his demise, Juan was survived

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[10] *Id.* at 218.

[11] *Id.* at 17.

[12] *Id.* at 208.

[13] *Id.* at 224.

not only by his wife Anita, but also by him and their sister Rizalina, as collateral relatives. Considering that Rizalina executed a Deed of Waiver of Rights[14] on January 16, 1990 whereby she relinquished all her rights and participation over the subject property in his favor, Rodolfo alleged that he is now entitled to one-half thereof.

For her part, Anita sought the dismissal of the complaint for lack of cause of action and that Rodolfo is barred by laches or prescription. Further, Anita claimed that the subject property is her exclusive property since she purchased the same with her own money. She denied that Rodolfo is a legitimate brother of her husband, Juan. Anita further denied committing any falsehood or misrepresentation in the execution of the Affidavit of Self-Adjudication. Lastly, she belied Rodolfo's allegation that he exerted earnest efforts to settle the dispute between them prior to the filing of the complaint considering that she was already residing in the United States.

Anita, in turn, filed a compulsory claim for damages against Rodolfo for filing a baseless and malicious suit against her.

During the trial, Dante Agra, the brother of Anita and her attorney-in-fact,[15] testified that Juan disclosed to him that Rodolfo was his illegitimate brother and that he also has an illegitimate sister. Further, Dante narrated that Juan informed him that he was the only son of Dolores Lopez who was the latter's mother as stated in the Marriage Certificate[16] of Juan and Anita. Anita presented a Certification[17] from the National Archives that it has no file of the Makati City Register of Births for the year 1935; hence, there was no available record about the birth of Juan on April 4, 1935 to Juan Caranto, Sr., as his father, and Dolores Lopez, as his mother. On the other hand,

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[14] *Id.* at 7.

[15] *Id.* at 418.

[16] *Id.* at 419.

[17] *Id.* at 421.

the Office of the Local Civil Registrar of Bacnotan, La Union,[18] stated that Rodolfo was born on May 21, 1945, to Juan Caranto as his father and Guillerma Lopez, as his mother.

Ruling of the Regional Trial Court

In its October 22, 2007 Decision,[19] the RTC ruled that the Extrajudicial Settlement of the Estate of the Deceased Guillerma Lopez-Caranto does not suffice to support Rodolfo's claim that he is the brother of Juan. Moreover, the Deed of Waiver of Rights executed by Rizalina in his favor, and the Special Power of Attorney executed by Juan designating Rizalina as his attorney-in-fact, were inadmissible for being mere photocopies of the originals. Besides, even if admitted, these also did not serve as proofs of Rodolfo's filiation with Juan.

The trial court further observed that Rodolfo did not present the birth certificate of Juan showing that his mother was also Guillerma Lopez-Caranto. It could have disproved Dante's testimony that Juan's mother was Dolores Lopez with said evidence.

Anent the compulsory claim of Anita, the trial court awarded exemplary damages in her favor for failure of Rodolfo to prove his cause of action. Anita was also adjudged entitled to attorney's fees, litigation expenses and costs of suit. The *fallo* of the Decision reads in this wise:

> **WHEREFORE,** premises considered, the court hereby renders judgment in favor of defendant Anita Agra Caranto and against plaintiff Rodolfo Caranto, ordering said plaintiff —
>
> 1) to pay the amount of Php20,000.00 as exemplary damages;
>
> 2) to pay the amount of Php20,000.00 as attorney's fees;
>
> 3) to pay the amount of Php10,000.00 as litigation expenses and cost of suit.
>
> **SO ORDERED.**[20]

[18] *Id.* at 420.

[19] *Rollo,* pp. 113-119.

[20] *Id.* at 119.

Undeterred, Rodolfo appealed to the CA[21] averring that the trial court erred: (a) in not declaring Anita in estoppel in impugning his relationship with her husband; (b) in ruling that he failed to sufficiently prove that he is the brother of Juan; (c) in not giving credence to the Extrajudicial Settlement of Estate of the Late Guillerma O. Lopez-Caranto even in the absence of Juan's signature; (d) in not ordering the reversion of the property to him considering that the property was originally owned by his mother, Guillerma Lopez-Caranto; and (e) in awarding exemplary damages and attorney's fees to Anita despite lack of bases thereof.[22]

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

In his appeal, Rodolfo raised the following assignment of errors:

THE TRIAL COURT SERIOUSLY ERRED IN NOT HOLDING THAT DEFENDANT IS NOW IN ESTOPPEL TO IMPUGN THE RELATIONSHIP BETWEEN PLAINTIFF AND HER DECEASED HUSBAND JUAN L. CARANTO[.]

THE TRIAL COURT SHOULD HAVE GIVEN WEIGHT AND CREDENCE TO THE EXTRAJUDICIAL SETTLEMENT OF THE ESTATE OF THE LATE GUILLERMA O. LOPEZ-CARANTO SANS THE SIGNATURE OF JUAN L. CARANTO FOR HE WAS THE ULTIMATE BENEFICIARY THEREOF AS THE PROPERTY, SUBJECT MATTER OF THE CASE, WAS ADJUDICATED TO HIM BY VIRTUE THEREOF[.]

ASSUMING THAT THE MOTHER OF JUAN L. CARANTO IS ONE DOLORES LOPEZ, THE MORE REASON THAT THE PROPERTY SHOULD REVERT TO THE PLAINTIFF AS THE ORIGINAL OWNER THEREOF IS HIS DECEASED MOTHER GUILLERMA LOPEZ-CARANTO WHO NOW APPEARS TO HAVE NO RELATION AT ALL WITH JUAN L. CARANTO, HUSBAND OF THE APPELLEE, ANITA AGRA CARANTO[.]

WITH THE FINDING THAT THE LATE JUAN L. CARANTO['S] MOTHER IS DIFFERENT FROM THAT OF PLAINTIFF'S MOTHER, THE TRIAL COURT ALSO ERRED IN NOT FINDING THAT THE PLAINTIFF IS NOW ENTITLED TO FULL OWNERSHIP OF THE PROPERTY AS HIS INHERITANCE FROM GUILLERMA LOPEZ-CARANTO AND THEREFORE, THE DEFENDANT MUST BE DIRECTED TO RECONVEY THE SAME[.]

THERE WAS NO FACTUAL AND LEGAL BASIS IN AWARDING DAMAGES TO DEFENDANT-APPELLEE[.] (CA *rollo*, p. 28)

[22] *Id.* at 28.

Ruling of the Court of Appeals

In its April 18, 2012 Decision,[23] the CA partly granted Rodolfo's appeal. It agreed with the trial court's findings that Rodolfo failed to prove that he is the brother of Anita's husband, Juan, so as to have the right to inherit a portion of the subject property. Likewise, there was insufficient evidence to prove his title over the same to warrant an action for reconveyance as well as the cancellation of the title of the subject property.

Nonetheless, the appellate court held that the award of exemplary damages was improper for lack of basis. Further, there was no factual finding as to whether Rodolfo acted in a wanton, oppressive or malevolent manner in filing the complaint against Anita.

The dispositive portion of the appellate court's Decision reads:

WHEREFORE, premises considered, this Court **partially AFFIRMS** in part the October 22, 2007 Decision of the Regional Trial Court, Branch 212 of Mandaluyong City. This Court **partially DISMISSES** the instant appeal without prejudice to the filing before the appropriate court of an intestate proceeding for the purpose of determining the heirs who may be entitled to inherit to the estate, including the property covered by Transfer Certificate of Title No. 7884, previously under Transfer Certificate of Title No. 391576, of deceased Juan L. Caranto. Additionally, the award of exemplary damages is **DELETED** but the awards of ₱20,000.00 as attorney's fees and ₱10,000.00 litigation expenses and cost of suit are **AFFIRMED**.

SO ORDERED.[24]

Aggrieved, Rodolfo filed a Motion for Reconsideration,[25] but the appellate court denied the same in its July 31, 2012 Resolution[26] for lack of merit.

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[23] *Rollo*, pp. 34-49.

[24] *Id.* at 48.

[25] CA *rollo*, pp. 124-129.

[26] *Rollo*, pp. 52-53.

Hence, the instant Petition for Review on *Certiorari*.[27]

The Issues

The core issues for resolution are:

(1) whether Anita is estopped from impugning the relationship between her late husband, Juan, and Rodolfo;

(2) whether the evidence of Rodolfo, particularly the Extrajudicial Settlement of the Estate of the Late Guillerma O. Lopez-Caranto, sufficed to prove that he is entitled to one-half of the subject property of Juan by way of inheritance and by virtue of the waiver of rights executed by Rizalina in his favor; and

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[27] *Id.* at 18-31.

Rodolfo ascribed the following assignment of errors:

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT RESPONDENT IS NOW IN ESTOPPEL TO IMPUGN THE RELATIONSHIP BETWEEN PETITIONER AND HER DECEASED HUSBAND JUAN L. CARANTO[.]

THE COURT OF APPEALS SHOULD HAVE GIVEN WEIGHT AND CREDENCE TO THE EXTRAJUDICIAL SETTLEMENT OF THE ESTATE OF THE LATE GUILLERMA O. LOPEZ-CARANTO SANS THE SIGNATURE OF JUAN L. CARANTO FOR HE WAS THE ULTIMATE BENEFICIARY THEREOF AS THE PROPERTY, SUBJECT MATTER OF THE CASE, WAS ADJUDICATED TO HIM BY VIRTUE THEREOF[.]

ASSUMING THAT THE MOTHER OF JUAN L. CARANTO IS ONE DOLORES LOPEZ, THE MORE REASON THAT THE PROPERTY SHOULD REVERT TO THE PETITIONER AS THE ORIGINAL OWNER THEREOF IS HIS DECEASED MOTHER GUILLERMA LOPEZ-CARANTO WHO NOW APPEARS TO HAVE NO RELATION AT ALL WITH JUAN L. CARANTO, HUSBAND OF THE APPELLEE, ANITA AGRA CARANTO[,] WITH THE FINDING THAT THE LATE JUAN L. CARANTO[’S] MOTHER IS DIFFERENT FROM THAT OF PETITIONER’S MOTHER, THE COURT OF APPEALS ALSO ERRED IN NOT FINDING THAT THE PETITIONER IS NOW ENTITLED TO FULL OWNERSHIP OF THE PROPERTY AS HIS INHERITANCE FROM GUILLERMA LOPEZ-CARANTO AND THEREFORE, THE RESPONDENT MUST BE DIRECTED TO RECONVEY THE SAME[.] (*Id.* at 23-24)

(3) assuming that Juan's mother was named Dolores Lopez, whether Rodolfo is entitled to the whole subject property by reason that it was previously owned by his mother Guillerma.

The Court's Ruling

The Petition must be denied. The allegations of Rodolfo are a mere rehash of his arguments before the CA and essentially raise questions of fact as to be beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Rule 45 of the Rules of Court lays down the rule that only questions of law should be raised in petitions filed under the said rule since factual questions are not the proper subject of an appeal by *certiorari*. The Court will thus not entertain questions of fact as the factual findings of the appellate court are considered final, binding, or conclusive on the parties and upon this Court especially when supported by substantial evidence.[28]

In *Century Iron Works, Inc. v. Bañas*,[29] the Court differentiated a question of law from a question of fact in this manner:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
>
> Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. (Citations omitted)

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[28] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016).

[29] 711 Phil. 576, 585-586 (2013), citing *Leoncio v. De Vera*, 569 Phil. 512, 516 (2008) and *Binay v. Odeña*, 551 Phil. 681, 689 (2007).

However, there are 10 recognized exceptional circumstances wherein the Court admits and reviews questions of fact. These are enumerated in *Medina v. Mayor Asistio, Jr.*[30] as follows:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (Citations omitted)

The allegations asseverated by Rodolfo such as: (a) that Anita is estopped from impugning that he and Juan are siblings; and (b) he is entitled to one-half or the whole of the subject property, hinge on his claim that he has sufficiently proven by preponderance of evidence his cause of action in the complaint for annulment of title and reconveyance of the subject property that he filed against Anita.

In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his/her case by a preponderance of evidence.[31] Preponderance of evidence is defined as the

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[30] 269 Phil. 225, 232 (1990).

[31] Section 1, Rule 133 of the Rules of Court.

> Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability

weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence."[32] It is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as it is worthier of belief than that which is offered in opposition thereto.[33]

Preponderance of evidence refers to the probability to truth of the matters intended to be proven as facts. As such, it concerns a determination of the truth or falsity of the alleged facts based on the evidence presented by a party, who in this case is Rodolfo.[34]

Rodolfo's arguments are essentially questions of fact. Rodolfo argues that he is the brother of Juan although his birth certificate stated that his mother was Guillerma Lopez-Caranto while the marriage contract between Juan and Anita indicated that Juan's mother was Dolores Lopez, and both documents stated that Juan Caranto, Sr. was their father. Rodolfo stresses that, assuming that he and Juan have different mothers, he is therefore entitled to the ownership of the entire property being the legitimate heir of Guillerma Lopez-Caranto and because of Rizalina's relinquishment of her rights over the same in his favor.

It is thus clear that if the Court has to entertain the above-mentioned contentions assailing the findings of the appellate court, it has to review the probative value and evaluate once again the evidence presented by the contending parties. This is evidently beyond the purview of a petition for review under Rule 45.

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or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[32] *Tan, Jr. v. Hosana*, 780 Phil. 258, 266 (2016), citing *Ramos v. Obispo*, 705 Phil. 221, 230 (2013).

[33] *Tan, Jr. v. Hosana, id.*

[34] *Metropolitan Bank and Trust Company v. Ley Construction and Development Corporation*, 749 Phil. 257, 270 (2014).

In his vain attempt to prove that his petition should be given due course despite raising factual issues, Rodolfo interposes that the following six exceptions wherein the Court may review factual issues exist: (a) the findings of the appellate court are grounded entirely on speculation, surmises and conjectures; (b) its inference from the findings of fact is manifestly mistaken/ absurd; (c) it went beyond the issues of the case and the same are contrary to the admissions of both parties; (d) its judgment is premised on misapprehension of facts; (e) it failed to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (f) its findings of fact are based on the absence of evidence but contradicted by the evidence on record.

None of these exceptions is present in the case.

A close perusal of Rodolfo's arguments in the petition shows that these are simply a mere rehash of his claims in his appeal before the appellate court which it already thoroughly passed upon. Coming before this Court, Rodolfo alleges that the appellate court gravely erred in its findings resulting in the presence of the exceptional circumstances aforementioned. Unfortunately, he failed to demonstrate any compelling reason that would warrant the reversal of the findings and conclusions of the appellate court that Rodolfo failed to sufficiently prove that he is the brother of Juan and therefore he had no share in the latter's estate.

Indubitably, the Court will not review the factual findings of the appellate court as there is not even a scintilla of evidence that the instant petition falls under any of the exceptions laid down in *Medina*. To stress, the burden of proof lies upon Rodolfo who failed to convince the Court that a review of the factual findings is necessary.[35] His mere assertion and claim that the case falls under the exceptions is not enough.

At this juncture, we quote with approval the findings of the Court of Appeals:

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[35] *Pascual v. Burgos, supra* note 28 at 184.

Thus, it is incumbent upon Rodolfo to prove that he is the brother of the decedent. Unfortunately, Rodolfo failed to overcome this burden. The record is bereft of any evidence submitted by Rodolfo to prove his relationship with the decedent. Indeed, Rodolfo could have submitted documents, such as birth certificates, duly showing that he and Juan have the same mother, father or both.

From the foregoing discussions, it is without a doubt that Rodolfo failed to prove his title to the 347-square meter lot covered by TCT No. 7884, previously under TCT No. 391576, in order to successfully maintain an action for reconveyance. In addition thereto, he failed to prove by preponderance of evidence that he is the brother of deceased Juan. In the absence of evidence to support his cause, the right to inheritance sought by Rodolfo is untenable for lack of ground or basis therefor.[36]

All told, considering that the issues were factual in nature as it involved the determination of whether Rodolfo sufficiently proved his claim by preponderance of evidence, the Court sees no reason to warrant the exercise of its judicial discretion to review the same. Hence, there is no need to discuss the other issues raised by Rodolfo.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The April 18, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 92085 is **AFFIRMED**.

SO ORDERED.

Carandang,[*] *Inting, Delos Santos,* and *Gaerlan,*[*] *JJ.*, concur.

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[36] *Rollo,* pp. 45-46.

[*] Per February 19, 2020 Raffle vice Senior Associate Justice Estela M. Perlas-Bernabe and Associate Justice Andres B. Reyes, Jr. who recused from the case due to prior participation in the Court of Appeals.

FIRST DIVISION

[G.R. No. 210548. March 2, 2020]

ANA LIZA ASIS CASTRO, *petitioner, vs.* **JOSELITO O. CASTRO,** *respondent*.

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY; EXPLAINED.— As a ground to nullify a valid marriage, psychological incapacity should refer to no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that must concomitantly be assumed and discharged by the parties to the marriage. It must be characterized by gravity, juridical antecedence, and incurability[.]

2. REMEDIAL LAW; APPEALS; FINDINGS OF THE TRIAL COURT ON THE EXISTENCE OR NON-EXISTENCE OF A PARTY'S PSYCHOLOGICAL INCAPACITY SHOULD BE FINAL AND BINDING FOR AS LONG AS SUCH FINDINGS AND EVALUATION OF THE TESTIMONIES OF WITNESSES AND OTHER EVIDENCE ARE NOT SHOWN TO BE CLEARLY AND MANIFESTLY ERRONEOUS.— Foremost, the findings of the RTC on the existence or non-existence of a party's psychological incapacity should be final and binding for as long as such findings and evaluation of the testimonies of witnesses and other evidence are not shown to be clearly and manifestly erroneous. In this case, petitioner failed to provide such a compelling reason to convince this Court to deviate from the findings of the RTC, as affirmed by the CA. The totality of evidence presented does not convince this Court to rule that respondent's psychological incapacity is so grave and serious, warranting the nullity of his marriage to petitioner.

3. CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY; THE ENTIRETY OF THE EVIDENCE MUST DEMONSTRATE THE PARTY'S

PSYCHOLOGICAL INDISPOSITION WHICH NECESSARILY SHOWS THE CONNECTION BETWEEN HIS ACTS AND THE INCAPACITY.— While the Court has recognized the dispensability of personal examination by the expert mainly because marriage involves only two persons, who witnessed each other's behavior, the entirety of the evidence must demonstrate the respondent's psychological indisposition, which necessarily shows the connection between his acts and the incapacity[.] x x x Succinctly, a medical assessment which declares a party's psychological incapacity does not guarantee the grant of a petition for declaration of nullity of marriage. The facts of each case must be examined to determine whether the same rationalize the legal dissolution of a marriage.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Dominador R. Santiago for respondent.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated June 3, 2013 and the Resolution[3] dated December 19, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 97878 which denied the petition for declaration of nullity of marriage filed by Ana Liza Asis Castro (petitioner).

Relevant Antecedents

Devoid of the non-essentials, the facts of the case are as follows:

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[1] *Rollo*, pp. 32-73.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring; *id.* at 10-26.

[3] *Id.* at 28-30.

On the ground of psychological incapacity, petitioner filed a petition for declaration of nullity of her marriage to Joselito O. Castro (respondent). She likewise prayed for the grant of custody of their children and monthly support of ₱122,000.00.[4]

Petitioner narrated that she was introduced to respondent by a high school friend who is married to respondent's brother, after she went home from New York sometime in 1988. Initially, she was impressed by respondent and his brother as they fluently speak French. After some time, they grew fond of each other and started dating.[5]

Petitioner found the respondent to be a true gentleman and admired his close relationship with his family. Their relationship, however, was unstable in the beginning as the petitioner found the respondent to be possessive and jealous. Despite the same, they decided to get married after almost a year of dating. An Ante-Nuptial Agreement was executed by them on April 14, 1989. Relevant portion of which reads:

> The parties hereto hereby agree that the property regime that shall govern their marriage shall be under an absolute separation of properties as defined in the New Family Code.
>
> Specifically, the parties hereby agree, among others, that:
>
> a. All properties owned and acquired by each other prior to the marriage shall remain as the exclusive property of such party.
>
> b. The earnings, fruits, and profits of properties owned prior to such marriage shall belong exclusively to such owner of the property.
>
> c. All earnings and properties acquired during marriage shall pertain to the party who earned and acquired the same.
>
> d. All family expenses during the marriage shall be shared by the parties hereto.[6]

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[4] *Id.* at 11.

[5] *Id.*

[6] *Id.* at 11-12.

On June 4, 1989, petitioner and respondent got married in Manila and went to France for their honeymoon. At that time, petitioner was 26 years old while respondent was 29 years old.[7]

Their marriage bore children — Christina Beatriz who was born on February 19, 1990; Alfonso Martin who was born on September 26, 1993; and Joselito Rolando II who was born on June 13, 1995.[8]

At the beginning of the marriage, respondent was unemployed. The family, thus, stayed at a condominium unit donated by petitioner's father. Eventually, petitioner put up her own real estate marketing business while respondent remained out of job. When petitioner's business attained stability in 1997, her father cut off her allowance. Petitioner claimed that respondent's jealousy prevailed whenever she would go out to meet a client.[9]

However, a year after, petitioner was surprised to learn that respondent decided to run for public office in his father's hometown in Ilocos Norte. Respondent explained that he was trying to do something to earn a living for the family.[10] However, respondent lost the election.[11]

In 2000, respondent found a job as a security consultant for Rustan's Makati and as staff member of the Consulate of Morocco while petitioner became a housewife. As respondent was the breadwinner of the family, petitioner lamented that he tightened his grip on the family budget, making it difficult for them to ask money from him.[12]

Petitioner alleged that respondent was irresponsible and prone to having violent outbursts such as breaking vases and appliances

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[7] *Id.* at 12.

[8] *Id.*

[9] *Id.* at 13.

[10] *Id.* at 12-13.

[11] *Id.* at 38.

[12] *Supra* note 9.

and kicking tables during dinner. It was likewise claimed that respondent emotionally tortured their children.[13]

The final stroke for petitioner which prompted her to drive respondent away from their conjugal home was when the latter cursed their daughter, Christina and pinned her against the wall after asking for gas money.[14]

To reinforce her claim, petitioner sought the opinion of a clinical psychologist, Dr. Natividad Dayan (Dr. Dayan), who conducted three separate evaluations wherein she interviewed the petitioner and her children. In her medical assessment, Dr. Dayan made the following findings:

> Summary and Conclusion
>
> Findings from assessment procedures used reveal that Joey is psychologically incapacitated to render the essential obligations of marriage. He has Personality Disorder Not Otherwise Specified with Paranoid Antisocial Personality Disorder: His pathological suspiciousness of his wife's fidelity, mistrust of her, irritability, aggressiveness, violent and destructive behavior, lack of empathy, and reckless disregard for the safety of others are the salient characteristics of his personality disorders. His personality disorder is clinically-defined, grave, incurable, and has antecedents, the root cause of which can be traced from parental overindulgence and his exposure to his father's and siblings' violent and aggressive behavior. There was identification with an aggressor so that when he got married, he manifested the same dysfunctional behaviors toward his wife.[15]

Aside from this, Dr. Dayan observed that respondent is a spoiled child as opposed to petitioner, given the level of affluence of their respective families. Moreover, she discussed that respondent found it difficult to trust petitioner, which largely contributed to their marital problems.[16]

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[13] *Rollo*, pp. 13-14.

[14] *Id.* at 14.

[15] *Id.* at 14-15.

[16] *Id.*

As to petitioner, Dr. Dayan found petitioner to be a compulsive person lacking due discretion when she married the respondent.[17]

In his Answer,[18] respondent likewise sought for the declaration of nullity of his marriage to petitioner, but insisted that it was petitioner who is psychologically incapacitated.

In a Decision[19] dated June 1, 2011, the Regional Trial Court of Makati City, Branch 60 (RTC) upheld the validity of the marriage between the petitioner and the respondent. The RTC ratiocinated that the evidence presented by petitioner, her testimony, and that of Dr. Dayan's, do not sufficiently prove that the psychological incapacity of respondent is grave and serious, which compels the trial court to breach the sanctity of their marriage. Furthermore, the RTC noticed that petitioner and respondent lived together for 20 years, which showed the level of their marital stability, before petitioner drove respondent away from their conjugal home.

Thus:

> WHEREFORE, aprioprisms duly considered the instant "Petition for Declaration of Nullity of Marriage under Article 36 of the Family Code" of the petitioner Ana Liza Asis Castro (Ms. Castro) is hereby DISMISSED for dearth of merit.
>
> Consequently, the marriage between herein petitioner Ana Liza Asis Castro (Ms. Castro) and herein respondent Joselito O. Castro, Jr. (Mr. Castro) celebrated on 04 June 1989 is hereby declared to be VALID AND SUBSISTING.
>
> No costs.
>
> SO ORDERED.[20]

Petitioner filed a Motion for Reconsideration, which was denied in a Resolution dated September 1, 2011.[21]

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[17] *Id.*

[18] *Id.* at 343-348.

[19] Penned by Judge Cedrick O. Ruiz; *id.* at 400-414.

[20] *Id.* at 413-414.

[21] *Id.* at 449-450.

Pained by the ruling of the RTC, petitioner filed an appeal before the CA. Petitioner opined that the trial court erred in discounting the testimony of Dr. Dayan, an expert in her field, who stated her inference that respondent is psychologically incapacitated based on the clinical interview and assessment with petitioner and her children. Insisting on the credibility of Dr. Dayan and her assessment, petitioner argued that said psychological incapacity is grave, permanent, incurable and has juridical antecedents, the root cause of which can be traced from parental indulgence and his exposure to his father's and sibling's violent and aggressive behavior.[22]

In a Decision[23] dated June 3, 2013, the CA affirmed the ruling of the RTC. Sustaining the sanctity of marriage between respondent and petitioner, the CA disputed the one-sided findings of Dr. Dayan, which solely focused on petitioner and made no mention about the respondent, among others. The dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the instant Appeal is DENIED. The Decision dated June 1, 2011 rendered by the Regional Trial Court of Makati, Branch 60 in Civil Case No. 07-843 is AFFIRMED.
>
> SO ORDERED.[24]

Consequently, petitioner filed a Motion for Reconsideration, which was denied in a Resolution[25] dated December 19, 2013.

Hence, this petition.

Petitioner argues that she was able to establish that respondent is psychologically incapacitated under Article 36 of the Family Code in view of the findings of Dr. Dayan, supported by her testimony and that of her children. She further averred that personal examination of the respondent by Dr. Dayan is not necessary for a declaration of psychological incapacity.

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[22] *Id.* at 454-507.

[23] *Supra* note 2.

[24] *Rollo*, p. 25.

[25] *Supra* note 3.

In its Comment,[26] the Republic of the Philippines, through the Office of the Solicitor General (OSG), counters that petitioner failed to prove that respondent's incapacity is such a degree which warrants the nullity of their marriage. The OSG argues that the records showed mere incompatibility between petitioner and respondent, and not respondent's psychological disorder. Furthermore, the OSG observed that Dr. Dayan neither identified the precise cause of respondent's alleged psychological incapacity nor the link between the root cause and his undesirable behavior. The absence of evidence which may serve as the bases for Dr. Dayan's assessment, other than petitioner and her children's testimonies, was likewise pointed out.

The Consolidated Reply[27] filed by petitioner and respondent basically echoed the same assertions found in the instant petition.

The Issue

Whether or not petitioner and respondent's marriage should be declared null on the basis of psychological incapacity under Article 36 of the Family Code.

This Court's Ruling

No less than the Constitution guards the sanctity of a marriage as an inviolable social institution. Marriage, as envisioned under the Family Code, is entered into for the establishment of a conjugal and family life. To this end, the Family Code recognizes that a marriage necessarily entails the fulfillment of essential marital obligations.

However when parties who entered into this special contract are psychologically impaired to perform these obligations, the law perceives the impossibility of achieving the marriage's purpose.

Thus, the Code provides that a party's psychological incapacity of fulfilling the aforementioned obligations renders

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[26] *Rollo*, pp. 745-764.

[27] *Id.* at 767-778.

the marriage void *ab initio* under Article 36 of the Family Code, thus:

> ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

As a ground to nullify a valid marriage, psychological incapacity should refer to no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that must concomitantly be assumed and discharged by the parties to the marriage.[28] It must be characterized by gravity, juridical antecedence, and incurability, to wit:

> The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage, and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[29]

To prove the foregoing, petitioner put forth into evidence her testimony, the testimonies of her daughter and son, and the testimony and medical assessment of Dr. Dayan. All of which, however, were found insufficient by the RTC and the CA. The RTC found that the assessment of Dr. Dayan was "not sufficiently in-depth and comprehensive" while the CA failed to give credence to said evaluation on the basis of its sole reliance of the testimonies of petitioner, her daughter, and her son.

Foremost, the findings of the RTC on the existence or non-existence of a party's psychological incapacity should be final and binding for as long as such findings and evaluation of the testimonies of witnesses and other evidence are not shown to be clearly and manifestly erroneous.[30]

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[28] *Mendoza v. Republic of the Philippines*, 698 Phil. 241, 254 (2012).

[29] *Santos v. Court of Appeals*, 310 Phil. 21, 39 (1995).

[30] *Kalaw v. Fernandez*, 750 Phil. 482, 500 (2015).

In this case, petitioner failed to provide such a compelling reason to convince this Court to deviate from the findings of the RTC, as affirmed by the CA. The totality of evidence presented does not convince this Court to rule that respondent's psychological incapacity is so grave and serious, warranting the nullity of his marriage to petitioner.

A perusal of the findings of Dr. Dayan provides the following attributes of respondent and apparent causes, which led her to conclude that he is indeed psychologically incapacitated, to wit:

1. Pinky's marriage to Joey clearly indicates a V61.1 **Partner Relational Problem** Joey failed to render mutual love, trust, respect and support towards Pinky, as he proved to be psychologically incapacitated to comply with the essential obligations of marriage. Pinky experienced severe stress and mental anguish in her relationship with Joey.

2. Prior to the marriage, Joey already showed warning signs of his psychological incapacity to fulfill essential matrimonial duties.

   2.1 When Pinky met Joey, he was **jobless and was just bumming around**. x x x

   2.2 As a boyfriend, Joey was **overly jealous and possessive** of Pinky. x x x

   x x x x x x x x x

   2.4 Apparently, the members in Joey's family have short tempers. Joey's father and sister are easily piqued or upset even over trifling matters. His brothers are also demanding, proud, and have difficulty accepting their own personal failings. x x x

   2.5 Growing up, Joey and his siblings were indulged on by their parents. x x x

3. It was during their marriage that Joey's fatal personality flaws became evident, which amounted to his psychological incapacity to perform the essential obligations of marriage.

   3.1 He had **recurrent suspicions**, without justification, regarding the fidelity of his spouse.

x x x x x x x x x

3.2 Joey was **reluctant to confide with his wife**, thinking that the information he shares will be used against him. x x x

x x x x x x x x x

3.4. He showed **reckless disregard of the safety of others**.

3.5 He **lacked empathy**.[31] (Emphases supplied)

As aptly observed by the CA, the facts from which the assessment was derived from came from petitioner, her daughter, and her son. While this Court has recognized the dispensability of personal examination by the expert mainly because marriage involves only two persons, who witnessed each other's behavior,[32] the entirety of the evidence must demonstrate the respondent's psychological indisposition, which necessarily shows the connection between his acts and the incapacity, *viz.*:

> Verily, the totality of the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself. **If other evidence showing that a certain condition could possibly result from an assumed state of facts existed in the record, the expert opinion should be admissible and be weighed as an aid for the court in interpreting such other evidence on the causation.** Indeed, an expert opinion on psychological incapacity should be considered as conjectural or speculative and without any probative value only in the absence of other evidence to establish causation. The expert's findings under such circumstances would not constitute hearsay that would justify their exclusion as evidence.[33]

Succinctly, a medical assessment which declares a party's psychological incapacity does not guarantee the grant of a petition for declaration of nullity of marriage. The facts of each case must be examined to determine whether the same rationalize the legal dissolution of a marriage.

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[31] *Rollo*, pp. 117-122.

[32] *Republic v. Javier*, G.R. No. 210518, April 18, 2018, 861 SCRA 682, 692.

[33] *Kalaw v. Fernandez*, *supra* note 30, at 503.

Here, as found by the RTC and the CA, the Report of Dr. Dayan cannot be absolutely relied on as there were no other evidence offered which would establish that the conduct of respondent and his actuation can be linked to his disorder.

In her Report,[34] Dr. Dayan stated that in making her assessment, one of the background information relied on was respondent's family history which was merely derived from petitioner's statements. However, it does not appear from the records that petitioner had first-hand information regarding the same; as such, the latter could not have known respondent's upbringing.

Likewise, there was no additional evidence aside from the Report of Dr. Dayan which would indicate the gravity, juridical antecedence, and incurability of the supposed incapacity of respondent. In fact, there was nothing in the Report which alludes to the gravity and incurability of respondent's incapacity, as well as explanation for the same, save for a general conclusion. At most, what the Report showed was petitioner's narration of events which she deemed demonstrative of respondent's incapacity. Also, there was neither justification as to how such incapacity relate to the respondent's failure to comply with essential marital obligations aside from Dr. Dayan's broad and unspecific statement.

The distrust of this Court to the evaluation made by an expert witness who relied solely on one-sided information without corroborative evidence can be observed in the cases of *Castillo v. Republic*,[35] *Republic v. Javier*,[36] and *Republic v. Tobora-Tionglico*,[37] to cite a few.

Thus, the fact that respondent was jobless for a long period of time, possessive, suspicious, reluctant to confide with

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[34] *Rollo*, pp. 116-143.

[35] 805 Phil. 209 (2017).

[36] *Supra* note 32.

[37] G.R. No. 218630, January 11, 2018, 851 SCRA 107.

petitioner, reckless in regarding the safety of others, and lacks empathy do not merit the pronouncement that respondent is indeed psychologically incapacitated to fulfill his marital obligations. As discussed, the incapacity must be grave, deeply rooted, and incurable[38] for it to warrant the dissolution of his marriage to petitioner.

Petitioner's invocation of the case of *Camacho-Reyes v. Reyes*,[39] wherein this Court gave credence to the Report of the expert witnesses despite the lack of personal examination as regards the respondent fails. In fact, in said case, this Court warned that each case must be decided depending on the set of facts, to wit:

> Each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. In the field of psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on "all fours" with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."[40]

The circumstances in *Camacho-Reyes* are different: three expert witnesses concurred in finding that respondent has a personality disorder, rendering him incapable of fulfilling marital obligation. These witnesses were able to explain the incurability, juridical antecedence, and gravity of the incapacity; and the bases of such findings were acquired from the testimonies of petitioner, petitioner and respondent's son, siblings-in-law and sister-in-law of petitioner. These considerations were not present in the instant case.

As to the prayer for monthly support, this Court finds that there was no discussion at all by the RTC or the CA regarding the same. It was petitioner who narrated in her Petition that the RTC awarded support *pendente lite* in the amount of

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[38] *Kalaw v. Fernandez*, *supra* note 30, at 513.

[39] *Camacho-Reyes v. Reyes*, 642 Phil. 603 (2010).

[40] *Id.* at 634.

₱28,742.16 per month during trial. However, there was nothing in the records which explains as to how the RTC arrived at such computation. That being said, this Court has no basis to evaluate the disposition of the RTC.

The issue on the amount of support is essentially factual in nature, requiring the reception of evidence. The remand of the case to the RTC is then deemed proper.

Inasmuch as this Court acknowledges with the discord in the Castro household, the alienation of affection between the petitioner and the respondent does not justify the severance of their permanent marital union.

WHEREFORE, premises considered, the instant petition is hereby **DENIED.** Accordingly, the Decision dated June 3, 2013 and the Resolution dated December 19, 2013 of the Court of Appeals in CA-G.R. CV No. 97878 are **AFFIRMED**.

Let the records of Civil Case No. 07-843 be **REMANDED** to the Regional Trial Court of Makati City, Branch 60 which is **DIRECTED** to reopen the trial of Civil Case No. 07-843 with respect to the claim of Ana Liza Asis Castro against Joselito O. Castro, Jr. for the support of their children and conduct hearings for further reception of evidence for the proper determination of the proper amount of support to be awarded.

SO ORDERED.

Caguioa,[*] *Lazaro-Javier,* and *Lopez, JJ.*, concur.

Peralta, C.J. (Chairperson), on official business.

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[*] Acting Chairperson per S.O. 2776.

FIRST DIVISION

[G.R. No. 222785. March 2, 2020]

ANITA C. BUCE, *petitioner, vs.* **SPOUSES GEORGE GALEON and ERLINDA TIONGCO GALEON, SPOUSES HONESTO CABRERA, JR. and GENEROSA TIONGCO CABRERA, SPOUSES LEO SANDS and MARIA TERESA TIONGCO SANDS, JOSE M. TIONGCO, and MARIA CORAZON M. TIONGCO,** *respondents*.

SYLLABUS

1. CIVIL LAW; CONTRACTS; LEASE; RIGHT OF RETENTION; A LESSEE IS NOT A BUILDER IN GOOD FAITH, THUS NOT ENTITLED THERETO; ARTICLE 1678 OF THE CIVIL CODE APPLIES; CASE AT BAR.— Whether a lessee is a builder in good faith is already settled in the case of *Geminiano v. Court of Appeals*, to wit: Being mere lessees, the private respondents knew that their occupation of the premises would continue only for the life of the lease. Plainly, they cannot be considered as possessors nor builders in good faith. In a plethora of cases, this Court has held that Article 448 of the Civil Code, in relation to Article 546 of the same Code, which allows full reimbursement of useful improvements and retention of the premises until reimbursement is made, applies only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof. It does not apply where one's only interest is that of a lessee under a rental contract; otherwise, it would always be in the power of the tenant to "improve" his landlord out of his property. Plainly, a lessee is not a builder in good faith. What is applicable in such case is Article 1678 of the Civil Code: x x x Alternatively put, the right to reimbursement arises only if the lessor opts to appropriate the improvements introduced by the lessee. In this case, there was no indication that respondents chose to appropriate the improvements. They, thus, cannot be compelled to pay one-half of its value. However, respondents cannot retain possession of the improvement, without reimbursing the petitioner. In case

they refuse to pay the same, petitioner has the right to remove the building without causing any more impairment upon the property leased than is necessary. Thus, respondents cannot demand the possession of the improvements on the subject land without properly reimbursing petitioner.

2. **ID.; ID.; ID.; IMPLIED NEW LEASE; ELEMENTS.—** The provision on implied new lease or *tacita reconduccion* is found in Article 1670 of the Civil Code. [I]t is clear that there is an implied renewal of the contract when the following elements concur: (a) the term of the original contract of lease has expired; (b) the lessor has not given the lessee a notice to vacate; and (c) the lessee continued enjoying the thing leased for 15 days with the acquiescence of the lessor.

3. **ID.; ID.; ID.; ID.; TERMS OF THE IMPLIED LEASE DEPEND ON THE PERIOD THAT THE LESSEE MADE THE RENTAL PAYMENTS.—**Article 1687 of the same Code provides for the determination of the period for which such implied lease is considered as valid. x x x [T]he terms of such contract depend on the period that the lessee made the rental payments.

4. **ID.; DAMAGES; ATTORNEY'S FEES; NOT AWARDED EVERY TIME A PARTY PREVAILS IN A SUIT BECAUSE OF THE POLICY THAT NO PREMIUM SHOULD BE PLACED ON THE RIGHT TO LITIGATE; POWER OF THE COURT TO AWARD ATTORNEY'S FEES UNDER ARTICLE 2208 OF THE CIVIL CODE DEMANDS FACTUAL, LEGAL, AND EQUITABLE JUSTIFICATION.—** It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. Article 2208 of the Civil Code specifically provides for the instances when attorney's fees may be recovered. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.

APPEARANCES OF COUNSEL

Tristram B. Zoleta for petitioner.
Puno & Associates Law Office for respondents.

D E C I S I O N

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

Before this Court is a Petition for Review on *Certiorari*, assailing the Decision[1] dated February 27, 2015 and the Resolution[2] dated January 29, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 97195.

The Relevant Antecedents

The case stemmed from a civil action for recovery of possession filed by the spouses George Galeon and Erlinda Tiongco Galeon, the spouses Honesto Cabrera, Jr. and Generosa Tiongco Cabrera, the spouses Leo Sands and Maria Teresa Tiongco Sands, Jose M. Tiongco and Maria Corazon M. Tiongco (collectively referred to as respondents) against Anita Buce (petitioner) involving a parcel of land located at Quirino Avenue, Pandacan, Manila (subject land).[3]

Respondents are the heirs of their father, Bernardo Tiongco (Bernardo) and their uncle, Dionisio Tiongco (Dionisio) who left the subject land upon their demise. The subject land was covered by Transfer Certificate of Title (TCT) No. 92195 registered in the names of Bernardo and Dionisio.[4]

Subsequently, TCT No. 167461 cancelled TCT No. 92195, as the former was issued in the names of the respondents.[5]

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[1] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Noel G. Tijam (a retired Member of the Court) and Mario V. Lopez (now a Member of the Court); *rollo*, pp. 43-54.

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

[3] *Id.* at 19.

[4] *Id.*

[5] *Id.*

The records of the case reveal that Bernardo and Dionisio entered into a contract of lease with the spouses Rogelio and Anita Buce (spouses Buce) over the subject land. Under the terms of the lease contract, the same shall be effective for a period of 15 years effective June 1, 1979, subject to renewal for another 10 years under the same terms and conditions. The lessees agreed to pay the lessors a monthly rental of ₱200.00 starting June 1979. Pursuant also to the terms of the contract, the lessees were allowed to construct improvements thereon at their own expense.[6]

The monthly lease rental of ₱200.00 ballooned into ₱400.00 in 1985 and into ₱1,000.00 in July and August 1991. Before the end of the year 1991, respondents informed petitioner of the impending increase of rental to ₱1,576.58 effective January 1992. Despite such information, petitioner tendered checks in the amount of ₱400.00 for the rental payment for October to December 1991, January and May 1992, and January 1993. As these checks were insufficient to cover the total amount of monthly rental payments due, respondents refused to accept the checks drawn in their names.[7]

Petitioner, thus, filed a complaint for specific performance with prayer for consignation against the respondents. During the pendency of said case, respondents sent a letter to petitioner which reminded her that their lease contract expired on June 1, 1994.[8]

On August 29, 1995, the trial court declared that the lease contract between the petitioner and the respondents was automatically renewed for another 10 years. The trial court accordingly fixed the rental payment at ₱400.00 from June 1, 1990 to June 1, 1994 and ₱1,000.00 from June 1, 2000 to June 1, 2004.[9]

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

[7] *Id.* at 22.

[8] *Id.*

[9] *Id.*

On appeal, the CA reversed the decision of the trial court and ordered the petitioner to immediately vacate the leased premises on the ground of the lease contract's expiration on June 1, 1994.[10]

The matter reached this Court in G.R. No. 136913, entitled *Buce v. Court of Appeals*.[11] In said case, this Court limited its resolution on the issue of the correct interpretation of the lease contract, that is, whether it is subject to automatic renewal or not. Ruling in the negative, this Court maintained that the lease contract was not automatically renewed in the absence of any mutual agreement between the parties. The *fallo* thereof reads:

> WHEREFORE, the instant petition is partly GRANTED. The assailed decision of the Court of Appeals is REVERSED insofar as it ordered the petitioner to immediately vacate the leased premises, without prejudice, however, to the filing by the private respondents of an action for the recovery of possession of the subject property.
>
> No costs.
>
> SO ORDERED.[12]

Acting contrary to the ruling of this Court, the petitioner still failed to restore the possession of the subject property to the respondents.[13]

On July 13, 2002, respondents sent a notice to the petitioner, reiterating the turn-over of the possession of the subject property and payment of rentals in arrearages of ₱46,000.00 and ₱10,000.00 as reasonable rental for the use of the premises until petitioner vacates the same. However, petitioner failed to heed the said letter.[14]

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[10] *Id.*

[11] 387 Phil. 897 (2000).

[12] *Id.* at 908.

[13] *Rollo*, p. 23.

[14] *Id.* at 24.

Respondents brought the complaint before the barangay; but no settlement was arrived at as the petitioner failed to appear during the scheduled hearings. Hence, a Certificate to File Action was issued by the barangay captain.[15]

Subsequently, the respondents lowered the amount of the rental payment from ₱10,000.00 to ₱5,000.00. However, the petitioner still refused to pay and instead made partial payments of ₱1,000.00 a month.[16]

As the petitioner refused to turn over the premises and failed to pay proper monthly rentals, the respondents instituted a complaint for recovery of possession before the Regional Trial Court of Manila, Branch 10 (RTC).

In her Answer, petitioner averred that the filing of the complaint is premature in view of respondents' acquiescence in allowing her to continue her occupation of the subject property despite the expiration of the lease contract. In other words, petitioner insisted an implied renewal of the lease contract.[17]

In a Decision[18] dated May 28, 2010, the RTC ordered the petitioner to vacate the premises, to remove the improvements thereon should the respondents refuse to pay the same, and to pay rental arrearages and monthly rentals. The RTC found that petitioner is no longer entitled to remain in the premises of the subject property by virtue of the expiration of the lease contract. The fact that the petitioner paid the ₱1,000.00 partial payment to respondents does not amount to an implied renewal of the lease contract nor to an acquiescence to the continued occupation of the subject property because there was nothing which indicated that respondents voluntarily waived their right to recover their property. Thus:

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[15] *Id.*

[16] *Id.*

[17] *Supra* note 13.

[18] Penned by Judge Virgilio M. Alameda; *rollo*, pp. 19-42.

WHEREFORE, based on the evidence presented, judgment is hereby rendered in favor of the plaintiffs and against the defendant as follows:

a) Ordering defendant Anita C. Buce and all persons claiming right under her to restore and turn over possession of the 56[-]square [meter] parcel of land, subject of this case, to the plaintiffs;

b) Ordering defendant Anita C. Buce to remove the two (2) storey building erected on the premises should the plaintiffs refuse to pay her 1/2 of the value of said improvements;

c) Ordering defendant Anita C. Buce to pay plaintiffs the amount of ₱46,000.00 as rental arrearages and to pay plaintiff ₱1,000,00 as monthly rental for the period of June 1, 1994 to June 1, 2004;

d) Ordering defendant Anita C. Buce to pay the amount of ₱5,000.00 as reasonable rental for the use of the premises starting June 1, 2004 until the plaintiffs are restored by the defendant of the premises;

e) Ordering defendant to pay plaintiff the sum of ₱50,000.00 as attorney's fees; and

f) To pay the costs of the suit.

SO ORDERED.[19]

A Motion for Reconsideration was filed by petitioner. However, it was denied in a Resolution dated January 14, 2011.

On appeal, petitioner insisted that she cannot be evicted from the subject land without proper reimbursement as regards the two-storey building which she introduced therein. Nevertheless, petitioner reiterated that there was an implied renewal of the lease contract. Petitioner likewise denied her liability to pay rental in arrears because the increase of monthly rental payment from ₱1,000.00 to ₱5,000.00 is exorbitant, among others.

In a Decision[20] dated February 27, 2015, the CA denied the appeal and affirmed with modification the ruling of the RTC.

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[19] *Id.* at 42.

[20] *Supra* note 1.

On the issue of reimbursement, the CA held that petitioner has no right of retention because she, being a lessor, knew very well that she has no claim of title over the subject land. Hence, she cannot be considered as a builder in good faith.

On the issue of implied renewal of the lease contract, the CA ruled that the same was already settled in G.R. No. 136913, holding that the lease contract was not renewed based on the terms thereof. However, petitioner's continued possession of the subject property resulted in an implied new lease under Article 1670 and Article 1687 of the New Civil Code. Nevertheless, respondents' act of sending a formal demand to vacate constitutes an express act on their part, as lessors, to withdraw their consent to the continued occupation of the subject land; hence, terminating the implied lease.

On the payment of arrears, the CA declared that petitioner is liable to pay for the same because of her use and occupation of the subject land. The CA discussed that petitioner is liable to pay ₱1,000.00 monthly rental after June 1, 1994 (or the expiration of the contract) to the time that petitioner was given five days after receipt of the demand to vacate the property or on July 13, 2002. Furthermore, the petitioner is ordered to pay ₱5,000.00 as reasonable amount of compensation for the use and occupation of the subject land.

The dispositive portion of which provides:

WHEREFORE, the appeal is DENIED. The decision rendered by the Regional Trial Court of Manila, Br. 10 dated May 28, 2010 in Civil Case No. 02-104849 is Affirmed with Modification. Defendant-appellant Anita C. Buce is ordered to pay plaintiffs-appellees Sps. Erlinda Tiongco Galeon & George Galeon, Sps. Generosa Tiongco Cabrera and Honesto Cabrera, Jr., Sps. Maria Teresa Tiongco Sands & Leo Sands, Jose M. Tiongco and Maria Corazon M. Tiongco the amount of PhP1,000.00 as monthly rental from June 1, 1994 until the time that defendant-appellant was given five days from receipt of the letter of demand dated July 13, 2002, and further, the amount of ₱5,000.00 thereafter, as reasonable amount of compensation for the use of the premises until defendant-appellant surrenders the possession of the subject property to the plaintiffs-appellees.

SO ORDERED.[21]

Petitioner filed a motion for reconsideration, which was likewise denied in a Resolution[22] dated January 29, 2016.

Echoing the arguments set forth in her appeal before the CA, the petitioner filed a Petition for Review on *Certiorari* before this Court.

In a Resolution[23] dated June 8, 2016, this Court resolved to deny the petition and affirm the February 27, 2015 Decision and the January 29, 2016 Resolution of the CA.

Undaunted, petitioner filed a Motion for Reconsideration[24] on July 28, 2016.

In a Resolution[25] dated August 30, 2016, this Court granted the reconsideration of the motion. Accordingly, the petition was reinstated and the respondents were required to file their comment thereto.

In their Comment,[26] respondents reiterated that petitioner has no right to any reimbursement on the two-storey building and to remain in possession of the subject land. Also, the respondents averred that petitioner is liable to pay rental arrearages and reasonable compensation for the use of the same.

Considering the pronouncement of this Court, the reexamination and reevaluation of the case is deemed proper.

The Issues

Summarily, the petitioner puts forth the following matters as subject of this Court's power of review: (a) whether or not

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

[22] *Supra* note 2.

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

[24] *Id.* at 62-68.

[25] *Id.* at 70.

[26] *Id.* at 73-90.

she has a right to retention over the subject land until she is reimbursed for the costs of the building she constructed therein; (b) whether or not there was an implied new lease contract between her and the respondents; and (c) whether or not payment of attorney's fees is proper.

The Court's Ruling

On petitioner's right to retention

Whether a lessee is a builder in good faith is already settled in the case of *Geminiano v. Court of Appeals*,[27] to wit:

> Being mere lessees, the private respondents knew that their occupation of the premises would continue only for the life of the lease. Plainly, they cannot be considered as possessors nor builders in good faith.
>
> In a plethora of cases, this Court has held that Article 448 of the Civil Code, in relation to Article 546 of the same Code, which allows full reimbursement of useful improvements and retention of the premises until reimbursement is made, applies only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof. It does not apply where one's only interest is that of a lessee under a rental contract; otherwise, it would always be in the power of the tenant to "improve" his landlord out of his property.

Plainly, a lessee is not a builder in good faith. What is applicable in such case is Article 1678 of the Civil Code:

> ART. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.
>
> With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects,

[27] 328 Phil. 682 (1996).

provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

Alternatively put, the right to reimbursement arises only if the lessor opts to appropriate the improvements introduced by the lessee.

In this case, there was no indication that respondents chose to appropriate the improvements. They, thus, cannot be compelled to pay one-half of its value. However, respondents cannot retain possession of the improvement, without reimbursing the petitioner. In case they refuse to pay the same, petitioner has the right to remove the building without causing any more impairment upon the property leased than is necessary. Thus, respondents cannot demand the possession of the improvements on the subject land without properly reimbursing petitioner.

On the implied new lease under Article 1670 of the New Civil Code of the Philippines

The provision on implied new lease or *tacita reconduccion* is found in Article 1670 of the Civil Code:

> ART. 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.

From the foregoing, it is clear that there is an implied renewal of the contract when the following elements concur: (a) the term of the original contract of lease has expired; (b) the lessor has not given the lessee a notice to vacate; and c) the lessee continued enjoying the thing leased for 15 days with the acquiescence of the lessor.[28]

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[28] *Samelo v. Manotok Services, Inc.*, 689 Phil. 411, 418 (2012).

Article 1687 of the same Code provides for the determination of the period for which such implied lease is considered as valid, to wit:

> ART. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily.

In other words, the terms of such contract depend on the period that the lessee made the rental payments.

Reference to the records reveal that the aforementioned elements are not extant in this case. However, respondents sent a notice to petitioner informing her of their intention not to renew the lease way back in 1993 after the filing of the specific performance case by petitioner. At this point, such notice constitutes a notice to vacate on the part of respondents as they were categorical in reminding petitioner that the contract had indeed expired; and by sending the same, it is clear that respondents intended to discontinue the juridical tie between them and petitioner as lessors and lessee. Such intention is further manifested by the filing of the case for recovery of possession following the ruling of this Court in G.R. No. 136913.[29] In obvious terms, respondents did not consent to petitioner's continued stay in the premises of the subject property. Her occupation therefore is by mere tolerance; deficient, however, of all the elements to constitute an implied new lease.

Moreover, the petitioner's contention that she failed to receive such notice was belied by the factual findings of the RTC and the CA. Neither can respondents' act of accepting rental payments be construed as their consent to the renewal of the lease. The simple reason is that the petitioner remained in possession of the subject land and, regardless of the outcome of their case, had to pay rentals to respondents for the use of the same.[30]

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[29] *Supra* note 11.

[30] *Torres v. Court of Appeals*, 290-A Phil. 163, 169 (1992).

As the petitioner continued to occupy and possess the subject property without a contract of lease, she is liable to pay for the reasonable use and possession thereof. Both the RTC and the CA found that the reasonable compensation for such use and occupation shall be pegged at ₱5,000.00 per month.

On the issue of rental payment

The Court agrees with petitioner that she is not liable to pay rental arrearages.

The increment from ₱1,000.00 to ₱1,576.58 which respondents demanded to take effect on January 1992 nor the increase of monthly rental from ₱1,000.00 to ₱5,000.00 which respondents demanded on July 2002 cannot be considered by this Court in holding the petitioner liable for deficient rental payment as there was no sufficient evidence which proved that the petitioner indeed received the notices signifying the intended rental increase by respondents and that the parties mutually agreed thereto. In fact, the respective rulings of the RTC and the CA failed to uphold the increments demanded by the respondents and brushed aside the respondents' averment that the increased rental payment was already established among the parties.

As respondents admitted that they received ₱1,000.00 per month from the petitioner as rental payment,[31] the rental arrearages computed on the basis of the aforementioned increase has no basis.

On payment of attorney's fees

It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer.[32]

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[31] *Rollo*, p. 84.

[32] See *Philippine National Construction Corporation v. APAC Marketing Corporation*, 710 Phil. 389, 395 (2013).

Article 2208[33] of the Civil Code specifically provides for the instances when attorney's fees may be recovered. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.[34]

The Court sustains the award of attorney's fees.

First. Even after this Court's ruling in G.R. No. 136913, the petitioner still refused to surrender the possession of the subject land despite the categorical declaration that the lease contract was not renewed. *Second*. The petitioner disregarded respondents' notice to vacate the premises. *Third*. This case was elevated to this Court for the second time because of petitioner's insistence that she has a better right to possess the subject land.

Verily, the RTC and the CA are correct in that they found that petitioner's unjustified failure to turn over the possession of the subject land amounted to bad faith; hence, entitlement of respondents to attorney's fees shall ensue as a consequence.

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[33] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

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

WHEREFORE, premises considered, the petition is **PARTLY GRANTED.** Accordingly, the Decision dated February 27, 2015 and the Resolution dated January 29, 2016 are **AFFIRMED with MODIFICATION** in that petitioner Anita C. Buce is **ORDERED to PAY** reasonable compensation for the use and occupation of the subject property in the amount of ₱5,000.00 from the expiration of the contract of lease which was on June 1, 1994 until she vacates the premises. The petitioner's liability to pay rental arrearages is hereby **DELETED**.

ALL OTHERS STAND.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 224335. March 2, 2020]

MUNICIPALITY OF BAKUN, BENGUET, herein represented by its Municipal Mayor HON. FAUSTO T. LABINIO, *petitioner, vs.* **MUNICIPALITY OF SUGPON, ILOCOS SUR, herein represented by its Municipal Mayor HON. FERNANDO C. QUITON, SR.,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; RULES OF PROCEDURE; MERE TOOLS DESIGNED TO

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[*] Additional member per Raffle dated February 19, 2020 in lieu of Associate Justice Mario V. Lopez, due to prior participation in the Court of Appeals.

FACILITATE THE ATTAINMENT OF JUSTICE, AND THAT STRICT AND RIGID APPLICATION OF RULES WHICH WOULD RESULT IN TECHNICALITIES THAT TEND TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE MUST ALWAYS BE AVOIDED; CASE AT BAR.— [R]ules of procedure are mere tools designed to facilitate the attainment of justice, and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. More so in the present case involving as it does two (2) municipalities and their competing claims over a piece of public property. Certainly, procedural technicalities must yield to considerations of public interest.

APPEARANCES OF COUNSEL

Provincial Legal Office for petitioner.
Provincial Legal Office for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

The Municipality of Bakun, Benguet and the Municipality of Sugpon, Ilocos Sur both lay claim on a 1,118-hectare parcel of land found in the middle of their respective territories.[1]

In line with the provisions of the 1991 Local Government Code (LGC) on boundary disputes,[2] the issue was referred to

[1] *Rollo*, p. 8.

[2] **Article 17.** *Procedures for Settling Boundary Disputes* – The following procedures shall govern the settlement of boundary disputes:

(i) Appeal — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the sanggunian concerned to the proper Regional Trial Court having jurisdiction over the dispute by filing therewith the appropriate pleading, stating among others, the nature of the dispute, the decision of the sanggunian concerned and the reasons for appealing therefrom. The Regional Trial Court shall decide the case

an *Ad Hoc* Joint Sanggunian of the Provinces of Benguet and Ilocos Sur for resolution. Following the parties' failure to reach a settlement, the Joint Sanggunian ordered them to submit their respective position papers.[3]

After due proceedings, the Joint Sanggunian, voting 4-3, issued Joint Resolution No. 1, Series of 2014 adjudging the land to Bakun.[4]

Aggrieved, the Province of Ilocos Sur, through the Municipality of Sugpon served a Notice of Appeal to the Sangguniang Panlalawigan of Province of Benguet.

Consequently, on May 20, 2014, Sugpon filed with the RTC-Ilocos Sur its "Petition on Appeal".[5]

Bakun moved to dismiss the appeal on ground that the notice of appeal failed to comply with the requirements set forth under Rule 40 of the Revised Rules of Court.[6] It argued that the notice of appeal was not filed before the Joint Sanggunian which rendered the assailed Joint Resolution. Instead, the notice was sent to the Province of Benguet. The notice of appeal, too, was filed by an improper party since it was signed by the members of the Sangguniang Panlalawigan of Ilocos Sur who incidentally were also members of the defunct Joint Sanggunian. The proper party to appeal the Joint Resolution should have been the Municipality of Sugpon, Ilocos Sur, being one of the original parties to the action. Further, Bakun was not served a copy of the notice of appeal. The notice of appeal is likewise wanting of essential particulars and docket fees were not paid.

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within one (1) year from the filing thereof. Decisions on boundary disputes promulgated jointly by two (2) or more sangguniang panlalawigans shall be heard by the Regional Trial Court of the province which first took cognizance of the dispute.

[3] *Rollo*, p. 8.

[4] *Id*.

[5] *Id*. at 53-79.

[6] *Id*. at 279-287.

The RTC denied the motion by Order[7] dated October 9, 2014. It ruled that Rule 40 of the Revised Rules of Court is not applicable to appeals involving boundary disputes since Rule 40 governs appeals from first level courts which is not the case here where the case emanated from the Joint Sanggunian. The Implementing Rules of the LGC is akin to a petition for review provided under Rule 42 of the Revised Rules of Court albeit this analogy may not be one hundred per cent (100%) accurate.[8]

The RTC, nonetheless, took cognizance of the appeal in view of the fact that the governing law on boundary disputes, the LGC, merely mandates the "filing of any appropriate pleading",[9] which Sugpon duly complied with via its "Petition on Appeal". As for the alleged defect in the Notice of Appeal, what is truly material is the fact that its primary purpose of informing the tribunal and the other party of the appeal was served. In fact, Bakun's counsel entered his appearance and even moved for extension to file its memorandum.[10]

Bakun moved for reconsideration[11] which was denied through Order[12] dated December 15, 2014.

Proceedings Before the Court of Appeals

Bakun went up to the Court of Appeals via Rule 65 of the Rules of Court. It charged the RTC with grave abuse of discretion in ruling that Rule 40 of the Revised Rules of Court does not apply to boundary disputes and in subsequently taking cognizance of Sugpon's appeal. The case was raffled to the Court of Appeals, Second Division and docketed CA-G.R. SP No. 138956.[13]

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[7] *Id.* at 306-312.

[8] *Id.* at 309-310.

[9] Article 17, Rules and Regulations Implementing the Local Government Code.

[10] *Rollo*, p. 310.

[11] *Id.* at 313-320.

[12] *Id.* at 322-324.

[13] Penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting; *rollo*, pp. 31-50.

Meantime, by Resolution dated April 28, 2015, the RTC reversed and set aside Joint Resolution No. 1, Series of 2014. The Resolution was assailed anew by Bakun in CA-G.R. SP No. 141726 now pending before the Court of Appeals, Seventeenth Division.[14]

Court of Appeals' Ruling

Back to CA-G.R. SP No. 138956, the Court of Appeals rendered its Decision[15] dated October 23, 2015 affirming the RTC's dispositions on Sugpon's Notice of Appeal. It held that pursuant to Title IX, Chapter 1, Section 119[16] of the LGC and Rule III, Article 17 of the Rules and Regulations Implementing the LGC, appeals in boundary disputes are within the jurisdiction of the RTCs. The proceedings are governed by Rule 40 of the Rules of Court.

Thus, Sugpon availed of the correct remedy under the LGC and the Revised Rules of Court. Too, Sugpon complied with all the requirements under Rule 40 of the Revised Rules of Court with regard to the petition's contents and service. It added that it is impossible for Sugpon to file the Notice of Appeal with the already defunct Joint Sanggunian for said body ceased to exist after the questioned Joint Resolution was promulgated.[17]

By Resolution dated April 26, 2016, the Court of Appeals denied petitioner's motion for reconsideration.

The Present Petition

Bakun now seeks to reverse the Court of Appeals' disposition and rule that Sugpon had lost its right to appeal for failure to

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

[15] *Id*. at 7-17.

[16] **SEC. 119.** *Appeal*. — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the sanggunian concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes.

[17] *Rollo*, p. 13.

comply with the requirements laid down under Rule 40 of the Revised Rules of Court. Hence, the assailed Joint Resolution had allegedly become final and executory.

Bakun essentially alleges that the mode and manner of appeal undertaken by Sugpon was erroneous because the correct procedure should have been for a Notice of Appeal served on the Joint Sanggunian that rendered the Joint Resolution and for the Joint Sanggunian to forward the case records to the RTC. Only then will the RTC allegedly acquire jurisdiction over the case. But Sugpon did not follow this procedure. Instead, it directly filed a "Petition on Appeal" before the RTC. Since the appeal was not deemed perfected due to Sugpon's non-compliance with procedural requirements, the decision or resolution sought to be appealed was deemed to have lapsed into finality.[18]

In its Comment[19] dated September 4, 2016, Sugpon asserts that it substantially complied with the Revised Rules of Court in appealing Joint Resolution No. 1, Series of 2014. It filed a Notice of Appeal before the Province of Benguet because the *Ad Hoc* Joint Sanggunian which initially heard and resolved the boundary dispute had already ceased to exist after its questioned resolution was promulgated. Notably, the members of the Sangguniang Panlalawigan of Benguet on whom the Notice of Appeal was served were the same members of the *Ad Hoc* Joint Sanggunian which issued the assailed resolution. Further, neither the LGC nor its Implementing Rules and Regulations provides that the Notice of Appeal should first be filed with the Joint Sanggunian before appeal may be brought before the regional trial court. As for the alleged non-payment of appellate docket fees, again, the LGC and its Implementing Rules and Regulations did not mention payment of appeal docket fees with the Joint Sanggunian. It, nevertheless, paid the same with the Office of the Clerk of Court of RTC, Ilocos Sur, in faithful compliance with the Rules of Court.[20]

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[18] *Id*. at 19-30.

[19] *Id*. at 351-365.

[20] *Id*. at 357-358.

Issue

Did Sugpon's appeal comply with Rule 40 of the Revised Rules of Court?

Ruling

The petition is **DENIED**.

Article 17 (i) of the Implementing Rules and Regulations of the Local Government Code of 1991 provides:

Article 17. *Procedures for Settling Boundary Disputes* – The following procedures shall govern the settlement of boundary disputes:

(i) Appeal — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the sanggunian concerned to the proper Regional Trial Court having jurisdiction over the dispute by filing therewith the appropriate pleading, stating among others, the nature of the dispute, the decision of the sanggunian concerned and the reasons for appealing therefrom. The Regional Trial Court shall decide the case within one (1) year from the filing thereof. Decisions on boundary disputes promulgated jointly by two (2) or more sangguniang panlalawigans shall be heard by the Regional Trial Court of the province which first took cognizance of the dispute.

On the other hand, Section 3, Rule 40 of the Rules of Court decrees:

Section 3. *How to appeal.* — The appeal is taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from. The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and state the material dates showing the timeliness of the appeal.

A record on appeal shall be required only in special proceedings and in other cases of multiple or separate appeals.

The form and contents of the record on appeal shall be as provided in section 6, Rule 41.

Copies of the notice of appeal, and the record on appeal where required, shall be served on the adverse party.

Here, Sugpon served on the Province of Benguet a Notice of Appeal to the RTC. It also subsequently filed with the RTC its corresponding "Petition on Appeal" setting forth the statement of facts and law, the assigned errors, and the arguments.

First. Sugpon's Notice of Appeal states:

NOTICE OF APPEAL

WHEREAS, Joint-Resolution No. 1, Series of 2014 was promulgated by the Joint-Committee members favouring the Province of Benguet as the alleged lawful owner/possessor of the disputed area consisting of 1,118 hectares at the boundary of the Province of Benguet and the Province of Ilocos Sur;

WHEREAS, in Joint-Resolution No. 1, Series of 2014 stipulated that the aggrieved party shall file the necessary appeal to the regular court of justice pursuant to Rule III, Section 17, par. I of the IRR of the Local Government Code of 1991;

NOW THEREFORE, the Province of Ilocos Sur through the Municipality of Sugpon, is hereby notifying the Province of Benguet that it is filing the necessary appeal to the Regional Trial Court within fifteen days from 14 May 2014 or until 29 May 2014 in which to file the same, for your information, guidance and appropriate action.

On its face, the Notice of Appeal conformed with Rule 40.

Second. Sugpon's Notice of Appeal was served on the Sangguniang Panlalawigan of Province of Benguet whose members were the same officials who constituted the already defunct Joint Sanggunian. For Bakun to insist that the Joint Sanggunian, after it became defunct should have been served the Notice of Appeal is unreasonable, if not impossible.

Third. Sugpon's omission or failure to furnish Bakun a copy of the Notice of Appeal is not fatal. Bakun's right to notice and due process was never curtailed. It in fact received copy of the Notice of Appeal from the Sangguniang Panlalawigan of Benguet. Following its receipt of the Notice of Appeal, Bakun was even able to file a motion to dismiss the appeal before the RTC.

Fourth. As for the signatories of the Notice of Appeal, they included Sugpon's board members and the Mayor himself. The objection against the board members themselves signing the Notice of Appeal is vacuous.

Finally. On the non-payment of docket fees, we quote with concurrence the Court of Appeals' disquisition, *viz*:

> Third, anent the non-payment of the appeal docket fee, as correctly observed by the lower court, the LGC and its Implementing Rules in prescribing how appeal is to be done simply states, "by filing therewith (RTC) any appropriate pleading". Even granting that appellant must pay the appeal docket fee, suffice it to say that the same does not automatically result in the dismissal of an appeal, it being discretionary on the part of the appellate court to give it due course or not. This is especially so in this case where the Joint Sanggunian where the appeal docket fee was supposed to be paid was already dissolved.[21]

Notably, Sugpon, despite its reluctance to pay docket fees considering the nature of the case, still paid in full the docket fees and other legal fees with the Office of the Clerk of Court of RTC, Ilocos Sur.[22]

In any event, rules of procedure are mere tools designed to facilitate the attainment of justice, and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. More so in the present case involving as it does two (2) municipalities and their competing claims over a piece of public property. Certainly, procedural technicalities must yield to considerations of public interest.[23]

Municipality of Pateros v. Court of Appeals[24] is apropos:

> Given the circumstances surrounding the instant case, we find sufficient reason to relax the rules. Thus, we now resolve the sole

[21] *Id*. at 13.

[22] *Id*. at 303-305.

[23] *Municipality of Pateros v. Court of Appeals*, 607 Phil. 104, 115-116 (2009).

[24] *Id*.

issue of whether the RTC has jurisdiction to entertain the boundary dispute between Pateros and Makati.

Apart from the doctrine that the jurisdiction of a tribunal over the subject matter of an action is conferred by law, it is also the rule that the court's exercise of jurisdiction is determined by the material allegations of the complaint or information and the law applicable at the time the action was commenced. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, by acquiescence, or even by express consent of the parties. Thus, the jurisdiction of a court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in court or upon a motion to dismiss for, otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation.

So must it be.

WHEREFORE, the Court resolves to **DENY** the petition for review for failure to adequately show that the Court of Appeals committed reversible error in rendering its Decision dated October 23, 2015 and Resolution dated April 26, 2016.

SO ORDERED.

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

Peralta, C.J. (Chairperson), on official leave.

THIRD DIVISION

[G.R. No. 234711. March 2, 2020]

DAISY REE CASTILLON, JUREEZE PHOEBE CASTILLON, and DREW WYATT CASTILLON, *petitioners, vs.* **MAGSAYSAY MITSUI OSK MARINE, INC. and/or FRANCISCO D. MENOR and/or MOL SHIP MANAGEMENT CO., LTD.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; WHEN THERE IS A SHOWING THAT THE COURT OF APPEALS MANIFESTLY OVERLOOKED FACTS WHICH WOULD JUSTIFY A DIFFERENT CONCLUSION, OR WHEN THERE IS INSUFFICIENT EVIDENCE TO SUPPORT THE FINDINGS OF THE LOWER COURTS, OR WHEN TOO MUCH IS CONCLUDED FROM BARE OR INCOMPLETE FACTS SUBMITTED BY THE PARTIES, THE COURT CAN DELVE INTO QUESTIONS OF FACT AND REVIEW THE EVIDENCE ON RECORD.— As a rule, only questions of law may be raised in a petition for review. Generally, this Court "does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitutte the findings of fact of the [National Labor Relations Commision], an administrative body that has expertise in its specialized field." In *Fuji Television Network, Inc. v. Espiritu*, this Court explained in length the procedural parameters for petitions for review in labor cases. Thus, when a Court of Appeals decision in a Rule 65 petition is appealed by way of a Rule 45 petition to this Court, only questions of law may be decided upon. Nevertheless, when there is a showing that the Court of Appeals manifestly overlooked facts which would justify a different conclusion, or when there is insufficient evidence to support the findings of the lower courts, or when too much is concluded from bare or incomplete facts submitted by the parties, this Court can delve into questions of fact and review the evidence on record. A careful review of this case reveals relevant and crucial facts which were overlooked by the Court of Appeals and labor

tribunals. Thus, we proceed to resolve the questions of fact raised by petitioners.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR DEATH; ELEMENTS FOR COMPENSABILITY.— For a seafarer's death to be compensable, the 2010 Philippine Overseas Employment Administration Standard Employment Contract stipulates that the claimants must establish that (a) the seafarer's death is work-related, and (b) the death occurred during the term of the employment contract.

3. ID.; ID.; ID.; ID.; WORK-RELATEDNESS REQUIRES A REASONABLE LINKAGE BETWEEN THE DISEASE SUFFERED BY THE EMPLOYEE AND HIS WORK; WORK-RELATED ILLNESS, DEFINED.— Work-relatedness requires a "reasonable linkage between the disease suffered by the employee and his work." The Philippine Overseas Employment Administration Standard Employment Contract defines "work-related illness" as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." In instances where the illness or disease does not fall under Section 32-A, Section 20(A)(4) states that a disputable presumption arises that the illness or disease is work-related. In *Romana v. Magsaysay Maritime Corp.*: The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits. Given the legal presumption in favor of the seafarer, he may rely on and invoke such legal presumption to establish a fact in issue. The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail.

4. ID.; ID.; ID.; ID.; PRESUMPTION OF WORK-RELATEDNESS IS NOT TANTAMOUNT TO A PRESUMPTION OF COMPENSABILITY; SEAFARER MUST STILL PROVE COMPLIANCE WITH THE CONDITIONS FOR COMPENSABILITY, WHETHER OR

NOT THE WORK-RELATEDNESS OF HIS ILLNESS IS DISPUTED BY THE EMPLOYER.— [T]he presumption of work-relatedness established under Section 20(A)(4) is not tantamount to a presumption of compensability. In *Romana*: The established work-relatedness of an illness does not, however, mean that the resulting disability is automatically compensable. As also discussed, the seafarer, while not needing to prove the work-relatedness of his illness, bears the burden of proving compliance with the conditions of compensability under Section 32 (A) of the 2000 POEA-SEC. Failure to do so will result in the dismissal of his claim. Notably, it must be pointed out that the seafarer will, in all instances, have to prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer. Nevertheless, the presumption of work-relatedness, like any presumption, may be controverted by the contrary evidence. The employer or principal may show that the conditions on board the vessel were such that there can be reasonable conclusion that the condition of the claimant could not have been aggravated by his work.

5. ID.; ID.; COMPENSABILITY OF DEATH ARISING FROM WORK-RELATED ILLNESS; REQUIREMENTS TO BE SATISFIED UNDER SECTION 32-A THEREOF.— [F]or death arising from work-related illness to be compensable, the claimant must satisfy the requirements under the provision, which reads: SECTION 32-A. Occupational Diseases. — For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer. Even if the illness was not contracted as a result of exposure to the work's risks, a pre-existing illness may be regarded as work-related if it was aggravated by the seafarer's working conditions.

6. ID.; ID.; ID.; IN DETERMINING WORK-RELATEDNESS, IT IS NOT NECESSARY THAT THE NATURE OF A SEAFARER'S WORK IS THE SOLE CAUSE OF THE ILLNESS; A REASONABLE PROOF OF WORK CONNECTION, NOT DIRECT CAUSAL RELATION, IS

REQUIRED.— [J]urisprudence has settled that in determining work-relatedness, it is not necessary that the nature of the seafarer's work is the sole cause of the illness. In *Magsaysay Maritime Services v. Laurel*: Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness 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.** Even if the illness is disputably presumed as work-related, a claimant must still present substantial evidence that the "work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work connection, not direct causal relation is required."

7. ID.; ID.; ID.; ID.; BURDEN SHIFTS TO THE SEAFARER TO PROVE OTHERWISE, IF THE EMPLOYER CONTESTS THE WORK-RELATEDNESS OF THE ILLNESS; CONDITIONS OF COMPENSABILITY THAT MUST BE COMPLIED WITH BY THE SEAFARER.— Should the employer contest the illness's work-relatedness, the burden shifts to the seafarer to prove otherwise (*i.e*. the illness is not pre-existing, or even if it was pre-existing, the work contributed to or aggravated the illness). In doing so, the seafarer is also able to comply with the condition of compensability under Section 32-A, particularly: (1) that the seafarer's work must involve the risks described herein; (2) that the disease was contracted as a result of the seafarer's exposure to the described risks; and (3) that the disease was contracted within a period of exposure and under such other factors necessary to contract it.

8. ID.; ID.; THE COMPANY-DESIGNATED PHYSICIAN HAS THE PRIMARY RESPONSIBILITY TO DETERMINE THE DISABILITY GRADING OR FITNESS TO WORK OF THE SEAFARERS; MEDICAL ASSESSMENT OR REPORTS OF THE COMPANY-DESIGNATED PHYSICIAN MUST BE COMPLETE AND DEFINITE TO GIVE THE PROPER DISABILITY BENEFITS.— The Philippine Overseas Employment Administration Standard Employment Contract prescribes the primary responsibility of the company-designated physician to determine the disability grading or fitness to work

of the seafarers. The rules favor the assessment of the company-designated physician because it is assumed "that they have closely monitored and actually treated the seafarer and are therefore in a better position to form an accurate diagnosis." To be deemed sufficient, the medical assessment or reports of the company-designated physician must be complete and definite to give the proper disability benefits.

9. ID.; ID.; ID.; ID.; IF THE COMPANY-DESIGNATED PHYSICIAN FAILS TO CONDUCT ALL PROPER AND RECOMMENDED TESTS, THE MEDICAL ASSESSMENT CANNOT BE GIVEN CREDENCE FOR BEING INDEFINITE AND INCONCLUSIVE.— Courts are not automatically bound by the company-designated physician's findings because its merit must still be weighed and considered. If the assessment of the company-designated physician was tardy, incomplete, and doubtful, the medical report shall be disregarded. x x x If the company-designated physician fails to conduct all proper and recommended tests, the medical assessment cannot be given credence for being indefinite and inconclusive.

10. ID.; ID.; ID.; ILLNESSES NOT LISTED UNDER SECTION 32-A ARE DISPUTABLY PRESUMED AS WORK-RELATED; ILLNESS OR DEATH BENEFIT CLAIMED BY THE SEAFARER MAY BE GRANTED AS LONG AS THE WORK-RELATEDNESS AND COMPENSABILITY IS ESTABLISHED.— For the purpose of compensability, the Philippine Overseas Employment Administration Standard Employment Contract does not require that the illness must be one of those enumerated under Section 32-A. To the contrary, Section 20(A)(4) explicitly provides that illnesses not listed under Section 32-A are disputably presumed as work-related. As long as the work-relatedness and compensability is established, the illness or death benefit claimed by the seafarer may be granted.

11. ID.; ID.; ID.; ID.; SEVERITY AND PROGRESSION OF THE ILLNESS IS NOT THE TEST OF WORK-RELATION; AS LONG AS THE WORK HAS CONTRIBUTED TO THE ESTABLISHMENT OR, AT THE VERY LEAST, AGGRAVATION OF ANY PRE-EXISTING CONDITION, WORK-RELATEDNESS IS PROVEN.— [W]ork-relatedness does not mean that the illness drastically progressed due to the seafarer's work. There may be work-relatedness in cases where a seafarer's colon cancer developed from Stage 1 to Stage 3 during his employment and where a seafarer's cancer was in a

more advanced stage at the time he or she was employed. The severity and progression of the illness is not the test of work-relation. As long as the work has "contributed to the establishment or, at the very least, aggravation of any pre-existing condition," work-relatedness is proven.

12. CIVIL LAW; OBLIGATIONS AND CONTRACTS; QUITCLAIMS; WHEN FREELY AND VOLUNTARILY EXECUTED, IT DISCHARGES THE EMPLOYER FROM LIABILITY TO THE EMPLOYEE; REQUISITES OF A VALID QUITCLAIM.— Generally, the law frowns upon quitclaims executed by employees for being contrary to public policy. However, when it is executed voluntarily, fully understanding its terms and with a corresponding reasonable consideration, the quitclaim is valid and binding. Legitimate waivers or quitclaims are regarded as the law between the employers and employees. x x x When the waiver or quitclaim is freely and voluntarily executed, it discharges the employer from liability to the employee. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned on a whim. In *Goodrich Manufacturing Corporation v. Ativo*: In certain cases x x x the Court has given effect to quitclaims executed by employees if the employer is able to prove the following requisites, to wit: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. The employer bears the burden to prove that the quitclaim is a reasonable settlement of the employee's benefits, and that it was executed voluntarily, fully understanding its import.

13. ID.; ID.; ID.; ID.; ID.; WHILE A QUITCLAIM HAS THE EFFECT AND AUTHORITY OF *RES JUDICATA* UPON THE PARTIES, A QUITCLAIM MAY BE RENDERED NULL AND VOID WHEN FOUND CONTRARY TO PUBLIC POLICY.— While a quitclaim has the effect and authority of *res judicata* upon the parties, a quitclaim may be rendered null and void when found contrary to public policy. Thus, respondents cannot cite *res judicata* to bar petitioners from claiming the full value of the benefits.

GESMUNDO*, J., dissenting opinion*:

1. REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF NECESSARY IN LABOR CASES IS SUBSTANTIAL EVIDENCE, OR SUCH AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.— It is an oft-repeated rule that the quantum of proof necessary in labor cases (as in other administrative and quasi-judicial proceedings) is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. And in a situation where the word of another party is taken against the other, as in this case, the Court must rely on substantial evidence because a party alleging a critical fact must duly substantiate and support such allegation.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR DEATH; REASONABLE PROOF OF WORK-CONNECTION IS SUFFICIENT TO ESTABLISH COMPENSABILITY OF A NON-OCCUPATIONAL DISEASE; A DIRECT CAUSAL RELATION IS NOT REQUIRED.— [A] ***reasonable*** **proof** of work-connection is sufficient to establish compensability of a non-occupational disease—a direct causal relation is not required. And while the degree of determining whether the illness is work-related requires only probability, the conclusions of the courts must still be based on real, and not just apparent, evidence.

3. ID.; ID.; ID.; A PRE-EMPLOYMENT MEDICAL EXAMINATION IS NOT EXPLORATORY AND MAY NOT BE RELIED UPON TO PRODUCE INFORMATION REGARDING A SEAFARER'S TRUE STATE OF HEALTH.— [A] pre-employment medical examination (*PEME*) is not exploratory and may not be relied upon to produce information regarding a seafarer's true state of health. It is not intended to be a totally in-depth and thorough examination of an applicant's medical condition. This jurisprudential observation applies to asymptomatic illnesses such as colon cancer which, as discussed earlier, usually appear only at a more advanced

stage of the disease. An asymptomatic illness cannot reasonably be detected during a PEME as the same procedure is routinary. It is only when patients complain of discomfort or pain that routinary procedures, such as the PEME, can be extended by the examining physician through additional medical tests which may lead to the eventual diagnosis of an underlying illness.

4. ID.; ID.; ID.; GENERAL PRINCIPLES SUCH AS SOCIAL JUSTICE CANNOT SUPPLANT THE REQUIREMENT OF ESTABLISHING FACTS OR INFERENCES BY EVIDENCE; DUE PROCESS CONSIDERATIONS REQUIRE THAT JUDGMENTS MUST CONFORM TO AND BE SUPPORTED BY THE PLEADINGS AND EVIDENCE PRESENTED IN COURT.— Time and again, the Court has ruled that the social justice provisions of the Constitution are not self-executing principles ready for enforcement through the courts—they are merely statements of principles and policies. In other words, they are merely guidelines for legislation. As such, social justice principles need legislative enactments before they can be implemented. Conversely, the protective mantle of social justice cannot be utilized as an instrument to hoodwink courts of justice. In relation to the administration of justice, 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. Especially in the aspect of establishing facts, **due process considerations** require that judgments must conform to and be **supported** by the pleadings and **evidence** presented in court. Deciding based on evidence is an essential attribute of due process which properly informs (especially those who will be deprived of life, liberty or property) the reasons for the verdict which pronounced the rights and obligations of contending parties in litigation.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; QUITCLAIMS; NOT ALL QUITCLAIMS ARE *PER SE* INVALID OR AGAINST PUBLIC POLICY; EXCEPTIONS; TO ALLOW RECOVERY OF FULL DISABILITY OR DEATH BENEFITS BY VIRTUE OF AN INVALID QUITCLAIM PRESUPPOSES THAT THERE IS A LEGAL ENTITLEMENT TO SUCH BENEFITS IN FULL.— Not all quitclaims are *per se* invalid or against public policy, except: (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of

settlement are unconscionable on their faces; in these cases, the law will step in to annul the questionable transactions. However, to allow the recovery of full disability or death benefits by virtue of an invalid quitclaim presupposes that there is a legal entitlement to such benefits in full.

6. ID.; ID.; UNJUST ENRICHMENT; WHEN PRESENT.— [I]t is settled that no person should unjustly enrich himself or herself at the expense of another. Unjust enrichment exists "when a person unjustly retains a benefit from the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." As such, it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.

APPEARANCES OF COUNSEL

Facundo L. Leda for petitioners.
Pamela Portia Coseip-Abarico for respondents.

D E C I S I O N

LEONEN, *J.*:

In resolving claims under the Philippine Overseas Employment Administration Standard Employment Contract, the element of work-relatedness only demands a reasonable link between the illness and the seafarer's work. It is not required that the seafarer's work is the sole contributor or factor in the aggravation of the illness. The test is only reasonable proof of work-connection, and not direct causation.

This resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals. The Court

[1] *Rollo*, pp. 15-28.

[2] *Id.* at 30-38. The Decision dated September 30, 2015 was penned by Associate Justice Edwin B. Contreras, and concurred in by Associate Justice Edgardo L. Delos Santos (now a Member of this Court) (Chair) and Renato C. Francisco of the Nineteenth Division, Court of Appeals, Cebu City.

[3] *Id.* at 39-40. The Resolution dated April 7, 2017 in CA-G.R. SP No.

of Appeals dismissed the petition and ruled that Junlou H. Castillon's illness and subsequent death is not compensable under the Philippine Overseas Employment Administration Standard Employment Contract.

Junlou H. Castillon (Castillon) was employed by Magsaysay Mitsui Osk Marine, Inc. (Magsaysay) as an Able Seaman for nine (9) months with a basic salary of US$564.00. He underwent pre-employment medical examination and was declared fit to work. On February 23, 2009, he was deployed on board M/V Amethyst Ace.[4]

In June 2009, Castillon complained of intermittent mild stomach pains but he later dismissed them as ordinary discomfort.[5]

However, in August 2009, his stomachache became severe and he discovered blood in his stool. While they were in Japan, a doctor examined him, declared him unfit for duty, and recommended his repatriation. The doctor further recommended laboratory tests to rule out malignancy due to Castillon's record of chronic hemorrhage and family history of intestinal malignancy.[6]

On September 3, 2009, Castillon was repatriated to the Philippines. He reported his condition to Magsaysay, which then referred him to Medicross Health Management Hospital where he was diagnosed with abdominal mass and was recommended to undergo colonoscopy. The company-designated physician likewise determined that Castillon's condition "was not work-related."[7]

06715 was penned by Associate Justice Edwin B. Contreras, and concurred in by Associate Justice Edgardo L. Delos Santos (now a Member of this Court) and Gabriel T. Ingles (Chair) of the Special Former Nineteenth Division, Court of Appeals, Cebu City.

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

[5] *Id.* at 17.

[6] *Id.* at 31.

[7] *Id.*

Consequently, Castillon underwent colonoscopy and biopsy tests in Iloilo Doctors Hospital, as per his request since he stays in Iloilo.[8] The tests showed that Castillon had lymph nodes in his colon, resulting to Sigmoid Colon Carcinoma Stage III.B.[9] Based on the results, Castillon was then endorsed for immediate operation.[10] Castillon called the Claims Department of Magsaysay and informed them of the needed operation. Magsaysay provided the estimated operation cost of ₱100,000.00.[11]

On November 3, 2009, Castillon was admitted to Iloilo Doctors Hospital where Dr. Maximo Nadala conducted the operation and subsequently endorsed Castillon for chemotherapy.[12]

On December 12, 2009, Castillon asked for a quotation of expenses for the chemotherapy and sent Magsaysay a request for financial assistance.[13]

On August 26, 2010, Magsaysay asked Castillon to go before the National Labor Relations Commission in Quezon City. In that instance, Castillon signed a *pro-forma* labor complaint against Magsaysay. The case was assigned to Labor Arbiter Melquiades Sol Del Rosario (Labor Arbiter Del Rosario). Immediately after, Castillon signed a quitclaim and received a check for ₱888,340.00 before Labor Arbiter Del Rosario.[14] The quitclaim reads:

RELEASE OF ALL RIGHTS

READ CAREFULLY — By signing this you give up EVERY right you have.

---

[8] *Id.*

[9] *Id.*

[10] *Id.* at 44.

[11] *Id.* at 44.

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

[13] *Id.*

[14] *Id.* at 18.

I, JUNLOU H. CASTILLON . . ., in exchange for TWENTY THOUSAND US DOLLARS . . . which I have received, do hereby RELEASE (*Please write the word **RELEASE** to show that you know what you are doing*) and forever discharge: MAGSAYSAY MITSUI OSK MARINE[,] INC. AND MOL SHIP MANAGEMENT CO., LTD. . . . from each and every right and claim which I now have, or may hereafter have, . . . on account of . . . illness . . . suffered by JUMLOU [sic] H. CASTILLON as follows:

> Colonic Carcinoma Sigmoid Stage IV, with Urinary Bladder Invasion, . . .

and in addition to that, I RELEASE (*Please write the word **RELEASE** to show that you know what you are doing*) them from each and every right and claim which I now have or may have because of any matter or thing which happened before the signing of this paper . . .

x x x x x x x x x

Lastly, I certify that the contents of this Release have been translated to me in my national language/local dialect, which is Filipino, and that I fully understand its terms and provisions.

READ THE FOLLOWING STATEMENTS CAREFULLY:

(1) I know that this paper is much more than a receipt. IT IS A RELEASE. I AM GIVING UP EVERY RIGHT I HAVE.

(2) I know that in signing this Release I am, among other things, now settling in full for all rights which I now have arising from my . . . illness . . .

x x x x x x x x x

(4) I am signing this realease [sic] because I am getting the money. I have not been promised anything else.

x x x x x x x x x

THE FOLLOWING [ARE] TO BE FILLED IN BY THE CLAIMANT IN HIS OWN HANDWRITING

A. Have you read this paper from beginning to end? *YES*
B. Do you know what this paper you are signing? [sic] *YES*
C. What is this paper you are signing? *RELEASE OF ALL RIGHTS*
D. Do you make the five (5) numbered statements above and

do you intend that the parties whom you are releasing shall rely on the statements as truth? *YES*

E. Do you know that signing this Release settles and ends EVERY right or claim you may have, whether it be based on contract, tort or on other grounds? *YES*

Therefore, I am signing my name upon the words THIS IS A RELEASE and alongside the seal, . . . to show that I mean everything that is said on this paper.[15] (Emphasis in the original)

On August 26, 2010, Labor Arbiter Del Rosario then issued an order of dismissal with prejudice.[16]

Subsequently on October 1, 2010, after reflecting on what had transpired, Castillon decided to file a complaint against Magsaysay for claim of disability and other benefits. On May 5, 2011, the Labor Arbiter dismissed the case for lack of merit. Castillon moved for reconsideration but his motion was denied.[17]

Castillon appealed before the National Labor Relations Commission but his appeal was likewise dismissed.[18] The National Labor Relations Commission ruled that Labor Arbiter Del Rosario's order of dismissal with prejudice operated as *res judicata* on the present case, thus:

The records reveal that complainant executed a Release of All Rights, *Pagpapaubaya ng Lahat ng Karapatan*, Affidavit of Claimant and Receipt of Payment in favor of respondents. This [wa]s in consideration of the settlement amount of Twenty Thousand (US$20,000.00) Dollars he received from the latter. Alongside with it, both parties executed and filed a Joint Motion to Dismiss before Labor Arbiter Melquiades Sol Del Rosario in NLRC-NCR Case No. (M) 08-12091-10. In said motion, they informed the Labor Arbiter that they have entered into a full and final amicable settlement of their impending case and of all claims that complainant has on respondents.

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

[16] *Id.* at 18.

[17] *Id.*

[18] *Id.* at 32.

> . . . one of the quitclaim documents executed by complainant is in the vernacular. From that alone, he cannot deny any knowledge and understanding of the contents thereof. Such was further bolstered by the Joint Motion to Dismiss filed by him and respondents, attesting to their full settlement.[19] (Emphasis in the original, citation omitted)

Castillon then filed a motion for reconsideration, but to no avail.[20] Thus, he filed an appeal before the Court of Appeals, claiming that the proceedings before Labor Arbiter Del Rosario was a "sham[,]" because it was Magsaysay which caused the filing of the complaint. Moreover, he argued that he did not voluntarily sign the release document and the joint motion to dismiss. He further contended that he is entitled to full disability benefits of US$60,000.00 because his illness is work-related.[21]

The Court of Appeals dismissed the petition, thus:

> **WHEREFORE**, the petition is **DENIED**. The NLRC's Decision dated October 28, 2011 and Resolution dated December 29, 2011 in NLRC Case No. OFW VAC-06-000027-201 are **AFFIRMED**.
>
> **SO ORDERED**.[22]

The Court of Appeals ruled that the release documents signed by Castillon barred him from claiming total disability benefits.[23] The appellate court found that the quitclaim was "knowingly and voluntarily" executed by Castillon, considering the absolute character of the document.[24] The Affidavit of Claimant executed by Castillon categorically stated that the US$20,000.00 covered all benefits due to him under the Philippine Overseas Employment Administration Standard Employment Contract.[25]

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[19] *Id.*

[20] *Id.* at 32.

[21] *Id.* at 33.

[22] *Id.* at 37.

[23] *Id.* at 33.

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

[25] *Id.* at 35.

Moreover, the Court of Appeals pointed out that the document was translated and was signed by Castillon in both English and Filipino versions. Castillon also handwrote the word "RELEASE" and the affirmative responses to the clarificatory questions in the documents. Castillon cannot assail the validity of the quitclaim on the ground that it was Magsaysay who filed the complaint before the National Labor Relations Commission because he fully participated in the proceedings. It is also noteworthy that the quitclaim was presented to and approved by Labor Arbiter Del Rosario.[26]

Further, the amount of US$20,000.00 is already a fair and reasonable settlement of Castillon's claim, considering that his illness is not work-related. The Court of Appeals considered the determination of the company-designated physician, along with Castillon's family history of intestinal malignancy.[27]

Thus, the Court of Appeals affirmed the National Labor Relations Commission's finding of *res judicata*. All elements of *res judicata* are present in this case: (1) the order of dismissal was final; (2) it was an adjudication on the merits because it was premised upon a settlement; (3) Labor Arbiter Del Rosario had jurisdiction over the subject matter and the parties; and (4) there is an identity of parties, subject matter, and causes of action.[28]

Castillon moved for reconsideration, but was later denied by the Court of Appeals.[29] Unfortunately, during the pendency of the motion for reconsideration, Castillon died.[30]

Castillon's widow and their two (2) children filed a Petition for Review on *Certiorari* before this Court assailing the Decision and Resolution of the Court of Appeals.[31]

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[26] *Id.* at 36.

[27] *Id.*

[28] *Id.* at 37.

[29] *Id.* at 39-40.

[30] *Id.* at 7.

[31] *Id.* at 15-28.

Petitioners argue that Castillon's execution of the quitclaim cannot be considered voluntary, taking into account his situation at that time. He was already weak and in dire need of financial assistance; thus, he was in a disadvantageous position when he signed the quitclaim.[32]

Moreover, petitioners aver that Castillon is not precluded from claiming his full disability benefits because a quitclaim is not valid if the compensation is less than what the claimant is legally entitled to.[33] In this case, Castillon is entitled to more than what respondents gave him. Respondents should have shouldered the total cost of chemotherapy amounting to ₱313,125.00, doctor's professional fee amounting to ₱400,000.00, sickness allowance for four (4) months amounting to US$2,256.00, and full disability benefits of US$60,000.00. Thus, the amount of ₱888,340.00 is not a fair and reasonable settlement of Castillon's claim.[34]

Further, petitioners maintain that Castillon is entitled to full disability claim because his illness is work-related.[35] To reiterate, before boarding, he was subjected to a pre-employment medical examination and was declared fit to work.[36] He was diagnosed during the term of his contract and at the very least, the nature of his job aggravated his condition.[37] His work was stressful and his meals on board were always canned goods, which are mostly high in fat. These facts were never disputed by respondents.[38]

As to the declaration of the company-designated physician that Castillon's illness is not work-related, petitioners contend

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[32] *Id.* at 20.

[33] *Id.* citing *American Home Assurance Co. v. National Labor Relations Commission*, 328 Phil. 606 (1996) [Per *J.* Regalado, Second Division].

[34] *Id.* at 20-21.

[35] *Id.* at 21.

[36] *Id.* at 23.

[37] *Id.* at 21.

[38] *Id.*

that this finding should be given scant consideration. Being the chosen physician of the respondents, the findings are clearly self-serving and biased.[39]

Petitioners further argue that there is no *res judicata* in this case, because the proceedings before Labor Arbiter Del Rosario were fraudulent. The *pro-forma* complaint and the hurried dismissal with prejudice was orchestrated to take advantage of Castillon.[40]

Petitioners claim that Castillon was only a layman and was not well-versed in legal matters. They alleged that it was Magsaysay who directed Castillon to sign a prepared *pro-forma* complaint, only to cause its immediate dismissal with prejudice.[41]

In their Comment,[42] respondents counter that Castillon's illness is not compensable under the Philippine Overseas Employment Administration Standard Employment Contract because it is not work-related.[43] That he was declared fit to work prior to boarding and that he later on got sick while on board does not make his illness work-related.[44]

Respondents aver that to be regarded as work-related, the illness must be one of those enumerated as occupational diseases under Section 32-A of the Philippine Overseas Employment Administration Standard Employment Contract. The company-designated physician likewise determined that Castillon's illness is not work-related and that this finding was never disputed by contrary evidence.[45]

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

[40] *Id.* at 23.

[41] *Id.*

[42] *Id.* at 68-90.

[43] *Id.* at 69.

[44] *Id.* at 70.

[45] *Id.* at 70.

Moreover, the pre-employment medical examination is merely routinary and not exploratory. It is not conclusive proof. Thus, it does not support petitioners' contention that Castillon's illness is work-related.[46] That Castillon's illness manifested while he was on board does not also necessarily mean that his illness is work-related.[47]

Respondents also dispute petitioners' claim that the working condition and unhealthy diet on board contributed to his illness. Respondents argue that this claim is baseless because there is already a prevailing standard on dietary provisions on board vessels.[48] Further, petitioners failed to present any evidence to prove that Castillon's work aggravated his illness.[49] Thus, in the face of the company-designated physician's diagnosis, petitioners' claims must fail.[50]

Respondents argue that the quitclaim signed by Castillon is a valid settlement of his claims.[51] The dismissal of the first case constituted *res judicata*.[52] The four (4) elements of *res judicata* are present in this case:

(1) The dismissal order from Labor Arbiter Del Rosario is final;[53]

(2) The order was issued after considering documentary evidence;[54]

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[46] *Id.* at 71.

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

[48] *Id.* at 78-80.

[49] *Id.* at 80-81.

[50] *Id.* at 81.

[51] *Id.*

[52] *Id.*

[53] *Id.* at 82.

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

(3) The National Labor Relations Commission had jurisdiction over the claim and over the parties;[55] and

(4) There is an identity of parties, subject matter, and cause of action in the first and second cases.[56]

With respect to the voluntariness of the quitclaim's execution, respondents point out that Castillon knew that the payment given to him was already the full and complete settlement of all his claims. The document was translated to Filipino, which was fully understood by Castillon.[57] He voluntarily acknowledged the quitclaim before a Notary Public and confirmed it before Labor Arbiter Del Rosario.[58] Moreover, petitioner Daisy Castillon, Castillon's wife, signed as a witness to the quitclaim.[59]

In their Reply,[60] petitioners add that, even assuming the pre-employment medical examination is not exploratory, Castillon fell ill during the term of his contract. Moreover, this illness was further aggravated by the nature of his work.[61] He worked for more than eight (8) hours, lifted heavy objects, and was exposed to oils and fumes.[62] Further, it is questionable why respondents paid Castillon US$20,000.00 while they continue to insist that his ailment was not work-related.[63]

The issues for this Court's resolution are the following:

(1) Whether or not petitioners may raise questions of fact in a Rule 45 petition;

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[55] *Id.* at 83.

[56] *Id.*

[57] *Id.* at 84.

[58] *Id.* at 85.

[59] *Id.* at 88.

[60] *Id.* at 122-131.

[61] *Id.* at 123.

[62] *Id.* at 124.

[63] *Id.* at 126.

(2) Whether or not petitioners may claim for disability or death benefits against respondents. Subsumed under this issue are the following: (a) whether or not the findings of the company-designated physician must be upheld and (b) whether or not Castillon's illness is work-related; and finally

(3) Whether or not the quitclaim signed by Castillon was valid. Subsumed under this issue is whether or not the order of dismissal operates as *res judicata*.

I

As a rule, only questions of law may be raised in a petition for review.[64] Generally, this Court "does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the [National Labor Relations Commission], an administrative body that has expertise in its specialized field."[65]

In *Fuji Television Network, Inc. v. Espiritu*,[66] this Court explained in length the procedural parameters for petitions for review in labor cases. Thus, when a Court of Appeals decision in a Rule 65 petition is appealed by way of a Rule 45 petition to this Court, only questions of law may be decided upon. Thus:

> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[67]

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[64] RULES OF COURT, Rule 45, Sec. 1.

[65] *Monana v. MEC Global Shipmanagement and Manning Corp.*, 746 Phil. 736, 749 (2014) [Per *J.* Leonen, Second Division].

[66] 749 Phil. 388 (2014) [Per *J.* Leonen, Second Division].

[67] *Id.* at 416 citing *Meralco Industrial v. National Labor Relations Commission*, 572 Phil. 94 (2008) [Per *J.* Chico-Nazario, Third Division].

Nevertheless, when there is a showing that the Court of Appeals manifestly overlooked facts which would justify a different conclusion,[68] or when there is insufficient evidence to support the findings of the lower courts, or when too much is concluded from bare or incomplete facts submitted by the parties,[69] this Court can delve into questions of fact and review the evidence on record.

A careful review of this case reveals relevant and crucial facts which were overlooked by the Court of Appeals and labor tribunals. Thus, we proceed to resolve the questions of fact raised by petitioners.

II

For a seafarer's death to be compensable, the 2010 Philippine Overseas Employment Administration Standard Employment Contract stipulates that the claimants must establish that (a) the seafarer's death is work-related, and (b) the death occurred during the term of the employment contract.[70]

Work-relatedness requires a "reasonable linkage between the disease suffered by the employee and his work."[71] The Philippine Overseas Employment Administration Standard Employment Contract defines "work-related illness" as "any sickness as a result of an occupational disease listed under Section 32-A of

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[68] See *Radio Mindanao Network, Inc. v. Amurao III*, 746 Phil. 60 (2014) [Per *J.* Bersamin, First Division].

[69] See *Cootauco v. MMS Phil. Maritime Services, Inc.*, 629 Phil. 506 (2010) [Per *J.* Perez, Second Division].

[70] POEA Memorandum Circular No. 10 (2010), Sec. 20 (B) (1) provides:

B. Compensation and Benefits for Death

1. In case of work-related death of the seafarer, during the term of his contract, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

[71] *Manansala v. Marlow Navigation Phils., Inc.*, 817 Phil. 84, 96 (2017) [Per *J.* Leonen, Third Division].

this Contract with the conditions set therein satisfied."[72] In instances where the illness or disease does not fall under Section 32-A, Section 20 (A) (4) states that a disputable presumption arises that the illness or disease is work-related.[73] In *Romana v. Magsaysay Maritime Corp.*:[74]

> The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits. Given the legal presumption in favor of the seafarer, he may rely on and invoke such legal presumption to establish a fact in issue. The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail.[75]

However, the presumption of work-relatedness established under Section 20 (A) (4) is not tantamount to a presumption of compensability. In *Romana*:

> The established work-relatedness of an illness does not, however, mean that the resulting disability is automatically compensable. As also discussed, the seafarer, while not needing to prove the work-relatedness of his illness, bears the burden of proving compliance with the conditions of compensability under Section 32 (A) of the 2000 POEA-SEC. Failure to do so will result in the dismissal of his claim.
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> Notably, it must be pointed out that the seafarer will, in all instances, have to prove compliance with the conditions for compensability,

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[72] POEA Memorandum Circular No. 10 (2010), Definition of Terms (16).

[73] POEA Memorandum Circular No. 10 (2010), Sec. 20 (A) (4) provides:

> Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

[74] 816 Phil. 194 (2017) [Per *J.* Perlas-Bernabe, First Division].

[75] *Id.* at 203-204.

whether or not the work-relatedness of his illness is disputed by the employer.[76]

Nevertheless, the presumption of work-relatedness, like any presumption, may be controverted by the contrary evidence. The employer or principal may show that the conditions on board the vessel were such that there can be reasonable conclusion that the condition of the claimant could not have been aggravated by his work.

In *Magsaysay Maritime Corporation v. National Labor Relations Commission*,[77] this Court considered that the working condition of the seafarer did not cause or increase the risk of contracting the illness. In this case, the employer assailed the grant of disability benefits to the seafarer after he fell ill with lymphoma. The employer argued that the seafarer's working condition could not have exposed him to carcinogenic fumes or chemicals because his duties merely involved housekeeping and cleaning.

In granting the employer's petition, this Court found that the employer was able to prove that the working conditions on board could not have exposed the seafarer to the risk of contracting lymphoma. The evidence presented by the employer sufficiently showed that the seafarer's work as an assistant housekeeping manager did not expose him to anaesthetics or any viral infection in his workplace.[78]

Corollarily, for death arising from work-related illness to be compensable, the claimant must satisfy the requirements under the provision, which reads:

SECTION 32-A. Occupational Diseases. —

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

1. The seafarer's work must involve the risks described herein;

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[76] *Id.* at 210.

[77] 630 Phil. 352 (2010) [Per *J.* Brion, Second Division].

[78] *Id.* at 365-366.

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

4. There was no notorious negligence on the part of the seafarer.

Even if the illness was not contracted as a result of exposure to the work's risks, a pre-existing illness may be regarded as work-related if it was aggravated by the seafarer's working conditions.[79]

Further, jurisprudence has settled that in determining work-relatedness, it is not necessary that the nature of the seafarer's work is the sole cause of the illness. In *Magsaysay Maritime Services v. Laurel*:[80]

Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness 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**.[81] *(Emphasis supplied)*

Even if the illness is disputably presumed as work-related, a claimant must still present substantial evidence that the "work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work connection, not direct causal relation is required."[82]

Thus, when the illness does not fall under Section 32-A, it is disputably presumed that the illness is work-related. The

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[79] *Manansala v. Marlow Navigation Phils., Inc.*, 817 Phil. 84, 96 (2017) [Per J. Leonen, Third Division].

[80] 707 Phil. 210 (2013) [Per J. Mendoza, Third Division].

[81] *Id.* at 225.

[82] *Philippine Transmarine Carriers, Inc. v. Bernardo*, G.R. No. 220635, August 14, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65498> [Per J. Carandang, First Division].

seafarer does not initially bear the burden of proving the work-relatedness, and the burden of proof shifts to the employer.[83] The employer should either prove that the illness was pre-existing, or if it was pre-existing, it should be proven that the conditions of his work did not contribute or aggravate the illness. If this was sufficiently proved by the employer, there is no need to resolve the question of compensability.[84]

Should the employer contest the illness's work-relatedness, the burden shifts to the seafarer to prove otherwise (*i.e.*, the illness is not pre-existing, or even if it was pre-existing, the work contributed to or aggravated the illness).[85] In doing so, the seafarer is also able to comply with the condition of compensability under Section 32-A, particularly: (1) that the seafarer's work must involve the risks described herein; (2) that the disease was contracted as a result of the seafarer's exposure to the described risks; and (3) that the disease was contracted within a period of exposure and under such other factors necessary to contract it.

Further, the findings and declaration of the physicians who assessed the seafarer is equally important, because it is the basis of the seafarer's claim.[86] The Philippine Overseas Employment Administration Standard Employment Contract clearly provides a guideline for the medical assessment of the seafarer's condition for the purposes of claiming benefits. The pertinent portion of Section 20 (A) (3) reads:

> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment,

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[83] *Romana v. Magsaysay Maritime Corp.*, 816 Phil. 194, 210 (2017) [Per *J.* Perlas-Bernabe, First Division].

[84] *Id.*

[85] *Id.*

[86] See *Licayan v. Seacrest Maritime Management, Inc.*, 773 Phil. 648 (2015) [Per *J.* Mendoza, Second Division].

the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

The Philippine Overseas Employment Administration Standard Employment Contract prescribes the primary responsibility of the company-designated physician to determine the disability grading or fitness to work of the seafarers.[87] The rules favor the assessment of the company-designated physician because it is assumed "that they have closely monitored and actually treated the seafarer and are therefore in a better position to form an accurate diagnosis."[88]

To be deemed sufficient, the medical assessment or reports of the company-designated physician must be complete and definite to give the proper disability benefits. In *Orient Hope Agencies, Inc. v. Jara*:[89]

A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[90]

Courts are not automatically bound by the company-designated physician's findings because its merit must still be weighed

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[87] See *Orient Hope Agencies, Inc. v. Jara*, G.R. No. 204307, June 6, 2018, 864 SCRA 428 [Per *J.* Leonen, Third Division].

[88] *Leonis Navigation Co., Inc. v. Obrero*, 794 Phil. 481, 490 (2016) [Per *J.* Jardeleza, Third Division].

[89] G.R. No. 204307, June 6, 2018, 864 SCRA 428 [Per *J.* Leonen, Third Division].

[90] *Id.* at 450.

and considered.[91] If the assessment of the company-designated physician was tardy, incomplete, and doubtful, the medical report shall be disregarded.[92] In *Pastor v. Bibby Shipping Philippines, Inc.*:[93]

> [T]he foremost consideration 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 disregarded. As case law holds, a final and definitive disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries to the seafarer and his or her capacity to resume work as such.[94]

If the company-designated physician fails to conduct all proper and recommended tests, the medical assessment cannot be given credence for being indefinite and inconclusive. In *Toquero v. Crossworld Marine Services, Inc.*,[95] this Court held:

> Disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician. To be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits. As explained by this Court:
>
> > A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

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[91] See *Licayan v. Seacrest Maritime Management, Inc.*, 773 Phil. 648 (2015) [Per *J.* Mendoza, Second Division].

[92] See *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234 (2015) [Per *J.* Mendoza, Second Division].

[93] G.R. No. 238842, November 19, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64848> [Per *J.* Perlas-Bernabe, Second Division].

[94] *Id.*

[95] G.R. No. 213482, June 26, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65333> [Per *J.* Leonen, Third Division].

> On the contrary, tardy, doubtful, and incomplete medical assessments, even if issued by a company-designated physician, have been repeatedly set aside by this Court.
>
> Here, the medical assessment issued by the company-designated physician cannot be regarded as definite and conclusive. A review of the records shows that the company-designated physician failed to conduct all the proper and recommended tests.[96]

In this case, respondents assert that Castillon's illness is not work-related based on the finding of the company-designated physician, and because colon cancer is not one of the occupational diseases under Section 32-A.

This Court disagrees.

For the purpose of compensability, the Philippine Overseas Employment Administration Standard Employment Contract does not require that the illness must be one of those enumerated under Section 32-A. To the contrary, Section 20 (A) (4) explicitly provides that illnesses not listed under Section 32-A are disputably presumed as work-related.[97] As long as the work-relatedness and compensability is established, the illness or death benefit claimed by the seafarer may be granted.

Colon cancer is disputably presumed as work-related because it is not one of the occupational illnesses listed under Section 32-A. Thus, the burden of proving otherwise shifts to respondents. In this case, respondents failed to discharge its burden.

The finding of the company-designated physician presented by the respondents cannot be regarded as the final and definitive assessment of Castillon's medical condition. When it was declared that Castillon's illness was not work-related, it cannot be said that the assessment was complete, thorough, and final,

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[96] *Id.*

[97] POEA Memorandum Circular No. 10 (2010), Sec. 20 (A) (4) provides:

> 4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

because the company-designated physician merely felt an abdominal mass on Castillon and recommended him to undergo a colonoscopy test. In fact, Castillon's condition was finally determined only after the colonoscopy and biopsy tests were conducted. There was no accurate diagnosis yet when the physician made the declaration; thus, this Court cannot use the company-designated physician's findings.

On the other hand, petitioners were able to prove that Castillon's working condition contributed to and aggravated his illness. While Castillon's illness can be traced from his family history of malignancy, his working and living condition while on board contributed to his illness. In *Leonis Navigation Co., Inc. v. Villamater*,[98] this Court held that colon cancer can be considered as a work-related illness, and that a seafarer is entitled to disability benefits if it's proven that the conditions inside the vessel increased or aggravated the risk of colon cancer. This Court discussed:

> It is true that under Section 32-A of the POEA Standard Contract, only two types of cancers are listed as occupational diseases — (1) Cancer of the epithelial lining of the bladder (papilloma of the bladder); and (2) cancer, epithellematous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound products or residues of these substances. Section 20 of the same Contract also states that those illnesses not listed under Section 32 are disputably presumed as work-related. Section 20 should, however, be read together with Section 32-A on the conditions to be satisfied for an illness to be compensable, 31 to wit:
>
> For an occupational disease and the resulting disability or death to be compensable, all the following conditions must be established:
>
> 1. The seafarer's work must involve the risk described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;

[98] 628 Phil. 81 (2010) [Per *J*. Nachura, Third Division].

4. There was no notorious negligence on the part of the seafarer.

Colon cancer, also known as colorectal cancer or large bowel cancer, includes cancerous growths in the colon, rectum and appendix. With 655,000 deaths worldwide per year, it is the fifth most common form of cancer in the United States of America and the third leading cause of cancer-related deaths in the Western World. Colorectal cancers arise from adenomatous polyps in the colon. These mushroom-shaped growths are usually benign, but some develop into cancer over time. Localized colon cancer is usually diagnosed through colonoscopy.

Tumors of the colon and rectum are growths arising from the inner wall of the large intestine. Benign tumors of the large intestine are called polyps. Malignant tumors of the large intestine are called cancers. Benign polyps can be easily removed during colonoscopy and are not life-threatening. If benign polyps are not removed from the large intestine, they can become malignant (cancerous) over time. Most of the cancers of the large intestine are believed to have developed as polyps. Colorectal cancer can invade and damage adjacent tissues and organs. Cancer cells can also break away and spread to other parts of the body (such as liver and lung) where new tumors form. The spread of colon cancer to distant organs is called metastasis of the colon cancer. Once metastasis has occurred in colorectal cancer, a complete cure of the cancer is unlikely.

Globally, colorectal cancer is the third leading cause of cancer in males and the fourth leading cause of cancer in females. The frequency of colorectal cancer varies around the world. It is common in the Western world and is rare in Asia and in Africa. In countries where the people have adopted western diets, the incidence of colorectal cancer is increasing.

Factors that increase a person's risk of colorectal cancer include high fat intake, a family history of colorectal cancer and polyps, the presence of polyps in the large intestine, and chronic ulcerative colitis.

Diets high in fat are believed to predispose humans to colorectal cancer. In countries with high colorectal cancer rates, the fat intake by the population is much higher than in countries with low cancer rates. It is believed that the breakdown products of fat metabolism lead to the formation of cancer-causing chemicals (carcinogens). Diets high in vegetables and high-fiber foods may rid the bowel of these carcinogens and help reduce the risk of cancer.

A person's genetic background is an important factor in colon cancer risk. Among first-degree relatives of colon-cancer patients, the lifetime risk of developing colon cancer is 18%. Even though family history of colon cancer is an important risk factor, majority (80%) of colon cancers occur sporadically in patients with no family history of it. Approximately 20% of cancers are associated with a family history of colon cancer. And 5% of colon cancers are due to hereditary colon cancer syndromes. Hereditary colon cancer syndromes are disorders where affected family members have inherited cancer-causing genetic defects from one or both of the parents.

In the case of Villamater, it is manifest that the interplay of age, hereditary, and dietary factors contributed to the development of colon cancer. By the time he signed his employment contract on June 4, 2002, he was already 58 years old, having been born on October 5, 1943, an age at which the incidence of colon cancer is more likely. He had a familial history of colon cancer, with a brother who succumbed to death and an uncle who underwent surgery for the same illness. Both the Labor Arbiter and the [National Labor Relations Commission] found his illness to be compensable for permanent and total disability, because they found that his dietary provisions while at sea increased his risk of contracting colon cancer because he had no choice of what to eat on board except those provided on the vessels and these consisted mainly of high-fat, high-cholesterol, and low-fiber foods.[99] (Emphasis supplied)

In the more recent cases, this Court has repeatedly emphasized that the working conditions and dietary provisions aggravate and increase a seafarer's risk of colon cancer.[100] While there are other causes that may have contributed to the illness, such as genetics and the overall health of the seafarer, this Court recognized that the poor working conditions while on board aggravated, at the very least, the risk of contracting the illness.

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[99] *Id.* at 96-99.

[100] See *Jebsens Maritime, Inc. v. Alcibar*, G.R. No. 221117, February 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64999> [Per *J.* Carpio, Second Division]; *Skippers United Pacific, Inc. v. Lagne*, G.R. No. 217036, August 20, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64498> [Per *J.* Peralta, First Division].

In this case, Castillon himself pointed out that he was given poor dietary provisions such as canned goods, which are high in fat and cholesterol while he was on board respondents' vessel.[101] This allegation was never disputed by respondents. While respondents made a general claim that there is a prevailing dietary standard for seafarers, they failed to prove their compliance to this standard. Further, they never specifically denied that Castillon was only provided canned and fatty foods, that he worked for more than eight (8) hours a day, and that he was exposed to oil and fumes.

In his Dissenting Opinion, Justice Alexander Gesmundo points out that there is no substantial evidence to prove that Castillon's illness was work-related, considering that: (1) his cancer was already critical at the time he was employed, and thus, it could not be ruled that his condition "developed or progressed" while he was on board the vessel;[102] (2) his claim that his cancer was aggravated by his diet and living conditions is merely speculative;[103] and (3) the pre-employment medical examination could not have detected an asymptomatic illness, because the medical examination is only routinary.[104]

We disagree. First, work-relatedness only demands a reasonable link between the illness and the seafarer's work. It does not require that the seafarer's work should be the main cause of the illness' progression.

Justice Gesmundo posits that since Castillon's colon cancer could not have developed from Stage 1 to Stage 3 in a span of four (4) to six (6) months during which he was on board, his illness could not have developed due to his work.[105]

However, work-relatedness does not mean that the illness drastically progressed due to the seafarer's work. There may

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[101] *Rollo*, p. 43.

[102] Dissenting Opinion of *J.* Gesmundo, pp. 3-4.

[103] *Id.* at 4.

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

[105] *Id.* at 3.

be work-relatedness in cases where a seafarer's colon cancer developed from Stage 1 to Stage 3 during his employment and where a seafarer's cancer was in a more advanced stage at the time he or she was employed. The severity and progression of the illness is not the test of work-relation. As long as the work has "contributed to the establishment or, at the very least, aggravation of any pre-existing condition,"[106] work-relatedness is proven.

Second, there is substantial evidence that Castillon's working condition contributed to or at least aggravated his illness. Castillon pointed out that the poor dietary provision as well as his continuous exposure to oils and fumes worsened his condition. This is consistent with jurisprudence where this Court has repeatedly recognized that high fat intake paired with an obnoxious working environment increases the risk of developing colon cancer. On the other hand, respondents never denied that this is the working condition of Castillon; they merely relied on the findings of the company-designated physician, which turned out to be incomplete and doubtful.

Further, while Justice Gesmundo is correct in saying that there are various factors that lead to the development of the illness, all factors do not need to be entirely work-related. As discussed in *Leonis Navigation Co., Inc.*,[107] family history, genetic predisposition, and the physical condition of the seafarer may likewise increase the risk of developing colon cancer. However, the lack of work-relation with these factors will not preclude compensability, because it is not required that the seafarer's work should be the sole contributor or factor in the aggravation of the illness.[108] It is sufficient that the seafarer's

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[106] *Magsaysay Maritime Services v. Laurel*, 707 Phil. 210, 225 (2013) [Per *J.* Mendoza, Third Division].

[107] 628 Phil. 81 (2010) [Per *J.* Nachura, Third Division].

[108] *Skippers United Pacific, Inc. v. Lagne*, G.R. No. 217036, August 20, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64498> [Per *J.* Peralta, First Division].

"employment contributed, even if only in a small degree, to the development of the disease."[109]

To reiterate, only reasonable proof of work-connection is required, and not direct causation. In resolving compensability, this Court only looks for "[p]robability, not the ultimate degree of certainty."[110]

Moreover, as pointed out, there is a disputable presumption of work-relatedness in cases of colon cancer; thus, the burden of proving otherwise is shouldered by respondents — a burden which they failed to discharge.

Third, there is no contention as to the validity of the pre-employment medical examination. This type of initial examination is merely routinary and as such, the pre-employment medical examination on Castillon is not one of the bases of this Court on the finding of work-relatedness. However, in this case, it is only suggestive that his colon cancer was not yet symptomatic, not having been detected at the time he was examined.

Thus, Castillon's illness is work-related and compensable. Under Section 20 (B) (1), respondents must pay petitioners US$50,000.00 and an additional amount of US$7,000.00 to each child under 21 years, but not exceeding four (4) children.[111] Respondents must also pay petitioners an amount of US$1,000.00 for the burial expenses.[112]

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[109] *Id.*

[110] *Leonis Navigation Co., Inc. v. Obrero*, 794 Phil. 481, 488 (2016) [Per *J.* Jardeleza, Third Division].

[111] POEA Memorandum Circular No. 10 (2010), Sec. 20 (B) (1) provides:

B. COMPENSATION AND BENEFITS FOR DEATH

1. In case of work-related death of the seafarer, during the term of his contract, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US Dollars (US$50,000) and an additional amount of Seven Thousand US Dollars (USS7,000) to each child under the age twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

[112] POEA Memorandum Circular No. 10 (2010), Sec. 20 (B) (4) (c) provides:

III

Generally, the law frowns upon quitclaims executed by employees for being contrary to public policy. However, when it is executed voluntarily, fully understanding its terms and with a corresponding reasonable consideration, the quitclaim is valid and binding.[113]

Legitimate waivers or quitclaims are regarded as the law between the employers and employees. In *Radio Mindanao Network, Inc. v. Amurao III*,[114]

> Indeed, there are legitimate waivers that represent the voluntary and reasonable settlements of laborers' claims that should be respected by the Court as the law between the parties. Where the party has voluntarily made the waiver, with a full understanding of its terms as well as its consequences, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking, and may not later be disowned simply because of a change of mind. A waiver is essentially contractual.[115]

When the waiver or quitclaim is freely and voluntarily executed, it discharges the employer from liability to the employee.[116] If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned on a whim.[117]

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4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:

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c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

[113] *Poseidon International Maritime Services, Inc. v. Tamala*, 712 Phil. 459, 476 (2013) [Per *J.* Brion, Second Division].

[114] 746 Phil. 60 (2014) [Per *J.* Bersamin, First Division].

[115] *Id.* at 68.

[116] *Remoticado v. Typical Construction Trading Corp.*, G.R. No. 206529, April 23, 2018, 862 SCRA 245, 253-254 [Per *J.* Leonen, Third Division].

[117] *Periquet v. National Labor Relations Commission*, 264 Phil. 1115, 1122 (1990) [Per *J.* Cruz, First Division].

In *Goodrich Manufacturing Corporation v. Ativo*:[118]

> It is true that the law looks with disfavor on quitclaims and releases by employees who have been inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities and frustrate just claims of employees. In certain cases, however, the Court has given effect to quitclaims executed by employees if the employer is able to prove the following requisites, to wit: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.[119]

The employer bears the burden to prove that the quitclaim is a reasonable settlement of the employee's benefits, and that it was executed voluntarily, fully understanding its import.[120]

When the waiver was executed by an unsuspecting or gullible person, or when the terms of settlement was unconscionable, courts strike down the waiver for being invalid. Thus, when the consideration for the settlement was low and inequitable, a quitclaim will not bar recovery of the full measure of the worker's benefits and rights, and the acceptance of benefits will not amount to estoppel.[121]

In *Principe v. Philippine-Singapore Transport Services, Inc.*:[122]

> Even assuming for the sake of argument that the quitclaim had foreclosed petitioner's right over the death benefits of her husband, the fact that the consideration given in exchange thereof was very

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[118] 625 Phil. 102 (2010) [Per *J.* Villarama, First Division].

[119] *Id.* at 107.

[120] *F.F. Cruz & Co., Inc. v. Galandez*, G.R. No. 236496, July 8, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65467> [Per *J.* Perlas-Bernabe, Second Division].

[121] *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*, 813 Phil. 746, 766-767 (2017) [Per *J.* Mendoza, Second Division].

[122] 257 Phil. 522 (1989) [Per *J.* Gancayco, First Division].

much less than the amount petitioner is claiming renders the quitclaim null and void for being contrary to public policy. The State must be firm in affording protection to labor. The quitclaim wherein the consideration is scandalously low and inequitable cannot be an obstacle to petitioner's pursuing her legitimate claim. Equity dictates that the compromise agreement should be voided in this instance.[123]

Here, the quitclaim signed by Castillon cannot be regarded as valid and binding. First and foremost, the consideration for the settlement of Castillon's claim is less than what he is legally entitled to. The amount of US$20,000.00 given by the respondents is hardly sufficient considering that the petitioners are legally entitled to a total amount of US$65,000.00.

Moreover, based on the circumstances of this case, it cannot be said that Castillon signed the quitclaim voluntarily. At the time he was asked to execute the document, Castillon had already progressed to stage 4 colon cancer, and was desperate to obtain financial assistance for his chemotherapy. For Castillon, time was already running out and the amount of US$20,000.00 gave him hope. He was not in a position to bargain with respondents.

While a quitclaim has the effect and authority of *res judicata* upon the parties,[124] a quitclaim may be rendered null and void when found contrary to public policy.[125] Thus, respondents cannot cite *res judicata* to bar petitioners from claiming the full value of the benefits.

Being an action for employer's liability, attorney's fees must likewise be awarded to petitioners.[126]

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[123] *Id.* at 530-531.

[124] *Olaybar v. National Labor Relations Commission*, 307 Phil. 847, 852 (1994) [Per *J.* Bellosillo, First Division].

[125] *Principe v. Philippine-Singapore Transport Services, Inc.*, 257 Phil. 522, 530 (1989) [Per *J.* Gancayco, First Division].

[126] CIVIL CODE, Art. 2208 (8) provides:

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;

Finally, social justice is very much a part of our every decision in labor cases. Our seafarers gamble their lives to work for a shipping company that will direct their ships to where they can efficiently gain profits for their owners and shareholders. They are aware that on board are human souls within human bodies who have to live for weeks or months under the conditions they provide. While at sea, the seafarers do not have any option except to live in their quarters, eat the diet provided to them, and exist within the hours that are fully controlled by the officers of the vessel under the command of the owners.

That the Philippine Overseas Employment Administration already puts a cap on the amount that can be recovered by a seafarer for a work-related illness caused or aggravated by the working conditions of the employers is already a major and gargantuan compromise. The true cost of hiring a human being therefore will not be internalized. On many occasions, this Court stood as a mute witness to the paltry amounts received — even for permanent and total disabilities — compared with the illness Filipino seafarers have to suffer or the deaths that their families have to endure. Fairness and social justice demand that we give the petitioner's families all that they are due — as a Filipino seafarer who sacrificed and as a human being.

WHEREFORE, the Petition for Review is **GRANTED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 06715 dated September 30, 2015 and April 7, 2017 are **SET ASIDE**. Respondents Magsaysay Mitsui Osk Marine, Inc., Francisco D. Menor, and Mol Ship Management Co. Ltd. are solidarily liable to pay petitioners Daisy Ree Castillon, Jureeze Phoebe Castillon, and Drew Wyatt Castillon the following:

1) Death benefit of US$50,000.00;
2) Additional death benefit of US$7,000.00 for each of Junlou Castillon's two (2) children;
3) Burial expenses of US$1,000.00;
4) Attorney's fees equivalent to 10% of the total monetary award; and

5) Legal interest of six percent (6%) per annum of total monetary award, computed from the date of finality of judgment until full satisfaction.

SO ORDERED.

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

Gesmundo, J., see dissenting opinion.

DISSENTING OPINION

GESMUNDO, *J.*:

The undersigned most respectfully registers his dissent to the majority and the *ponencia*'s collective opinion as regards the award of full death benefits in favor of seafarer Junlou H. Castillon's *(Castillon)* heirs.

The striking facts which call for a re-assessment of the majority's position are enumerated as follows:

1) Castillon was [onboard] M/V Amethyst Ace from February 23, 2009 to September 3, 2009 which translates to one hundred and ninety-two (192) days or roughly six (6) months and eleven (11) days.[1]

2) In June 2009, roughly four (4) months aboard the vessel, Castillon complained of intermittent mild stomach pains but he dismissed the same as an ordinary discomfort.[2]

3) After being repatriated, Castillon was diagnosed with "Sigmoid Colon Carcinoma Stage III.B" (colon cancer).[3]

4) Castillon signed a quitclaim and received a check for ₱888,340.00 or roughly US$20,000.00.[4]

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[1] *Ponencia,* p. 2.

[2] *Id.*

[3] *Id.*

[4] *Id.* at 2-4 and 18.

Notwithstanding the aforementioned facts, the *ponencia* sided in favor of Castillon with the following findings and reasons:

1) Castillon's death during the pendency of his claim for compensation is compensable because it was work-related.[5]

2) Castillon's illness can be traced from his family history of malignancy as well as his working and living conditions while on board which contributed to his illness.[6]

3) Castillon's allegations — that he was given poor dietary provisions such as canned goods which are high in fat and cholesterol, that he worked for more than eight (8) hours a day, and that he was exposed to oil and fumes — were never disputed by the respondents.[7]

4) Castillon cannot be considered to have signed the quitclaim voluntarily as he was in desperate need of financial assistance for his chemotherapy and the amount given by respondent Magsaysay Mitsui OSK Marine, Inc. (Magsaysay) is hardly sufficient as he was legally entitled to US$65,000.00 instead of the US$20,000.00 that was given.[8]

The aforementioned reasons, with all due respect to the majority's position, appear to be inconsistent with some basic legal precepts and tend to present long-term problems for those who are contemplating of seeking employment in the maritime industry.

I. Evidence is not substantial enough to establish the fact that Castillon's colon cancer was work-related.

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[5] *Id.* at 10 and 13-14.

[6] *Id.* at 14.

[7] *Id.* at 16.

[8] *Id.* at 18.

It is an oft-repeated rule that the quantum of proof necessary in labor cases (as in other administrative and quasi-judicial proceedings) is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[9] And in a situation where the word of another party is taken against the other, as in this case, the Court must rely on substantial evidence because a party alleging a critical fact must duly substantiate and support such allegation.[10]

Concomitantly, a ***reasonable*** **proof** of work-connection is sufficient to establish compensability of a non-occupational disease — a direct causal relation is not required.[11] And while the degree of determining whether the illness is work-related requires only probability, the conclusions of the courts must still be based on real, and not just apparent, evidence.[12]

In the case at hand, the records barely show that Castillon's colon cancer was caused or aggravated by his work and stay in the confines of M/V Amethyst Ace for the following reasons:

FIRST, the probability of developing colorectal cancer and having the same progress from Stage 1 to Stage 3 in just 4-6 months is miniscule. Overall, only 5% of adenomas (precancerous colon polyps) progress to cancer and it can take seven (7) to ten (10) or more years for an adenoma to evolve into cancer — if it ever does.[13] Additionally, medical bulletins show that colorectal cancer is often found after symptoms appear as most people with early colon or rectal cancer have no symptoms of the disease; accordingly, symptoms usually appear

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[9] *Tenazas, et al. v. R. Villegas Taxi Transport, et al.*, 731 Phil. 217, 229 (2014); citation omitted.

[10] *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771 Phil. 391, 404 (2015); citation omitted.

[11] *De Leon v. Maunlad Trans., Inc., et al.*, 805 Phil. 531, 540 (2017), citation omitted.

[12] *Scanmar Maritime Services, Inc., et al. v. De Leon*, 804 Phil. 279, 291-292 (2017); citation omitted.

[13] https://www.health.harvard.edu/diseases-and-conditions/they-found-colon-polyps-now-what (last visited: January 20, 2020).

only at a more advanced stage of the disease.[14] In other words, colorectal cancers are usually asymptomatic and can take years to manifest. Moreover, such medical consensus suggest that cancer progresses in different stages and does not occur or develop in a rapid manner. And as to how fast cancer develops, the current state of medical science has yet to give humanity specific answers or reasonable estimates to enable physicians to pinpoint, with reasonable certainty, the period of such illness' development or progression.

Even if it is to be assumed that the rate of development of Castillon's colon cancer was unusually rapid as a result of some unusual mutation, such possibility remains to be within the realm of conjecture or supposition. As such, the Court can neither reasonably rule that Castillon's cancer may have developed or progressed during such a short span of time. While it is enough that his employment as a seafarer contributed — even if only in a small degree — to the development of the disease,[15] the existence of otherwise non-existent proof cannot be presumed.[16] Evidence which would establish a reasonable connection between the nature or conditions of work and the illness suffered by a seafarer during employment should still be presented and should still satisfy the needed quantum of proof — such requirement cannot be dispensed or ignored completely.

SECOND, the probability that Castillon's colon cancer was aggravated by his diet while onboard the vessel is speculative at best. It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[17] While

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[14] *Talosig v. United Philippine Lines, Inc., et al.*, 739 Phil. 774, 785 (2014); citation omitted.

[15] *Skippers United Pacific, Inc., et al. v. Lagne*, G.R. No. 217036, August 20, 2018; citation omitted.

[16] *Raro v. Employees' Compensation Commission, et al.*, 254 Phil. 846, 852 (1989).

[17] *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc.*, 805 Phil. 244, 260 (2017); citation omitted.

the facts show that the respondents failed to rebut the allegation that Castillon was given poor dietary provisions such as canned goods which are high in fat and cholesterol, such silence does not amount to substantial evidence. Self-serving allegations should still be substantiated by evidence if they are to be regarded as useful to establish a fact or inference.[18]

Moreover, one's predisposition to develop cancer is affected not only by one's work, but also by many factors **outside** of one's **working environment**.[19] The factors leading to Castillon's colon cancer are so varied that substantial evidence is needed to prove that the same illness is work-related. Factors that increase a person's risk of colorectal cancer include high fat intake, a family history of colorectal cancer and polyps, the presence of polyps in the large intestine, and chronic ulcerative colitis.[20] Accordingly, even if respondents' silence regarding M/V Amethyst Ace's poor dietary provisions are to be taken as an admission, the same falls short of the required quantum of proof required to establish work-relatedness because it is merely speculative as a probable factor of Castillon's colon cancer. Thus, the evidence is not substantial enough to prove that Castillon's diet onboard the vessel caused or contributed to the development of his colon cancer.

LAST, a pre-employment medical examination *(PEME)* is not exploratory and may not be relied upon to produce information regarding a seafarer's true state of health.[21] It is not intended to be a totally in-depth and thorough examination of an applicant's medical condition.[22] This jurisprudential

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[18] See *Seacrest Maritime Management, Inc., et al. v. Roderos*, 830 Phil. 750, 767 (2018).

[19] *Klaveness Maritime Agency, Inc., et al. v. Beneficiaries of the Late Second Officer Anthony S. Allas*, 566 Phil. 579, 589 (2008).

[20] *Leonis Navigation Co., Inc., et al. v. Villamater, et al.*, 628 Phil. 81, 97 (2018); citation omitted.

[21] *Dayo v. Status Maritime Corporation, et al.*, 751 Phil. 778, 792 (2015).

[22] *Doroteo v. Philimare, Incorporated, et al.*, 807 Phil. 164, 175 (2017); citation omitted.

observation applies to asymptomatic illnesses such as colon cancer which, as discussed earlier, usually appear only at a more advanced stage of the disease. An asymptomatic illness cannot reasonably be detected during a PEME as the same procedure is routinary. It is only when patients complain of discomfort or pain that routinary procedures, such as the PEME, can be extended by the examining physician through additional medical tests which may lead to the eventual diagnosis of an underlying illness.

However, the presumption of work-relatedness cannot be reasonably relied upon to support a claim of compensation just because the PEME is non-exploratory. At best, the inadequacy of the PEME in diagnosing or detecting a disease can only overcome an employer's defense that the illness suffered by a seafarer should not be considered as work-related as it was not found to be existing at the time of employment. Such presumption, even if sometimes supported by probability, cannot **by itself** be reasonably interpreted to automatically mean, establish or substantiate a claim of a seafarer's illness being work-related. At the very least, circumstantial evidence has to be offered to prove the "reasonable link" between the nature or conditions of work and the seafarer's purported resultant illness.

II. General principles such as social justice cannot supplant the requirement of establishing facts or inferences by evidence.

Time and again, the Court has ruled that the social justice provisions of the Constitution are not self-executing principles ready for enforcement through the courts — they are merely statements of principles and policies.[23] In other words, they are merely guidelines for legislation.[24] As such, social justice

[23] *Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit*, 584 Phil. 132, 137 (2008).

[24] See *Manila Prince Hotel v. Government Service Insurance System, et al.*, 335 Phil. 82, 106 (1997).

principles need legislative enactments before they can be implemented.[25]

Conversely, the protective mantle of social justice cannot be utilized as an instrument to hoodwink courts of justice.[26] In relation to the administration of justice, 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.[27] Especially in the aspect of establishing facts, **due process considerations** require that judgments must conform to and be **supported** by the pleadings and **evidence** presented in court.[28] Deciding based on evidence is an essential attribute of due process which properly informs (especially those who will be deprived of life, liberty or property) the reasons for the verdict which pronounced the rights and obligations of contending parties in litigation.

In this case, it has already been shown that the records lack substantial evidence to show that Castillon's colon cancer was work-related. To force the application of social justice principles by discarding evidentiary requirements just so an underprivileged party may benefit at the expense of the other is to betray the same principles. The constitutional commitment to the policy of social justice cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor.[29] Such constitutional and legal protection equally recognizes the employer's right and prerogative to manage its operation according to reasonable standards and norms of fair play.[30] Accordingly, **broad and generic principles** — such as

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[25] See *Tondo Medical Center Employees Association, et al. v. Court of Appeals, et al.*, 554 Phil. 609, 625 (2007); citation omitted.

[26] *Nilo v. Court of Appeals, et al.*, 213 Phil. 460, 475 (1984).

[27] *Spouses Bergonia v. Court of Appeals, et al.*, 680 Phil. 334, 344 (2012).

[28] See *Diona v. Balangue, et al.*, 701 Phil. 19, 31 (2013); emphases supplied.

[29] *Imasen Philippine Manufacturing Corporation v. Alcon, et al.*, 746 Phil. 172, 179 (2014); citation omitted.

[30] *PJ Lhuillier, Inc. v. Camacho*, 806 Phil. 413, 424 (2017).

social justice — **cannot be used as substitutes** in place of the quantum **of evidence** required to establish a fact or inference. Doing so would violate the basic tenets of due process and would amount to the desecration of the principle of social justice itself.

III. Drawing the line between applying social justice principles and sufficiency of evidence requires the Court to weigh the long-term effects of its decisions.

It was first declared by this Court in ***More Maritime Agencies, Inc., et al. v. National Labor Relations Commission, et al.***,[31] that: "[e]very workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person."[32] Such ruling is consistent with the disposition in the instant case in favor of Castillon.

Here, the *ponencia* cited the case of ***Leonis Navigation Co., Inc., et al. v. Villamater, et al.***,[33] which considered colon cancer as a compensable disease by reason of being work-related because, even if the NLRC and the Labor Arbiter found that seafarer Villamater's "dietary provisions while at sea increased his risk of contracting colon cancer because he had no choice of what to eat on board except those provided on the vessels and these consisted mainly of high-fat, high-cholesterol, and low-fiber foods," the employers "**were silent** when they argued that his affliction was brought about by diet and genetics." At this point, it is reasonable to conclude that the Court in ***Leonis*** did not give a clear explanation (aside from the fact that such illness is an interplay of age, hereditary, and dietary factors) why colon

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[31] 366 Phil. 646 (1999).

[32] *Id.* at 654-655.

[33] *Supra* note 20, at 98-99.

cancer is work-related considering that the "adenomatous polyps in the colon. . . are usually benign, but some develop into cancer over time." In other words, this Court's ruling that Villamater's colon cancer was probably work-related was **due to the result of failing to raise an argument in a timely manner — not due to sufficiency of evidence**. As earlier pointed out, the respondents' silence cannot be used in place of substantial evidence as it betrays the basic tenets of due process.

The *ponencia*'s resolve to uphold and apply social justice principles in the case at hand is commendable. However, the undersigned merely wishes to voice out his concern in according benefits to a single seafarer in view of social justice at the expense of all other seafarers who are still applying for employment as well as others who still wish for overseas deployment. If the Court decides to indiscriminately apply social justice principles and to follow the jurisprudential path of compensating ailments or deaths with the slightest perceived connection to work despite insufficiency of evidence of a reasonable causal connection, the barriers to entry of employment for Filipino seafarers as well as potential seafarers will eventually become insurmountable. Pre-employment medical examination costs will skyrocket as a result of an exhaustive requirement from employers in order to mitigate their monetary liability of compensating illnesses existing at the time of the execution of employment contracts.

More importantly, the Court would be establishing a dangerous precedent if an evidentiary presumption of work-relatedness is considered to be an implication of the general principle of social justice. It would have the effect of dispensing the requirement of satisfying the required quantum of evidence in favor of upholding an interpretative rule used to settle doubts.

Finally, no explanation or concrete jurisprudential solution was offered or, at least, discussed by the majority to address the foregoing concern relative to the long-term effect of indiscriminately applying social justice principles despite the fact that current medical science has yet to conclusively show, with reasonable probability, that colon cancer may form, develop

and worsen in such a short period of time as 3 to 4 months. As to the finding that Castillon's colon cancer was aggravated by his diet allegedly consisting of fatty foods, the same was only presumed without presentation of any scientific or medical evidence. Thus, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on conjectures and probabilities.[34]

IV. An improperly obtained quitclaim will not result in the seafarer's entitlement to full benefits when the death or illness is not work-related.

Not all quitclaims are *per se* invalid or against public policy, except: (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their faces; in these cases, the law will step in to annul the questionable transactions.[35] However, to allow the recovery of full disability or death benefits by virtue of an invalid quitclaim presupposes that there is a legal entitlement to such benefits in full.

Concomitantly, it is settled that no person should unjustly enrich himself or herself at the expense of another.[36] Unjust enrichment exists "when a person unjustly retains a benefit from the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience."[37] As such, it must be shown that

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[34] *Crew and Ship Management International, Inc., et al. v. Soria*, 700 Phil. 598, 613 (2012); *cf. Roy III v. Herbosa, et al.*, 800 Phil. 459, 493 (2016).

[35] *Mindoro Lumber and Hardware v. Bacay, et al.*, 498 Phil. 752, 760 (2005); citation omitted.

[36] *Loria v. Muñoz, Jr.*, 745 Phil. 506, 508 (2014).

[37] *Filinvest Land, Inc., et al. v. Backy, et al.*, 697 Phil. 403, 412 (2012); citation omitted.

a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.[38]

In this case, the respondents (especially Magsaysay) cannot be considered to have taken advantage of Castillon in the signing of the quitclaim as there was no clear proof that the latter was gullible or was defrauded. Moreover, the terms of the settlement, especially as to the amount of compensation cannot be considered as unconscionable. This is because Castillon cannot be considered as being entitled to death benefits in the first place for failure of his heirs to substantiate the existence of work-relatedness, a requirement for compensability.

Courts, as well as magistrates presiding over them, are not omniscient; they can only act on the facts and issues presented before them in appropriate pleadings.[39] As such, evidence is needed to establish an approximate amount of monetary claim in the first place before one can conclude that the amount being offered by the employer in a given quitclaim is conscionable or unconscionable. Since no such monetary claim was established/proven with substantial evidence of work-relatedness, it reasonably follows that any sum provided in the succeeding quitclaim can never amount to anything unconscionable.

Relatedly, since the evidence on record hardly establishes any relationship between Castillon's colon cancer and his stay onboard M/V Amethyst Ace, it would be manifestly unjust to require Magsaysay to part with its funds in order to pay off an obligation which it never had. While the undersigned greatly sympathizes with the plight of Castillon's heirs, he cannot in good conscience concede to the fact that one party will be unduly benefited at the expense of another.

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[38] *Mitsubishi Motors Philippines Salaried Employees Union (MMPSEU) v. Mitsubishi Motors Philippines Corporation*, 711 Phil. 286, 303 (2013); citation omitted.

[39] *De Castro v. Liberty Broadcasting Network, Inc., et al.*, 643 Phil. 304, 313 (2010).

Conclusion

All told, the available records do not establish through substantial evidence that Castillon's colon cancer developed due to or was caused by his work as a seafarer onboard M/V Amethyst Ace. Castillon's short stint of six (6) months as a seafarer onboard the subject vessel, coupled with an unsubstantiated allegation of poor dietary provisions, are not enough to lead the mind of a reasonable person to accept that such facts are adequate to justify the conclusion that such colon cancer was work-related. Moreover, **an interpretative rule in settling doubts such as social justice cannot be used in place of evidence**. To do so would be to **violate the basic constitutional principle of due process**. Finally, an invalid quitclaim does not automatically mean that a claimant is entitled to recovery of full compensatory benefits under the law or contract. A claimant first has to establish that he or she is legally entitled to such benefits to begin with.

At this point, the undersigned takes this opportune time to reiterate his view that social justice principles involve a delicate balance between the interests of both capital and labor. Principles which will eventually lead to long-term benefits for both sides should be pursued. Since this Court's decisions (and signed extended resolutions) not only settle past controversies but also set precedents for factually similar cases which may arise in the future, great care has to be taken in order to ensure that legal principles are balanced and will work for the benefit of all.

In the case of the maritime industry, it would be unreasonable to require employers to gather large amounts of data regarding the hereditary history of *all* its applicants. Moreover, automatically awarding compensatory benefits to seafarers even if the same are not established by substantial evidence would set a dangerous precedent which is repugnant to the ideals of due process. Not only would these measures be time-consuming and costly, they would also discourage foreign employers from hiring Filipino seafarers. State policies should also be balanced so as not to prejudice the very persons that the Constitution and the law seek to protect.

IN VIEW OF THE FOREGOING, the undersigned votes to **DENY** the Petition for Review on *Certiorari* and **AFFIRM** the September 30, 2015 Decision of the Court of Appeals in CA-G.R. SP No. 06715 with no costs to the petitioners.

SECOND DIVISION

[G.R. No. 235279. March 2, 2020]

SUNFIRE TRADING, INC., *petitioner, vs.* **GERALDINE GUY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; TRANSFER OF INTEREST; THE TRIAL COURT HAS DISCRETION TO ALLOW OR DISALLOW THE SUBSTITUTION OR JOINDER BY THE TRANSFEREE; A TRANSFEREE STANDS EXACTLY IN THE SHOES OF HIS PREDECESSOR-IN-INTEREST, BOUND BY THE PROCEEDINGS AND JUDGMENT IN THE CASE.— [Rule 3, Section 19 of the 1997 Rules of Procedure] gives the trial court discretion to allow or disallow the substitution or joinder by the transferee. Discretion is permitted because, in general, the transferee's interest is deemed by law as adequately represented and protected by the participation of his transferors in the case. There may be no need for the transferee *pendente lite* to be substituted or joined in the case because, in legal contemplation, he is not really denied protection as his interest is one and the same as his transferors, who are already parties to the case. We held that a transferee stands exactly in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him. It is not legally tenable for a transferee *pendente lite* to still intervene. Essentially, the law already considers the transferee

joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor and the transferee *pendente lite.*

2. **CIVIL LAW; SALES; PURCHASER IN GOOD FAITH AND FOR VALUE, NOT A CASE OF; CONSIDERING THAT PETITIONER HAD SUFFICIENT NOTICE OF ALL THE PROCEEDINGS IN CIVIL CASE NO. 70359 INCLUDING THE EXECUTION OF THE JUDGMENT, IT CANNOT CLAIM THAT IT WAS A PURCHASER IN GOOD FAITH AND FOR VALUE AND THAT IT WAS DENIED DUE PROCESS.—** [T]his court cannot accept petitioner's supposition that since it was not a party litigant, it cannot be the subject of the execution proceedings against 3D. To begin with, petitioner cannot be considered as a purchaser for value and in good faith. A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. In this case, it cannot be denied that petitioner, who is represented by the same person who represents 3D, had sufficient notice of all the proceedings that transpired in Civil Case No. 70359, including the execution of the judgment. The CA was in the right position to take notice that 3D was mum all throughout the execution stage that it had already assigned the trademark to the petitioner; and petitioner likewise did not assert its right over the trademark during the public auction and simply allowed the public auction to push through. In this regard, this Court cannot also give consideration to petitioner's claim of denial of right to due process. It was clear that petitioner was never deprived of its right to file an appeal or any other remedies it deemed proper from the time the main case was being litigated up to the time the execution of the judgment was to happen.

3. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; JURISDICTION OF THE COURT TO EXECUTE ITS JUDGMENT CONTINUES EVEN AFTER SAID JUDGMENT HAS BECOME FINAL FOR THE PURPOSE OF ENFORCING THE SAME.—** In support to its claim that the doctrine of immutability of judgment was violated in this case, petitioner claimed that once a decision or order becomes final and executory, the court is removed from the power or

jurisdiction of the court to further alter or amend it. We do not agree. The jurisdiction of the court to execute its judgment continues even after the judgment has become final for the purpose of enforcement of judgment. It is axiomatic that after a judgment has been *fully satisfied*, the case is deemed terminated once and for all. It is when the judgment has been *satisfied* that the same passes beyond review, for *satisfaction thereof is the last act and end* of the proceedings. In *Vda. de Paman v. Judge Señeris*, the Court held that a case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution. Lastly, the Court views with disfavor the unjustified delay in the enforcement of the final orders and decision in this case. Once a judgment, becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.

APPEARANCES OF COUNSEL

Sagayo Evangelista & Rebuelta Law Offices for petitioner.
Andres Padernal & Paras Law Offices for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

A Petition for Review under Rule 45 of the Rules of Court seeking to nullify, vacate, reverse and set aside the Decision [1] of the Court of Appeals in CA-G.R. SP No. 135146 promulgated on March 20, 2017 and its Resolution[2] dated

[1] *Rollo*, pp. 8-18, penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez (now a member of this Court), concurring.

[2] *Id.* at 19-20, penned by Associate Justice Eduardo B. Peralta, Jr., with

October 24, 2017, affirming the Order[3] of Regional Trial Court, Branch 159, Pasig City, rendered on November 18, 2013, which directed the Intellectual Property Office to cancel the assignment of trademark and the corresponding Certificate of Registration of the petitioner and to issue a new Certificate of Registration in favor of the respondent.

Facts and Antecedent Proceedings

As narrated by the Court of Appeals (CA) in its assailed Decision, the facts and the antecedent proceedings of the instant case are as follows:

> The controversy stemmed from Civil Case No. 70359 in the sala of public respondent, filed by Northern Islands Company, Inc. (NICI) against 3D Industries, Inc. (3D). Civil Case No. 70359 appeared to be one for breach of contract, trademark infringement, and unfair competition. Eventually, NICI prevailed in the civil case.
>
> It was established that on February 13, 2013, or after the judgment was rendered in Civil Case No. 70359, 3D assigned the trademark subject matter thereof to herein petitioner Sunfire Tradings[,] Inc.
>
> On May 7, 2013, execution proceedings ensued to satisfy the judgment award in favor of NICI. In the public auction of the trademark, private respondent Geraldine Guy emerged as the highest bidder and a Certificate of Sale was issued in her favor. The trademark was paid for in the amount of ₱500,000.00 and accordingly, the proceeds were released to NICI.
>
> Pursuant to the auction sale, the court *a quo* ordered the Intellectual Property Office ("IPO") to cause registration of the trademark in the name of private respondent. However, the IPO failed to comply because based on the IPO record, the trademark had already been transferred by 3D to petitioner.
>
> Private respondent claimed that petitioner should be treated as identical with 3D since it was owned and controlled by the same individual, and that the transfer was done to impede execution over the trademark.

Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez (now a member of this Court), concurring.

[3] *Id.* at 94-98, penned by Judge Rodolfo R. Bonifacio.

Upon investigation with the IPO, private respondent discovered that as early as April 4, 2009, a Deed of Assignment of the trademark was executed in petitioner's favor by 3D, as evidenced by a Deed of Assignment dated April 24, 2009. And, "*[F]or some unresolved conditions between 3D Industries and Sunfire however, the mark was temporarily returned to 3D on October 22, 2010, but was permanently assigned back to Sunfire Trading on February 12, 2013 x x x.*"

On account of ensuing events, private respondent filed an "Omnibus Motion (with Comment to *Ex Parte* Manifestation) dated September 12, 2013." She filed the pleading with public respondent in Civil Case No. 70359 to nullify/set aside the assignment of trademark made by 3D to petitioner, and to direct the IPO to issue a Certificate of Registration in her name.

Petitioner, which was not a party to Civil Case No. 70359, entered its special appearance to oppose the Motion, and filed its Comment and Opposition.

After an exchange of papers, the public respondent granted the Omnibus Motion of private respondent, through the assailed Order of November 18, 2013, during which occasion the IPO was directed to cancel the Certificate of Registration in favor of petitioner Sunfire, with a concomitant instruction to issue a new Certificate of Registration in favor of private respondent:

> **"WHEREFORE**, the Omnibus Motion dated September 12, 2013 is hereby **GRANTED**.
>
> The Intellectual Property Office is **DIRECTED** to **CANCEL** the assignment of trademark and the corresponding Certificate of Registration in favor of Sunfire Trading, Inc. and to **ISSUE** a new Certificate of Registration in the name of Geraldine G. Guy over MARK 3D AND DEVICE CONSISTING OF THE CHARACTERS '3' AND 'D' SUPERIMPOSED ON A RED QUADRILATERAL FIELD covered by Certificate of Registration No. 4-2002-000725, subject to compliance with the existing statutory and regulatory registration requirements. The same Office is further **ORDERED** to submit to this Court, within ten (10) days from receipt hereof, a report of its compliance with this Order.
>
> **SO ORDERED."**

Petitioner's Motion for Reconsideration of the preceding Order was likewise denied by public respondent on February 24, 2014.[4]

The Ruling of the CA

The CA dismissed the appeal of the petitioner for lack of merit. In agreeing with the trial court that the petitioner became transferee *pendente lite*, the CA found that the case was still in the execution stage and regarded as still pending when the assignment of trademark was made in favor of the petitioner. The CA also took note that 3D and petitioner are owned and controlled by Mr. Gilbert Guy, thus, it cannot be denied that Mr. Guy knew of the adverse judgment against 3D. The appellate court observed that 3D was mum all throughout the execution stage that it had already assigned the trademark to the petitioner; and in turn, petitioner likewise did not assert its right over the trademark during the public auction and simply allowed the same to push through.

According to the CA, the trial court did not alter nor modify the judgment because 3D remained liable to NICI, and petitioner was not substituted to assume the liability of 3D. Instead, the trial court ensured the compliance with its previous final and executory judgment. Thus, the Doctrine of Immutability of Judgment does not apply.

Lastly, the CA held that the Order of the trial court did not refer to piercing the veil of corporate fiction of 3D and the petitioner.

Hence, petitioner filed a Motion for Reconsideration,[5] but such was denied for lack of merit on October 24, 2017.

Issue

Whether or not the CA committed grave abuse of discretion when it upheld the cancellation of assignment of trademark and the corresponding Certificate of Registration of the petitioner.

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[4] *Id.* at 8-11.

[5] *Id.* at 74-78.

Prefatorily, petitioner averred that the ownership of the trademark was never in dispute in Civil Case No. 70359, thus, there was no doubt that 3D could sell the trademark to a third party without avoiding whatever judgment the trial court might render. According to the petitioner, it was erroneous for the CA to conclude that the Assignment of Trademark to petitioner was made during the execution stage or after an adverse judgment against 3D;[6] that the assignment was as early as April 24, 2009; and that it was a purchaser in good faith and for value and cannot be considered as a transferee *pendente lite*.[7] As regards the claim that the trial court has no jurisdiction over the petitioner and its properties, petitioner claimed that it was not a party litigant in Civil Case No. 70359 and its properties can never be the subject of execution proceedings to satisfy a judgment debt against 3D. Lastly, petitioner complained that the doctrine of immutability of judgment was violated.

For her part, respondent countered that the transfer of the mark in favor of the petitioner was done in contravention of the decision of the trial court rendered on November 26, 2012, which permanently enjoined 3D from using the mark and from enjoying all the rights appurtenant thereto. She claimed that it was a clear transfer *pendente lite* since the transfer was made on the date when a final judgment was already issued binding the trademark.

Our Ruling

After a careful review of the records of the instant case, this Court affirms the findings of the trial court and the CA that there was a transfer *pendente lite*. Thus, we deny the petition.

The legal interest of the petitioner over the trademark ***3D and Device*** springs from the sale of the subject trademark by 3D in favor of the petitioner during the pendency of the execution of the judgment in Civil Case No. 70359. To begin with, it is undisputed that the decision in Civil Case No. 70359 was

[6] *Id.* at 36-37.

[7] *Id.* at 35.

rendered by the trial court on November 26, 2012. It was established that one of the primary components of the dispositive portion in the decision was to permanently enjoin the defendant 3D from enjoying all the rights appurtenant to its ownership of the trademark.[8] An evaluation of the documents revealed that 3D actually executed an Assignment of Trademark in favor of the petitioner on February 13, 2013, which was clearly after the aforementioned decision in Civil Case No. 70359 has become final and executory and after 3D had received a copy of the Motion for Execution. In such case, the alleged "original" assignment of the trademark by 3D to the petitioner on April 24, 2009 becomes immaterial, which was also found to be unsupported by a credible evidence since the certification[9] dated June 17, 2014 issued by the Bureau of Trademarks pertaining to an assignment of trademark on April 24, 2009 showed an assignment to a certain Divine Token Limited and not to the petitioner.

As a transferee *pendente lite*, the Court agrees with the CA that petitioner need not be a party to the main case. Rule 3, Section 19 of the 1997 Rules of Procedure, provides:

> **SEC. 19.** *Transfer of interest*. — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

The above provision gives the trial court discretion to allow or disallow the substitution or joinder by the transferee. Discretion is permitted because, in general, the transferee's interest is deemed by law as adequately represented and protected by the participation of his transferors in the case. There may be no need for the transferee *pendente lite* to be substituted or joined in the case because, in legal contemplation, he is not really denied protection as his interest is one and the same as his transferors, who are already parties to the case.[10]

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[8] *Id.* at 12.

[9] *Id.* at 81.

[10] *Heirs of Medrano v. De Vera*, 641 Phil. 228, 242 (2010).

We held that a transferee stands exactly in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him. It is not legally tenable for a transferee *pendente lite* to still intervene. Essentially, the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor and the transferee *pendente lite*.[11]

Given the above principles, this court cannot accept petitioner's supposition that since it was not a party litigant, it cannot be the subject of the execution proceedings against 3D. To begin with, petitioner cannot be considered as a purchaser for value and in good faith. A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claims or interest of some other person in the property.[12] In this case, it cannot be denied that petitioner, who is represented by the same person who represents 3D, had sufficient notice of all the proceedings that transpired in Civil Case No. 70359, including the execution of the judgment. The CA was in the right position to take notice that 3D was mum all throughout the execution stage that it had already assigned the trademark to the petitioner; and petitioner likewise did not assert its right over the trademark during the public auction and simply allowed the public auction to push through. In this regard, this Court cannot also give consideration to petitioner's claim of denial of right to due process. It was clear that petitioner was never deprived of its right to file an appeal or any other remedies it deemed proper from the time the main case was being litigated up to the time the execution of the judgment was to happen.

In support to its claim that the doctrine of immutability of judgment was violated in this case, petitioner claimed that once a decision or order becomes final and executory, the court is

[11] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 28 (2002).

[12] *Seveses v. Court of Appeals*, 375 Phil. 64, 71 (1999).

removed from the power or jurisdiction of the court to further alter or amend it.[13] We do not agree. The jurisdiction of the court to execute its judgment continues even after the judgment has become final for the purpose of enforcement of judgment.[14]

It is axiomatic that after a judgment has been *fully satisfied*, the case is deemed terminated once and for all. It is when the judgment has been *satisfied* that the same passes beyond review, for *satisfaction thereof is the last act and end* of the proceedings. In *Vda. de Paman v. Judge Señeris*,[15] the Court held that a case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution.[16]

Lastly, the Court views with disfavor the unjustified delay in the enforcement of the final orders and decision in this case. Once a judgment, becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.[17]

WHEREFORE, premises considered, this Court resolves to **DENY** the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 135146 promulgated on March 20, 2017 and its Resolution dated October 24, 2017, are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Hernando, and *Inting, JJ.,* concur.

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[13] *Rollo,* p. 40.

[14] *Id.* at 33.

[15] G.R. No. L-31632, July 30, 1982.

[16] *Diamond Drilling Corp. of the Philippines v. Crescent Mining and Development Corp.*, G.R. Nos. 201785 & 207360, April 10, 2019.

[17] See *Mejia-Espinoza, et al. v. Cariño,* 804 Phil. 248, 259 (2017).

SECOND DIVISION

[G.R. No. 239273. March 2, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **JUAN FULE and DELIA O. FULE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF LAW; WHEN THE PETITIONER ASKS FOR A REVIEW OF THE DECISIONS MADE BY A LOWER COURT BASED ON THE EVIDENCE PRESENTED, WITHOUT DELVING INTO THEIR PROBATIVE VALUE BUT SIMPLY ON THEIR SUFFICIENCY TO SUPPORT THE LEGAL CONCLUSIONS MADE, THEN A QUESTION OF LAW IS RAISED; CASE AT BAR.— When the petitioner asks for a review of the decisions made by a lower court based on the evidence presented, without delving into their probative value but simply on their sufficiency to support the legal conclusions made, then a question of law is raised. In this petition, petitioner simply takes issue against the conclusions made by the CA regarding the prior existence OCT No. T-1929(464) based on the evidence on record, particularly, the certified microfilm of Decree No. 130359 and the certification issued by the Register of Deeds of Lucena City. Petitioner is not calling for an examination of the probative value or truthfulness of the aforesaid evidence. It, however, questions whether the said evidence is sufficient to support the RTC and CA's conclusion that OCT No. T-1929(464) actually existed and got lost or destroyed which is a condition precedent to the granting of a petition for reconstitution. Accordingly, petitioner raises the issue on whether or not the RTC and the CA, considering the documentary evidence presented by respondents in the reconstitution proceedings, are justified under the law and jurisprudence in their findings that the subject OCT actually existed and was subsequently lost or destroyed. Undoubtedly, this is a pure question of law, which calls for a resolution of what is the correct and applicable law to a given set of facts.

2. ID.; ID.; ID.; REQUIREMENT THAT THE PETITION SHOULD BE ACCOMPANIED BY "SUCH MATERIAL

PORTIONS OF THE RECORD AS WOULD SUPPORT THE PETITION" IS LEFT TO THE DISCRETION OF THE PARTY FILING THE PETITION; CASE AT BAR.— [P]etitioner's failure to attach to the instant petition the copies of the certified microfilm of Decree No. 130359 and the certification issued by the Register of Deeds of Lucena City is not a fatal mistake, which merits the immediate dismissal of a Rule 45 Petition. The requirement that a petition for review on *certiorari* should be accompanied by "such material portions of the record as would support the petition" is left to the discretion of the party filing the petition. Except for the duplicate original or certified true copy of the judgment sought to be appealed from, there are no other records from the court *a quo* that must perforce be attached before the Court can take cognizance of a Rule 45 petition. In the end, it is the Court, in finally resolving the merits of the suit that will ultimately decide whether the material portions of the records attached are sufficient to support the Petition.

3. **CIVIL LAW; LAND TITLES AND DEEDS; REPUBLIC ACT NO. 26 (AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED); GOVERNS THE PROCESS BY WHICH A JUDICIAL RECONSTITUTION REQUIRES, AS A CONDITION PRECEDENT, THAT AN ORIGINAL CERTIFICATE OF TITLE (OCT) HAS BEEN ISSUED.—** The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred. As such, a petition for reconstitution of lost or destroyed OCT requires, as a condition precedent, that an OCT has indeed been issued. For this purpose, Republic Act (RA) No. 26 governs the process by which a judicial reconstitution of Torrens Certificates of Title may be done. Specifically, Section 2 of the said law enumerates in the following order the competent and exclusive sources from which reconstitution of an OCT may be based. x x x Here, respondents' petition for reconstitution is based on Section 2(d), an authenticated copy of the decree of registration pursuant to which

the original certificate of title was issued. Hence, respondents presented an LRA certified microfilm copy of Decree No. 130359 dated 5 December 1922 issued by the Court of First Instance of the Province of Tayabas, ordering that Lot 1204 of the Cadastral Survey of Lucena be registered in the name of Isabel Zarsadias. However, as mentioned by the CA, Decree No. 130359 merely ordered for the registration of Lot 1204 in the name of Isabel Zarsadias. That means **there is still an act of registration to follow or to be complied with to bring the subject lot under the provisions of the Torrens System and, consequently, the issuance of a certificate of title.** Also, **the decree does not cite or mention that it was issued to support the issuance of an existing original certificate of title, in particular, the OCT No. T-1929(464) in the name of Isabel Zarsadias.** The foregoing considered, there is a need, therefore, for the respondents to submit supporting evidence to prove that Lot 1204 was subsequently registered and covered by Original Certificate of Title in the name of Isabel Zarsadias in compliance with and pursuant to Decree No. 130359. The respondents failed to do this.

4. **ID.; ID.; ID.; A TAX DECLARATION IS NOT A RELIABLE SOURCE OF RECONSTITUTION OF TITLE; ISSUE ON OWNERSHIP OF THE LAND COVERED BY THE LOST OR DESTROYED ORIGINAL CERTIFICATE OF TITLE IS NOT PASSED UPON IN A RECONSTITUTION PROCEEDING; CASE AT BAR.—** Anent the tax declaration presented by respondents, the same is not a reliable source of reconstitution of a certificate of title. As the Court held in *Republic of the Philippines v. Santua*, **a tax declaration can only be *prima facie* evidence of claim of ownership, which, however, is not the issue in a reconstitution proceeding. A reconstitution of title does not pass upon the ownership of land covered by the lost or destroyed title but merely determines whether a re-issuance of such title is proper.**

5. **ID.; ID.; LAND REGISTRATION FOR AS LONG AS THE DECREE ISSUED IN AN ORDINARY OR CADASTRAL REGISTRATION CASE HAS NOT YET BEEN ENTERED, SUCH DECREE HAS NOT YET ATTAINED FINALITY AND THEREFORE MAY STILL BE SUBJECT TO CANCELLATION IN THE SAME LAND REGISTRATION CASE; CASE AT BAR.—** All is not lost for the respondents,

however. If they remain insistent to have the title of the subject property issued under their names, they can institute the appropriate proceedings in accordance with law and jurisprudence, including the filing of a **Petition for the Cancellation and Re-issuance of a Decree of Registration** as elucidated in the case of *Republic v. Heirs of Sanchez*. In the said case, the Court, following the opinion of then LRA Administrator Benedicta B. Ulep, held that for as long as the decree issued in an ordinary or cadastral registration case has not yet been entered, meaning, it has not yet been transcribed in the Registration Book of the concerned Registrar of Deeds, such decree has not yet attained finality and therefore may still be subject to cancellation in the same land registration case. Upon cancellation of such decree, the decree owner (adjudicatee or his heirs) may then pray for the issuance of a new decree number and, consequently, pray for the issuance of an Original Certificate of Title based on the newly issued decree of registration.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Floralie P. Pamfilo for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated 22 September 2017 and Resolution dated 8 May 2018[3] of the Court of Appeals (CA) in CA-G.R. CV No. 105351 which affirmed the Order[4] of the Regional Trial Court (RTC) of Lucena City, Branch 57, in Misc. Case No. 2012-105, granting the petition

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[1] *Rollo*, pp. 11-23.

[2] *Id.* at 26-36.

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

[4] *Id.* at 204-208.

for reconstitution of Original Certificate of Title (OCT) No. T-1929(464) filed by respondents spouses Juan Fule and Delia Fule (respondents).

FACTS

On 28 June 2012, respondents filed before the RTC a Petition for Reconstitution of OCT No. T-1929(464) covering a parcel of land described as follows:

> A parcel of land (Lot 1204 of the Cadastral Survey of Lucena), with improvements thereon, situated in the Municipality of Lucena. Bounded on the NE. by Mamaboy Creek; on the SE., by Lot No. 672; on the SW., and NW. by Lot No. 671 x x x Containing an area of Two Thousand Six Hundred and Twenty Eight (2,628) Square Meters, more or less.[5]

In their petition, respondents alleged that OCT No. T-1929(464) was issued in the name of Isabel Zarsadias based on Decree No. 130359 issued by the then Court of First Instance, Province of Tayabas, dated 5 December 1922; that OCT No. T-1929(464) was on file with the Register of Deeds of Lucena City and was among those presumed burned during the fire that razed the City Hall building of Lucena City on 30 August 1983; that Isabel was married to Perfecto Pabillorin; that despite Isabel's death on 12 May 1924, Lot 1204 has been declared for taxation purposes in the name of Isabel Zarsadias; that upon her death, the heirs of Isabel Zarsadias possessed and occupied the subject property; that the original owner's copy of OCT No. T-1929(464) was kept in the possession and custody of Antonio Zarsadias Pabillorin, the eldest child of Isabel Zarsadias and Perfecto Pabillorin; that on 3 July 1983, Antonio died; that on 25 July 2011, Antonio's daughter Dorotea Pabillorin, executed an Affidavit of Loss stating that the original owner's copy of OCT No. T-1929(464), alongside some other documents which were supposedly in the possession and custody of her father Antonio, and kept inside a cabinet in their residence at Gomez St., Lucena City, can no longer be found, that her efforts

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[5] *Id.* at 27.

to locate the same have proved futile, that she considers the same irretrievably lost, and that the subject property has never been sold, mortgaged, encumbered or in any manner transacted; that on 25 July 2011, the grandchildren and successors-in-interest of Isabel Zarsadias executed an Extrajudicial Settlement of Estate with Deed of Absolute Sale in favor of the respondents; that the respondents are now in possession of the subject property; that OCT No. T-1929(464) on file with the Registry of Deeds of Lucena City has never been reconstituted nor the subject of any previous reconstitution proceedings and the Owner's copy of said OCT No. T-1929(464) which had been irretrievably lost has never been issued any second owner's copy or any co-owner's, mortgagee's or lessee's duplicate, as certified by the Office of the Register of Deeds of Lucena City; that there is no existing encumbrance over the subject property, it has never been sold, mortgaged or otherwise encumbered in favor of any person or entity, except in favor of the respondents; that no deeds or other instruments affecting the subject property have been presented for registration; that the subject property has never been subdvided, parceled out or partitioned, and the original area and size as appearing in Decree No. 130359 remain the same; that the present owners and occupants of the adjoining lots of the subject property are – Juan and Delia Fule (Allarey St., Brgy. 8, Lucena City), Carlos Ong Fule and Charles Ong Fule (Allarey St. Brgy. 8, Lucena City), and Engr. Roberto L. Devero (Brgy. Ilayang Talim, Lucena City); and that to respondents' knowledge, there are no other persons who have interest in the subject property.[6]

In support of their petition, respondents submitted as documentary evidence during the proceedings in the RTC, among others, the Certified Microfilm Copy of the Decree No. 130359 issued by the Land Registration Office, Quezon City; the Certification from the Registry of Deeds of Lucena City dated 10 June 2011 stating that OCT No. T-1929(464) covering Lot No. 1204 registered in the name of Isabel Zarsadias is among

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

those titles presumed burned during the fire that razed the City Hall building of the City of Lucena on 30 August 1983; Tax Declaration of Cadastral Lot 1204 in the name of Isabel Zarsadias and the Receipt evidencing the issuance thereof; and the Certification dated 20 June 2012 stating that OCT No. T-1929(464) covering Lot No. 1204 registered in the name of Isabel Zarsadias is among those titles presumed burned during the fire that razed the City Hall building of the City of Lucena on 30 August 1983 which then housed the Registry of Deeds and that aforesaid titled has neither been reconstituted judicially or administratively nor second owner's duplicate certificate has been issued.[7]

In the same RTC proceedings, the Land Registration Authority (LRA) submitted a Report dated 8 January 2013, which reads:

REPORT

(1) The present petition seeks the reconstitution of Original Certificate of Title No. T-1929(464) allegedly lost or destroyed and supposedly covering Lot No. 1204 of the Cadastral Survey of Lucena, situated in the Municipality of Lucena, Province of Tayabas (now Quezon), on the basis of Decree No. 130359.

(2) From Book 23(H) of the "Record Book of Cadastral Lots" on file at the Cadastral Decree Section, this Authority, it appears that Decree No. 130359 was issued for Lot No. 1204, Lucena (Tayabas) Quezon Cadastre, on December 5, 1922, in Cadastral Case No. 4, GLRO Cad. Record No. 215. As per copy of decree on file at the Vault Section, Docket Division, this Authority, it appears it was issued in favor of Isabel Zarsadias.

(3) The technical description of Lot No. 1204 of the Cadastral Survey of Lucena, appearing on the reproduction of Decree No. 130359 has been examined and verified correct after due computation. Said technical description when plotted on the Municipal Index Sheet No. 6001, does not appear to overlap previously plotted/decreed properties in the area.[8]

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[7] See *id.* at 29-30, 93-94, 95, 99, 106, 188-191.

[8] *Id.* at 31. See September 22, 2017 CA Decision, p. 6, quoting *in verbatim* the contents of the LRA Report dated January 8, 2013.

After considering the evidence presented by respondents and the Report of the LRA, the RTC issued an Order dated 11 February 2015 finding merit in the petition for reconstitution, the decretal portion of which reads:

> WHEREFORE, premises considered, the petition is GRANTED, and the Registry of Deeds of Lucena City is hereby ordered to reconstitute the original copy of Original Certificate of Title No. T-1929(464) registered in the name of Isabel Zarsadias, the wife of Perfecto Pabillorin, covering Lot No. 1204 of the Cadastral Survey of Lucena, entered pursuant to Decree No. 130359 in Cadastral Case No. 4, GLRO Cadastral Record No. 215, under the same terms and conditions set forth therein, to be considered as the original copy of the title for all legal intents and purposes, in lieu of the missing title, which is hereby declared null and void, upon finality of this Order and payment of the required legal fees.
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> As to the prayer for issuance of a second owner's copy, with the reconstituted Original Certificate of Title No. T-1929 (464), Section 16 of Republic Act No. 26 will apply which directs the [R]egister of [D]eeds to issue the corresponding owner's duplicate.
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> SO ORDERED.[9]

On 17 March 2015, petitioner Republic of the Philippines (petitioner), through the Office of the Solicitor General (OSG), filed a Notice of Appeal and elevated the case before the CA. In their Appeal Brief, the OSG assigned the lone error that the RTC erred in granting the Petition for Reconstitution despite respondents' failure to establish the existence of OCT No. T-1929(464) and the fact that it was lost or destroyed.[10]

On 22 September 2017, the CA rendered the assailed Decision denying the appeal and affirmed the 11 February Order of the RTC, the dispositive portion of which reads:

> WHEREFORE, the instant appeal is hereby DENIED for lack of merit. The Order dated February 11, 2015 issued by the Regional

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[9] *Id.* at 15-16.

[10] *Id.* at 31.

Trial Court (RTC) of Lucena City, Branch 57, in Misc. Case No. 2012-105 is AFFIRMED.

SO ORDERED.[11]

The CA ruled that the respondents were able to prove that Lot 1204 was covered by OCT No. T-1929(464) registered in the name of Isabel Zarsadias and that the same was lost or destroyed. The CA ratiocinated as follows:

> A careful perusal of the Petition for Reconstitution filed by petitioners-appellees and the records of this case reveal that the requirements of Sections 12 and 13 of R.A. No. 26 have been complied with. Furthermore, contrary to the position of the OSG, a reading of the Certification issued by the Register of Deeds of Lucena City shows that per its records, there is ground to presume that the original copy of OCT No. T-1929(464) covering Lot 1204 registered in the name of Isabel Zarsadias is one among those burned in the fire that razed the City Hall of Lucena City on 30 August 1983.
>
> As it stands, We find no reversible error on the part of the RTC in finding that petitioners-appellees were able to prove that the subject property was registered in the name of Isabel Zarsadias and was covered by OCT No. T-1929(464). This is consistent with the fact that petitioners– appellees were able to produce a certified microfilm copy of Decree No. 130359 dated December 5, 1922, issued by the Court of First Instance, Province of Tayabas, which ordered the registration in the name of Isabel Zarsadias of Lot No. 1204.[12]

The petitioner moved for reconsideration of the above Decision but the same was denied in the assailed CA Resolution dated 8 May 2018.[13]

Hence, the instant petition.

The OSG interposed the present appeal anchored on the grounds that:

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[11] *Id.* at 36.

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

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

I. THE CA COMMITTED REVERSIBLE ERROR IN AFFIRMING THE RTC'S 11 FEBRUARY 2015 ORDER, GRANTING THE PETITION FOR THE RECONSTITUTION BASED MERELY ON AN AUTHENTICATED COPY OF DECREE NO. 130359 ISSUED UNDER THE NAME OF ISABEL ZARSADIAS.

II. THE CA COMMITTED REVERSIBLE ERROR IN AFFIRMING THE RTC'S 11 FEBRUARY 2015 ORDER, GRANTING THE PETITION FOR RECONSTITUTION DESPITE RESPONDENTS' FAILURE TO PROVE THE EXISTENCE OF OCT. NO. T-1929(464).[14]

The OSG contends that the CA erred in affirming the order of the RTC granting the petition for reconstitution considering that respondents were not able to prove the issuance and prior existence of OCT No. T-1929(464) under the name of Isabel Zarsadias which is a condition precedent in a petition for reconstitution of lost or destroyed original certificate of title.[15] The OSG explains that while respondents presented a certified microfilm copy of Decree No. 130359, the same, however, does not show that OCT No. T-1929(464) was issued pursuant to said decree.[16] The OSG also asserts that the certification of the Register of Deeds of Lucena City does not establish that the original copy of OCT No. T-1929(464) was issued and kept or was part of its records. The certification merely stated that OCT No. T-1929(464) "is one among those titles presumed burned during the fire that razed the City Hall building of the City of Lucena".[17] Far from proving the existence of OCT No. T-1929(464), the OSG opines that the said certification would only establish that the Register of Deeds of Lucena City has no record of OCT No. T-1929(464) registered in the name of Isabel Zarsadias.[18] The OSG further avers that the tax declaration

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[14] *Id.* at 16.

[15] *Id.* at 18.

[16] *Id.*

[17] *Id.* at 19.

[18] *Id.*

for the assessment year 1995 presented by the respondents is not a reliable source to prove the existence of OCT No. T-1929(464).[19]

On their part, respondents pray for the outright dismissal of the instant petition on procedural grounds. They expound that petitioner raised questions of fact, which are beyond the purview of a Rule 45 Petition.[20] Further, respondents aver that petitioner also failed to attach in its petition the material portions of the record of the case, in violation of Section 4, Rule 45 of the Rules of Court. This include the material evidence cited in the petition such as the certified microfilm of Decree No. 130359 and the Certification dated 10 June 2011 issued by the Register of Deeds of Lucena City.[21]

Without waiving the above-said procedural objections, respondents further argue that the CA did not commit reversible error in its assailed Decision and Resolution. Respondents posit that they were able to present sufficient evidence that OCT No. T-1929(464) was duly issued. They rely on the Certification issued by the Register of Deeds of Lucena City stating that OCT No. T-1929(464) registered in the name of Isabel Zarsadias is presumed to be among those titles burned during the fire that razed the City Hall of Lucena City on 30 August 1983. According to respondents, the Certification was based on the records on file of the Register of Deeds of Lucena and by its plain and literal wording, the said Certification confirms that OCT No. T-1929(464) was issued but the original copy thereof was subsequently lost and destroyed by a fire. Moreover, the Certification issued by the Register of Deeds was corroborated by the certified microfilm copy of Decree No. 130359, by the LRA Report dated 8 January 2013, and by the testimony of Dorotea Pabillorin, the granddaughter of Isabel Zarsadias, which pieces of evidence, when taken together, would sufficiently prove that OCT No. TCT-1929(464) was issued and that it was lost or destroyed.

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[19] *Id.* at 20.

[20] *Id.* at 74-75.

[21] *Id.* at 75-76.

RULING

The petition is meritorious.

At the outset, the Court rejects the argument of respondents concerning the purported procedural defects of the present petition.

Contrary to the position of respondents, the petition raises a question of law, and not a question of fact.

When the petitioner asks for a review of the decisions made by a lower court based on the evidence presented, without delving into their probative value but simply on their sufficiency to support the legal conclusions made, then a question of law is raised.[22]

In this petition, petitioner simply takes issue against the conclusions made by the CA regarding the prior existence OCT No. T-1929(464) based on the evidence on record, particularly, the certified microfilm of Decree No. 130359 and the certification issued by the Register of Deeds of Lucena City. Petitioner is not calling for an examination of the probative value or truthfulness of the aforesaid evidence. It, however, questions whether the said evidence is sufficient to support the RTC and CA's conclusion that OCT No. T-1929(464) actually existed and got lost or destroyed which is a condition precedent to the granting of a petition for reconstitution. Accordingly, petitioner raises the issue on whether or not the RTC and the CA, considering the documentary evidence presented by respondents in the reconstitution proceedings, are justified under the law and jurisprudence in their findings that the subject OCT actually existed and was subsequently lost or destroyed. Undoubtedly, this is a pure question of law, which calls for a resolution of what is the correct and applicable law to a given set of facts.

Moving on, petitioner's failure to attach to the instant petition the copies of the certified microfilm of Decree No. 130359 and the certification issued by the Register of Deeds of Lucena

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[22] See *Republic v. Vega*, 654 Phil. 511, 518 (2011).

City is not a fatal mistake, which merits the immediate dismissal of a Rule 45 Petition. The requirement that a petition for review on *certiorari* should be accompanied by "such material portions of the record as would support the petition" is left to the discretion of the party filing the petition. Except for the duplicate original or certified true copy of the judgment sought to be appealed from, there are no other records from the court *a quo* that must perforce be attached before the Court can take cognizance of a Rule 45 petition.[23] In the end, it is the Court, in finally resolving the merits of the suit that will ultimately decide whether the material portions of the records attached are sufficient to support the Petition.[24]

In this case, the Court finds that the documents (the CA decision and resolution) submitted by petitioner sufficiently supported the allegations in its petition. As noted earlier, petitioner assails the correctness of the CA conclusion in its decision *vis-à-vis* the evidence presented by respondents. The assailed decision and resolution already contain the undisputed factual findings and the legal basis of the CA in affirming the RTC's order granting the petition for reconstitution. Certainly, by reading and examining the assailed decision and resolution, the Court could judiciously determine the merits of the petition.

Going now to the substantial merits of the petition, the Court finds that the CA erred in affirming the RTC's order granting the petition for reconstitution considering that the evidence on record failed to sufficiently support the legal conclusion that OCT No. T-1929(464) existed or was actually issued and that it was subsequently lost or destroyed. This will be explained below.

The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced

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[23] *Id.*

[24] *Id.*

in exactly the same way it has been when the loss or destruction occurred.[25] As such, a petition for reconstitution of lost or destroyed OCT requires, as a condition precedent, that an OCT has indeed been issued.[26] For this purpose, Republic Act (RA) No. 26[27] governs the process by which a judicial reconstitution of Torrens Certificates of Title may be done. Specifically, Section 2 of the said law enumerates in the following order the competent and exclusive sources from which reconstitution of an OCT may be based, *viz.*:

> Section 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:
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> (a) The owner's duplicate of the certificate of title;
> (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;
> (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;
> (d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;
> (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and
> (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

Here, respondents' petition for reconstitution is based on Section 2(d), an authenticated copy of the decree of registration

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[25] *Republic v. Dagondon*, 785 Phil. 210 (2016), citing *Republic v. Tuastumban*, 604 Phil. 491, 504-505 (2009).

[26] *Republic v. Heirs of Sps. Donato Sanchez and Juana Meneses*, 749 Phil. 999, 1004 (2014).

[27] Entitled "AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED," approved on September 25, 1946.

pursuant to which the original certificate of title was issued. Hence, respondents presented an LRA certified microfilm copy of Decree No. 130359 dated 5 December 1922 issued by the Court of First Instance of the Province of Tayabas, ordering that Lot 1204 of the Cadastral Survey of Lucena be registered in the name of Isabel Zarsadias. However, as mentioned by the CA, Decree No. 130359 merely ordered for the registration of Lot 1204 in the name of Isabel Zarsadias. That means **there is still an act of registration to follow or to be complied with to bring the subject lot under the provisions of the Torrens System and, consequently, the issuance of a certificate of title.** Also, **the decree does not cite or mention that it was issued to support the issuance of an existing original certificate of title, in particular, the OCT No. T-1929(464) in the name of Isabel Zarsadias.** The foregoing considered, there is a need, therefore, for the respondents to submit supporting evidence to prove that Lot 1204 was subsequently registered and covered by Original Certificate of Title in the name of Isabel Zarsadias in compliance with and pursuant to Decree No. 130359. The respondents failed to do this.

The LRA Report dated 8 January 2013 would not serve to help respondents' Petition for Reconstitution. A cursory reading of the LRA's report, which was quoted verbatim in the CA Decision,[28] would reveal that the LRA made an admission only as to the existence of Decree No. 130359 issued in favor of Isabel Zarsadias. It is worthy to note that the Report did not indicate that an original certificate of title was subsequently issued pursuant to said decree as well as the number of the original certificate of title and the date said title was issued. In *Republic v. Heirs of Ramos*,[29] the Court, citing *Tahanan Development Corporation v. Court of Appeals*,[30] held that the absence of any document, private or official, mentioning the

[28] *Rollo*, p. 31.

[29] 627 Phil. 123, 138-139 (2010).

[30] 203 Phil. 652 (1982).

number of the certificate of title and date when the certificate of title was issued, does not warrant the granting of such petition.

The CA also erred in relying on the Certification issued by the Register of Deeds of Lucena City dated 10 June 2011 to affirm the RTC's order granting the respondents' Petition for Reconstitution.

In its 22 September 2017 Decision, the CA held:

> A careful perusal of the Petition for Reconstitution filed by petitioners-appellees and the records of this case reveal that the requirements of Sections 12 and 13 of R.A. No. 26 have been complied with. Furthermore, contrary to the position of the OSG, a reading of the Certification issued by the Register of Deeds of Lucena City shows that per its records on file, there is ground to presume that the original copy of OCT No. T-1929(464) covering Lot 1204 registered in the name of Isabel Zarsadias is one among those burned in the fire that razed the City Hall of Lucena City on 30 August 1983.[31] (Underscoring supplied)

Very clearly, the CA, after examining the Certification, could only arrive at the finding that the Register of Deeds presumed that the original copy of OCT No. T-1929(464) covering Lot 1204 registered in the name of Isabel Zarsadias is one among those titles burned in a fire that razed the City Hall building of the City of Lucena on 30 August 1983. Certainly, the certification of said Register of Deeds that the subject certificate of title "is one among those titles presumed burned during the fire that razed the City Hall building of the City of Lucena" does not necessarily mean that OCT No. T-1929(464) once formed part of its records. The Register of Deeds only presumed that OCT No. T-1929(464) is among the titles burned during the fire without stating and confirming in certain terms that the said certificate of title existed and formed part of its records, in the first place. Consequently, in the absence of clear and definite finding that OCT No. T-1929(464) once formed part of the records of the Register of Deeds of Lucena City, the CA erred in affirming the RTC's order granting the petition for

[31] *Rollo,* p. 34.

reconstitution of lost or destroyed certificate of title since the fact that the certificate of title sought to be reconstituted actually existed could not be established.

Respondents cited the case of *Republic v. Dela Raga*[32] *(Dela Raga)* and pointed out that the Court upheld the trial court's grant of a petition for reconstitution although the certification of the Register of Deeds similarly stated that the title was presumed lost and destroyed in its records. A reading of the said case, however, reveals that the Court did not merely rely on the certification of the Register of Deeds in affirming the trial court's order granting the petition for reconstitution. In that case, the Court considered all the evidence presented before arriving at the conclusion that the lost or destroyed certificate of title actually existed. Worthy of attention is the fact that in addition to the copy of the decree which was the basis of issuance of the lost OCT, respondent in *Dela Raga* not only presented the Register of Deeds certification that the OCT was presumed lost or destroyed **but also a pre-war inventory of original certificates of the Registry of Deeds of Pangasinan which proved that the subject OCT in that case existed and formed part of the records of the concerned office but was destroyed during the World War II.** Thus:

> From the evidence presented during the *ex-parte* presentation of evidence before the Branch Clerk of Court, the following facts were proven:
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> The petitioner is the grandchild of Ignacio Serran, one of the registered owners of the land subject of this petition. The petitioner's mother was Aniceta Serran, one of the daughters of Ignacio Serran as evidenced by Exh. "N". The name of the other child of Ignacio Serran was Cornelia Serran. Both children have already died including Ignacio Serran.
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> When Ignacio Serran died, he left a property located at Dungon, Sison, Pangasinan. The same property was covered by a title. **However, the office copy of the title was destroyed during the World War II as evidenced by a pre-war inventory of the Registry of Deeds**

[32] See 613 Phil. 257 (2009).

of Pangasinan marked as EXH. "O". From such inventory of original certificates of the Registry of Deeds of Pangasinan (Exh. "0-1"), there was an entry O.C.T. No. 49266 to 49267 - mutilated. In Exh. "O", Original Certificate No. 49266, Vol. 162, Page 239 was in the name of Serrao, Ignacio, et. al. A Certification, Exh. "P" was issued by the Registry of Deeds of Pangasinan certifying to the effect that the Original Certificate of Title No. 49266 could not be found or located among the files in the registry, thus it was presumed lost or destroyed. x x x (Emphasis and underscoring supplied)

In the instant case, the respondents, unlike in *Dela Raga*, did not present clear and convincing evidence to prove that OCT No. T-1929(464) actually existed and formed parts of the records of the Register of Deeds.

Anent the tax declaration presented by respondents, the same is not a reliable source of reconstitution of a certificate of title. As the Court held in *Republic of the Philippines v. Santua*,[33] **a tax declaration can only be *prima facie* evidence of claim of ownership, which, however, is not the issue in a reconstitution proceeding. A reconstitution of title does not pass upon the ownership of land covered by the lost or destroyed title but merely determines whether a re-issuance of such title is proper.**

In sum, the Court finds that the CA erred in affirming the order of the RTC granting the petition for reconstitution of the lost or destroyed original certificate of title. The evidence presented by respondents is not sufficient to support the RTC and CA's conclusion that OCT No. T-1929(464) actually existed and got lost or destroyed which is a condition precedent to the granting of a petition for reconstitution.

All is not lost for the respondents, however. If they remain insistent to have the title of the subject property issued under their names, they can institute the appropriate proceedings in accordance with law and jurisprudence, including the filing of a **Petition for the Cancellation and Re-issuance of a Decree of Registration** as elucidated in the case of *Republic v. Heirs*

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[33] 586 Phil. 291 (2008).

of Sanchez.[34] In the said case, the Court, following the opinion of then LRA Administrator Benedicto B. Ulep, held that for as long as the decree issued in an ordinary or cadastral registration case has not yet been entered, meaning, it has not yet been transcribed in the Registration Book of the concerned Registrar of Deeds, such decree has not yet attained finality and therefore may still be subject to cancellation in the same land registration case. Upon cancellation of such decree, the decree owner (adjudicatee or his heirs) may then pray for the issuance of a new decree number and, consequently, pray for the issuance of an Original Certificate of Title based on the newly issued decree of registration.

WHEREFORE, the petition is **GRANTED**. The Decision dated 22 September 2017 and Resolution dated 8 May 2018 of the Court of Appeals in CA-G.R. CV No. 105351, are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Petition for Reconstitution filed by spouses Juan Fule and Delia Fule before the Regional Trial Court of Lucena City, Branch 57, docketed as Misc. Case No. 2012-105, is **DISMISSED** for lack of merit.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Hernando, and *Inting, JJ.,* concur.

SECOND DIVISION

[A.C. No. 12666. March 4, 2020]

SANTIAGO B. BURGOS, *complainant, vs.* **ATTY. JOVENCIO JAMES G. BEREBER,** *respondent*.

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[34] 749 Phil. 999 (2014); see also *Republic v. Dagondon*, *supra* note 25.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; VIOLATION OF THE RULES ON CONFLICT OF INTEREST; ESSENTIAL CRITERIA THAT MUST BE CONSIDERED TO DETERMINE VIOLATION OF THE RULES, ENUMERATED.— [I]n determining whether a lawyer is guilty of violating the rules on conflict of interest under the CPR, it is essential to determine whether: (1) "a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client"; (2) "the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty"; and (3) "a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment."

2. ID.; ID.; ID.; EXISTENCE OF AN ATTORNEY-CLIENT RELATIONSHIP IS RELEVANT IN THE RESOLUTION OF AN ISSUE INVOLVING CONFLICTING INTEREST; PRESENCE OF SUCH RELATIONSHIP, NOT ESTABLISHED IN THIS CASE.— [T]he proper resolution of the issue herein involved necessarily hinges upon the existence of an attorney-client relationship. Notably, the absence of an attorney-client relationship between Bereber and Burgos is an essential element of Bereber's defense to the charge of conflict of interest. On the basis of the attendant facts of the case, we find no conflict of interest when Bereber appeared as counsel before the NEA for the accused directors and management staff of CAPELCO. The Court finds insufficient evidence which would confirm the presence of an attorney-client relationship between Burgos and Bereber. We are inclined to believe the defense of Bereber, *i.e.*, that at no instance did Burgos obtain Bereber's legal advice in connection with the pending NEA complaint and/or Audit Report, in as much as Burgos made no attempt to refute such allegations decisive of this controversy. In his attempt to show even a semblance of an attorney-client relationship between him and Bereber, Burgos suggested that Bereber is a supposed "representative" of District III from which the complainants of the NEA case, such as Burgos, are also member-

consumers thereof. This Court, however, agrees with the finding of the IBP that Bereber, as CAPELCO director, represents the entire membership of CAPELCO, and not just the member-consumers of District III. In any case, Burgos failed to establish that Bereber was engaged as counsel by the member-consumers of District III.

3. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR NEGATE THE CLAIM THAT RESPONDENT REPRESENTED CONFLICTING INTEREST; LACK OF *"DELICADEZA"* IS NOT A LEGAL GROUND FOR ADMINISTRATIVE DISCIPLINARY ACTION.— [A] lawyer can be said to be representing conflicting interests specifically in circumstances when he, having been engaged as counsel for a corporation, subsequently represents the members of the same corporation's board of directors in a derivative suit filed against them. To be clear, a corporation in a derivative suit is the real party in interest, while the stockholder filing suit in the corporation's behalf would only be considered a nominal party. This is clearly wanting in this case. While the facts established on record reveal that Bereber assumed the role as counsel of CAPELCO, the administrative complaint filed before the NEA against the accused CAPELCO directors and managerial staff were brought by Burgos and other consumer-members in their individual capacities and not in behalf of CAPELCO. This Court is also not inclined to mete out disciplinary punishment on Bereber on the allegation of his supposed lack of "*delicadeza*" or sense of decency in this case because it is not a legal ground for administrative disciplinary action under the CPR. At best, Bereber can be said to have merely exercised independence of judgment as a lawyer when he defended the interests of other member-consumers of CAPELCO.

D E C I S I O N

HERNANDO, *J.*:

This resolves the Complaint[1] filed by Santiago B. Burgos (Burgos) against Atty. Jovencio James G. Bereber (Bereber) for conduct unbecoming of a member of the Bar.

[1] *Rollo*, p. 4.

The antecedent facts are as follows:

In his complaint, Burgos claimed that Bereber committed acts constituting conflict of interest, and lacking in "*delicadeza*."

Burgos alleged that he is a member-consumer of District III[2] of Capiz Electric Cooperative, Inc. (CAPELCO), a non-stock, non-profit electric cooperative supervised by the National Electrification Administration (NEA), which currently provides electric services to the Province of Capiz. On July 1, 2015, Burgos and two other member-consumers of District III of CAPELCO, on the basis of a NEA Comprehensive Operations Audit,[3] filed an administrative complaint[4] with the NEA against several management staff of CAPELCO and certain members of its Board of Directors for committing acts constituting Grave Misconduct, Neglect of Duty, and Falsification. Having been elected as director by member-consumers of District III, Burgos insisted that Bereber failed to advance their interests, and as such, had no regard for professionalism, ethics, integrity, and "*delicadeza*" when he represented the accused members of the Board of Directors and management staff in the proceedings before the NEA.

On his part, Bereber admitted in his Verified Answer,[5] Position Paper,[6] and other allied pleadings that the accused members of the Board of Directors consulted with him and sought his legal services in connection with the administrative complaint filed by Burgos with the NEA. Bereber then drafted, prepared, and signed their answer to the NEA complaint, and appeared as counsel/collaborating counsel for them in the same case during the preliminary conferences before the NEA.[7] This notwithstanding, Bereber insisted that he did not represent

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[2] Comprising the Municipalities of President Roxas and Pilar, Capiz.

[3] *Rollo*, pp. 149-230.

[4] *Id.* at 8-12.

[5] *Id.* at 42-56.

[6] *Id.* at 124-132.

[7] *Id.* at 125.

conflicting interests and, perforce, cannot be held administratively liable therefor.

In particular, Bereber argued that there existed no lawyer-client relationship between him and Burgos, considering that Burgos, at no instance in the past, obtained his legal advice or sought consultation on any legal matter arising from the pending NEA complaint and/or the NEA Comprehensive Operations Audit.[8] On the contrary, Bereber emphasized that he even acted as counsel for the adverse parties in Civil Case No. 477 for forcible entry and damages, and in Criminal Case No. 2564 for light coercion filed against Burgos pending before the Municipal Circuit Trial Court in President Roxas, Capiz.[9]

Bereber further argued that he has the discretion to represent the causes of his fellow member-consumers of CAPELCO, such as the accused members of its Board of Directors, in the NEA administrative case. On this point, Bereber clarified that the district election of CAPELCO is only for the purpose of determining the number of directors that will sit on its Board of Directors. Thus, while he was elected as director of CAPELCO by the member-consumers of District III, he does not, by virtue thereof, exclusively represent them in the board, nor does he become the counsel of the member-consumers of the district where he was elected. Bereber explained that, as CAPELCO director, he is mandated to represent not only the member-consumers of District III, but also the entire membership of CAPELCO.[10]

Bereber also maintained that current state of laws does not prohibit him from practicing his profession as a lawyer upon his election as CAPELCO director,[11] and that "*delicadeza*" is "not a ground to prohibit a lawyer from acting as counsel to a party."[12]

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[8] *Id.* at 126.

[9] *Id.* at 57.

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

[11] *Id.* at 46.

[12] *Id.* at 128.

In a Report and Recommendation dated January 2, 2018,[13] Investigating Commissioner Jeric J. Jucaban of the Commission on Integrity and Bar Discipline of the Integrated Bar of the Philippines (IBP) recommended the dismissal of the complaint for lack of merit. The Investigating Commissioner opined that Burgos failed to show that a lawyer-client relationship existed between him and Bereber. Moreover, he noted that there is no basis under the laws governing electric cooperatives, particularly, Presidential Decree (PD) No. 269,[14] as amended by Republic Act (RA) No. 10531,[15] which would support the conclusion that Bereber's election as director gave rise to a lawyer-client relationship between him and Burgos, or the general membership of CAPELCO for that matter. Moreover, the Investigating Commissioner found that Bereber, in representing the cause of his fellow members of the Board of Directors, merely exercised "independent judgment" as director of CAPELCO, *viz.*:

> The need for a director to exercise independent judgment is further recognized by the Securities and Exchange Commission when it issued SEC Memorandum Circular No. 19, Series of 2016 prescribing the Code of Corporate Governance for Publicly-Listed Companies. Under Principle 5 of the said Code, the SEC requires that the "Board should endeavor to exercise objective and independent judgment on all corporate affairs."
>
> Such issuances of the SEC underscores the responsibility of a director to safeguard and advance the interest of the corporation, as his primordial concern rather than just the interest of a particular set of members or stockholders thereof. x x x A director, therefore, is not bound by the wishes of a stockholder or member, and could take a position contrary to that taken by them.[16]

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[13] *Id.* at 298-303.

[14] The "National Electrification Administration Decree" (August 6, 1973).

[15] The "National Electrification Administration Reform Act of 2013," approved on May 7, 2013.

[16] *Rollo*, p. 302.

The Investigating Commissioner agreed with Bereber that there is no law which bars him from practicing his legal profession upon his election as director of CAPELCO, *viz.*:

> What is prohibited by our jurisprudence is a lawyer engaged as counsel for a corporation representing members of the same corporation's board of directors in a derivative suit brought against them by the members or stockholders. For a suit to be considered derivative, however, "the corporation should be included in the suit," which is not present in this case.[17] (Citations omitted)

The Investigating Commissioner also held that lack of "*delicadeza*" is not one of the grounds for disbarment or suspension of a member of the bar.

In a Resolution dated December 6, 2018,[18] the IBP Board of Governors adopted the Investigating Commissioner's Report and Recommendation to dismiss the complaint against Bereber.

The Court's Ruling

The Court adopts the findings of the IBP and accepts its recommendation to dismiss the complaint against Bereber for lack of merit.

We take note at this point that Bereber rendered his legal services to CAPELCO further to his duties and responsibilities as director. This is evident from the December 18, 2015 Affidavit[19] of Mr. Salvador A. Asis, former President of CAPELCO (as attached to Bereber's Answer), which states, in part:

> 4.) Atty. James is the only lawyer in CAPELCO's Board of Directors; the entire members of the board appreciate so much his presence as director because he shared with us his legal opinion on matters requiring it for the betterment of CAPELCO, its members-consumers and employees, he drafted our rules of procedure to be observed every board meeting; he argued and give inputs on legal points, passed

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[17] *Id.*

[18] *Id.* at 296.

[19] *Id.* at 53-56.

several resolutions and policies, drafted the revision of our by-laws and did many other works; he chaired the newly created Committee on Employees' Welfare and did his assigned tasks well; he worked in the CAPELCO very satisfactorily as a director and a lawyer; the running of the general management of CAPELCO is smooth and well with the help of Atty. James[.]

Considering that an administrative complaint was filed with the NEA against certain members of the board and management staff in their capacities as directors and officers, respectively, of CAPELCO, Bereber, as its counsel, took on the responsibility of representing them during the proceedings before the NEA. From the foregoing recitals, it appears, therefore, that Bereber assumed the dual role of a director and lawyer of CAPELCO.

Bearing in mind his roles as director and lawyer of CAPELCO, the issue for consideration of this Court is whether Bereber is guilty of representing conflicting interests in violation of the pertinent provisions of the Code of Professional Responsibility (CPR) when he appeared as counsel for the accused members and management staff of CAPELCO in a case filed against them by CAPELCO member-consumers of District III.

Rules on conflict of interest are embodied in Rule 15.03, Canon 15 of the CPR, which states, to wit:

> Canon 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.
>
> x x x x x x x x x
>
> Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

In *Hornilla v. Salunat*,[20] the Court explained the concept of conflict of interest in this wise:

> There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not

[20] 453 Phil. 108 (2003).

in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.[21]

Simply put, in determining whether a lawyer is guilty of violating the rules on conflict of interest under the CPR, it is essential to determine whether: (1) "a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client;"[22] (2) "the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty;"[23] and (3) "a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment."[24]

Considering the foregoing, the proper resolution of the issue herein involved necessarily hinges upon the existence of an attorney-client relationship. Notably, the absence of an attorney-client relationship between Bereber and Burgos is an essential element of Bereber's defense to the charge of conflict of interest.

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[21] *Id.* at 111-112.

[22] *Aniñon v. Sabitsana*, 685 Phil. 322, 327 (2012).

[23] *Id.*

[24] *Id.*

On the basis of the attendant facts of the case, we find no conflict of interest when Bereber appeared as counsel before the NEA for the accused directors and management staff of CAPELCO.

The Court finds insufficient evidence which would confirm the presence of an attorney-client relationship between Burgos and Bereber. We are inclined to believe the defense of Bereber, *i.e.*, that at no instance did Burgos obtain Bereber's legal advice in connection with the pending NEA complaint and/or Audit Report, in as much as Burgos made no attempt to refute such allegations decisive of this controversy.

In his attempt to show even a semblance of an attorney-client relationship between him and Bereber, Burgos suggested that Bereber is a supposed "representative" of District III from which the complainants of the NEA case, such as Burgos, are also member-consumers thereof. This Court, however, agrees with the finding of the IBP that Bereber, as CAPELCO director, represents the entire membership of CAPELCO, and not just the member-consumers of District III. In any case, Burgos failed to establish that Bereber was engaged as counsel by the member-consumers of District III.

Moreover, a lawyer can be said to be representing conflicting interests specifically in circumstances when he, having been engaged as counsel for a corporation, subsequently represents the members of the same corporation's board of directors in a derivative suit filed against them. To be clear, a corporation in a derivative suit is the real party in interest, while the stockholder filing suit in the corporation's behalf would only be considered a nominal party.[25] This is clearly wanting in this case. While the facts established on record reveal that Bereber assumed the role as counsel of CAPELCO, the administrative complaint filed before the NEA against the accused CAPELCO directors and managerial staff were brought by Burgos and other consumer-members in their individual capacities and not in behalf of CAPELCO.

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[25] *Hornilla v. Atty. Salunat, supra* note 20 at 112.

This Court is also not inclined to mete out disciplinary punishment on Bereber on the allegation of his supposed lack of "*delicadeza*" or sense of decency in this case because it is not a legal ground for administrative disciplinary action under the CPR. At best, Bereber can be said to have merely exercised independence of judgment as a lawyer when he defended the interests of other member-consumers of CAPELCO.

Indeed, while "[t]his Court will not hesitate to mete out [the] proper disciplinary punishment upon lawyers who are shown to have failed to live up to their sworn duties, x x x neither will it hesitate to extend its protective arm to them when the accusation against them is not indubitably proven."[26]

WHEREFORE, the Court **ADOPTS** and **APPROVES** the findings of fact, conclusions of law, and recommendation of the Integrated Bar of the Philippines. Thus, the Complaint against Atty. Jovencio James G. Bereber is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Inting, and *Delos Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 191834. March 4, 2020]

JOSEPHINE ESPINOSA, *petitioner, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents*.

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[26] *Guanzon v. Dojillo,* A.C. No. 9850, August 6, 2018.

[G.R. No. 191900. March 4, 2020]

FELICISIMO F. LAZARTE, JOSEPHINE C. ANGSICO, and VIRGILIO V. DACALOS, *petitioners, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents*.

[G.R. No. 191951. March 4, 2020]

NOEL A. LOBRIDO, *petitioner, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; MAY ONLY CORRECT ERRORS OF JURISDICTION, OR SUCH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; DOES NOT INCLUDE CORRECTION OF PUBLIC RESPONDENT'S EVALUATION OF THE EVIDENCE AND FACTUAL FINDINGS THEREON; CASE AT BAR.— While a petition for *certiorari* may properly warrant a review of the resolution of an interlocutory order — in this case, a motion to dismiss on demurrer to evidence — the Petitions raise matters outside the scope of a petition for *certiorari*. In any event, public respondent did not commit grave abuse of discretion. The rule is clear: a petition for *certiorari* may only correct errors of jurisdiction, or such grave abuse of discretion amounting to lack or excess of jurisdiction. It "*does not include* correction of public respondent's evaluation of the evidence and factual findings thereon." Here, petitioners assail public respondent's order for them to present controverting evidence despite the prosecution's failure to produce certain documents that would have supposedly established their guilt beyond reasonable doubt. They thus question the sufficiency of the prosecution's evidence as determined by public respondent, which is beyond the scope of a petition for *certiorari*.

2. ID.; ID.; ID.; ERRORS REVIEWABLE THEREBY, DISTINGUISHED FROM ERRORS REVIEWABLE BY APPEAL.— *People v. Court of Appeals* likewise distinguished

errors reviewable by a petition for *certiorari* from those reviewable by appeal: Hence, *where the issue or question involved affects the wisdom or legal soundness of the decision* — not the jurisdiction of the court to render said decision — *the same is beyond the province of a special civil action for certiorari. The proper recourse* of the aggrieved party from a decision of the Court of Appeals *is a petition for review on certiorari* under Rule 45 of the Revised Rules of Court. The special civil action for *certiorari* will not operate to review the sufficiency of the prosecution's evidence.

3. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; AN ALLEGATION THEREOF MUST BE SUBSTANTIATED BEFORE THE COURT CAN EXERCISE ITS POWER OF JUDICIAL REVIEW.— *Degamo v. Office of the Ombudsman*, citing *Joson v. Office of the Ombudsman*, provides the standard for grave abuse of discretion: [A]n allegation of grave abuse of discretion must be substantiated before this Court can exercise its power of judicial review. As held in *Tetangco v. Ombudsman*: It is well-settled that the Court will not ordinarily interfere with the Ombudsman's determination of whether or not probable cause exists except when it commits grave abuse of discretion. 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.

4. ID.; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; REQUISITES.— Petitioners' insistence on a particular document as the only viable proof of their liability is inconsistent with *People v. Pentecostes*: *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: (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.

5. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; SUFFICIENCY OF INFORMATION; AN INFORMATION NEEDS TO STATE ONLY THE ULTIMATE FACTS CONSTITUTING THE OFFENSE, NOT THE FINER DETAILS OF WHY AND HOW THE ILLEGAL ACTS ALLEGED AMOUNTED TO UNDUE INJURY OR DAMAGE; CASE AT BAR.— *Romualdez v. People* provides an additional perspective in determining the sufficiency of the allegations in an information: To restate the rule, *an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage* — matters that are appropriate for the trial. x x x Here, petitioners were charged with giving "unwarranted benefits, advantage[,] and preference" to Triad Construction, its president Cruz, and themselves, to the government's damage and prejudice by causing Triad Construction to be paid ₱1,280,964.20, well above the ₱330,075.76 it was due. How the company was given unwarranted benefits, and to what extent the government was prejudiced by this, were subject to proof during trial. Thus, the prosecution forwarded documents allegedly establishing Triad Construction's entitlement to only ₱330,075.76. There is, therefore, no merit to petitioners' contention that there had been a material and prejudicial "variance between the allegation in the Information and proof adduced during trial[.]" The prosecution's additional evidence, which public respondent duly considered, pertained to the same allegation that Triad Construction was only due ₱330,075.76.

APPEARANCES OF COUNSEL

YF Lim & Associates Law Office for Josephine Espinosa.
Juancho L. Botor & Noe Botor for petitioners Lazarte, *et al.*
Solomon A. Lobrido, Jr. for petitioner Lobrido.
The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

A petition for *certiorari* assailing the denial of a demurrer to evidence will not resolve the merits of the case in advance of trial. The court tasked with resolving the petition for *certiorari* may only review whether the lower court denied the demurrer to evidence with grave abuse of discretion.

Filing petitions for *certiorari* to assail denials of demurrers to evidence is emphatically discouraged. There is clearly a remedy still left to the accused, which is to continue with trial. Filing a petition for *certiorari*, therefore, borders on contumacious.

For this Court's resolution are consolidated Petitions for *Certiorari*, filed under Rule 65 of the Rules of Court, assailing the Sandiganbayan Resolutions[1] denying the Demurrers to Evidence and subsequent Motions for Reconsideration of the National Housing Authority officials charged with violation of Section 3 (e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

The case centers on the alleged giving of unwarranted benefits to a contractor for a housing development project. Before this Court, the accused officials allege that the Sandiganbayan committed grave abuse of discretion when it denied their respective Demurrers to Evidence and instead ordered them to present their evidence.

On May 9, 2001, Robert P. Balao (Balao), Josephine C. Angsico (Angsico), Virgilio V. Dacalos (Dacalos), Felicisimo F. Lazarte, Jr. (Lazarte), Josephine Espinosa (Espinosa), and Noel H. Lobrido (Lobrido), as employees of the National Housing

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[1] *Rollo* (G.R. No. 191834), pp. 72-109 and 110-116. The January 29, 2008 and February 18, 2010 Resolutions were penned by Associate Justice Francisco H. Villaruz, Jr. and concurred in by Associate Justices Edilberto G. Sandoval and Samuel R. Martires of the Special Second Division of the Sandiganbayan.

Authority, and Jose M. Cruz (Cruz), as president of Triad Construction and Development Corporation (Triad Construction), were all charged with violating Section 3 (e) of Republic Act No. 3019 for the unwarranted benefits given to the contractor, to the government's prejudice, involving the Pahanocoy Sites and Services Project Phase I (Pahanocoy Project).

The Information[2] read in part:

> That in or about the month of September, 1992, at Bacolod City, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused ROBERT P. BALAO, JOSEPHINE C. ANGSICO, VIRGILIO V. DACALOS, FELICISIMO F. LAZARTE, JR., JOSEPHINE T. ESPINOSA and NOEL H. LOBRIDO, Public Officers, being the General Manager, Visayas Mgt. Office, Division Manager (Visayas), Manager, RPD, Project Mgt. Officer A and Supervising Engineer, respectively, of the National Housing Authority, Diliman, Quezon City, in such capacity and committing the offense in relation to office and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with accused JOSE M. CRUZ, a private individual and President of Triad Construction and Development Corporation, with address at Ben-lor Bldg., Quezon Avenue, Quezon City, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously cause to be paid to Triad Construction and Development Corporation public funds in the amount of ONE MILLION TWO HUNDRED EIGHTY THOUSAND NINE HUNDRED SIXTY FOUR PESOS and TWENTY CENTAVOS (₱1,280,964.20) PHILIPPINE CURRENCY, supposedly for the final work accomplishment of Triad Construction on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that the Final Quantification of the Actual Work Accomplishment on the said Project amounted only to THREE HUNDRED THIRTY THOUSAND SEVENTY FIVE PESOS AND SEVENTY SIX CENTAVOS (₱330,075.76) as revealed by the Special Audit conducted by the Commission on Audit, thus accused public officials in the performance of their official functions had given unwarranted benefits, advantage and preference to Jose M. Cruz and Triad Construction

[2] *Id.* at 36-39.

and Development Corporation and themselves, to the damage and prejudice of the government.

CONTRARY TO LAW.[3]

Cruz died before his arraignment, warranting his case's dismissal and leaving only the National Housing Authority officials, who all pleaded not guilty.[4] Trial commenced on June 14, 2004, with the prosecution presenting its witnesses and documentary evidence.[5]

Candido Montesa Fajutag, Jr. (Fajutag) testified that as the then project engineer of the Pahanocoy Project, he was tasked with checking the contractors' personnel and equipment capabilities, monitoring construction activities, checking contractor billings, and evaluating contractor requests for progress payments.[6]

Fajutag explained that the Pahanocoy Project was a land development project intended for housing[7] that involved "earthworks, water and sewerage works, drainage[,] and road construction."[8] He was appointed halfway through the project's expected duration, following two (2) project engineers who had already billed two (2) progress payments to A.C. Cruz Construction, the former contractor. Upon his appointment, Triad Construction was already engaged for the remaining works.[9]

According to Fajutag, he was not given an official project plan upon which to base the fourth progress billing, so he inventoried the contractor's accomplishments and asked the

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[3] *Id.* at 37.

[4] *Id.* at 74.

[5] *Id.* at 76.

[6] *Id.* at 76-77.

[7] *Id.* at 77.

[8] *Id.*

[9] *Id.*

project engineers to verify their billings.[10] He found that the portion of work Triad Construction completed was not commensurate to the amount it received, which was well over 30% of the contract price.[11]

Fajutag noted that the project construction was suspended at the time he assumed office and resumed only when Work Variation Order No. 1 was issued upon approval by the general manager.[12] The variation order called for the resumption of "(1) excavation of unsuitable materials, (2) filling up of road fill materials, (3) reinforcement of RC road pipe crossing, and (4) demolition of unwanted structures."[13] Because these items were excluded from the original contract, Fajutag stated, they required an additional net cost of over ₱710,000.00.[14]

Not only did Fajutag find that some of these items were nonexistent, but that the fourth progress billing covered over 40% work accomplishment when only 32% of the work was completed, discounting those Fajutag found defective or substandard. He reported these irregularities in his Evaluation Report to the project manager and general manager of the National Housing Authority. Since he refused to sign the fourth progress billing request, Fajutag was pulled out of the project.[15]

On May 1, 1992, the Pahanocoy Project was completed.[16]

Sometime in 1993, Fajutag accompanied the Commission on Audit Special Team sent to investigate the project. He identified the irregularities and substandard construction works surrounding it.[17]

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[10] *Id.* at 77-78.

[11] *Id.* at 78.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 79.

[15] *Id.*

[16] *Id.*

[17] *Id.*

Atty. Sheila Uy-Villa (Atty. Villa), a state auditor for the Commission on Audit, testified that she led the team that investigated the Pahanocoy Project from July 5 to 31, 1993,[18] upon Fajutag's Complaint against the National Housing Authority officials. Their investigation allegedly revealed irregularities in the project: of the two (2) billings paid to Triad Construction, the second billing covered works that did not exist and those already paid to the previous contractor.[19]

Assisted by engineers, the Atty. Villa-led team conducted core drilling and soil testing to see if "activities that were claimed in connection with the excavation of unsuitable materials and the import of road field works"[20] were actually conducted in accordance with the variation order.[21]

The results of the tests allegedly indicated that "[t]here were no unsuitable materials removed from the road sites" and that "no imported road materials were filled thereat."[22] Likewise, the pavement core samples confirmed Fajutag's concerns that they "fell short of the required thickness."[23] The team also examined the supporting documents of the contracts with the contractors, but noted that some important documents were not provided despite the team's efforts to procure them from the officials concerned.[24]

Their findings indicated that the grant of remaining works in the Pahanocoy Project to Triad Construction was irregular, that the documents supporting the final billing estimate showed various discrepancies, and that changes in the scope of work were not supported by the necessary contract variation order.[25]

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[18] *Id.* at 81.

[19] *Id.* at 80.

[20] *Id.* at 82.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 83.

Atty. Villa pointed out that there were two (2) summaries of payment estimates for Triad Construction's final billing: first, totaling ₱330,075.76; and second, totaling ₱1,280,964.20. The difference was allegedly due to quantity overruns that were not supported by any contract variation order. According to Atty. Villa, such variations should have been covered by a change order pursuant to the Implementing Rules and Regulations of Presidential Decree No. 1594.[26]

Moreover, Atty. Villa testified that the project had two (2) Certificates of Completion — the first dated May 1, 1992; the second, March 31, 1992. The latter date was typewritten over the original completion date of May 1, 1992 on the second Certificate of Completion. Likewise, a memorandum labeled Exhibit "I" indicated a project completion date of April 15, 1992.[27]

In an exit conference on February 4, 1994,[28] Atty. Villa's team received the National Housing Authority representatives' comments on the draft report, in which they explained that the discrepancies arose when Triad Construction conducted additional works for items that were either inexistent or in need of repair.[29] However, the officials failed to provide any documentation for these purported works, which, Atty. Villa noted, should have been standard practice.[30]

Rosalie Molo Sales (Sales), a state auditor who was part of Atty. Villa's team, mainly testified on the lack of "factual or documentary basis for the increased contract cost"[31] paid to Triad Construction.[32]

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[26] *Id.* at 84.

[27] *Id.* at 85.

[28] *Id.* at 83.

[29] *Id.* at 85.

[30] *Id.* at 85-86.

[31] *Id.* at 86.

[32] *Id.*

According to Sales, the audit team's requests for the project's supporting documents were not fully complied with, and even former project engineer Fajutag could not produce them as these were not provided to him. Instead, Fajutag provided a "built-in-plan" of the project that he prepared on his own.[33]

Corroborating Atty. Villa's testimony, Sales stated that the test results showed the pavement samples did not meet the required thickness, and that only one (1) of 12 samples was a mix of gravel and sand, while "[t]he rest showed that unsuitable materials were not extracted by the contractor."[34]

Sales also testified on the Physical Abstract Accomplishment, a Memorandum, and a Final Quantification. The Memorandum, which did not show a specific quantity of particular works defined in the contract, indicated a total project cost of ₱10,024,970.79 — different from the project cost shown in the contract, which was ₱9,554,837.32. Meanwhile, the Final Quantification showed a discrepancy in the quantity of unsuitable materials excavated, from the original 2,018.94 cubic meters to 2,018.95 cubic meters. Finally, the Abstract of Physical Accomplishment suggested how farfetched it was that the excavation was done in four (4) days, when the process was significantly more laborious.[35]

The prosecution dispensed with the testimony of their fourth witness, Atty. Jose M. Agustin, because the defense admitted that the photocopies of the checks to be identified were "faithful reproductions of the originals."[36]

On March 8, 2006, the prosecution formally offered its evidence, on which the National Housing Authority officials then commented. Nonetheless, the Sandiganbayan admitted the prosecution's evidence despite the officials' objections. Thus, they moved for leave to file their respective demurrers to evidence.[37]

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[33] *Id.* at 87.

[34] *Id.*

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

[36] *Id.* at 89.

[37] *Id.* at 89 and 100-101.

The Sandiganbayan granted the officials' motion for leave. The officials commonly alleged that the prosecution failed to prove their guilt beyond reasonable doubt because the "Final Quantification" — which, as the Information stated, supposedly indicated a billing of ₱330,075.76 — never existed. It was, thus, never presented in court, rendering the complaint baseless and dismissible. Additionally, they argued that the prosecution failed to adequately establish conspiracy on their part.[38]

In a January 29, 2008 Resolution,[39] the Sandiganbayan denied the Demurrers to Evidence, holding that there was sufficient basis to support the charges in the Information. The Sandiganbayan, thus, ordered the accused officials to proceed to trial and establish their respective defenses.[40]

The National Housing Authority officials respectively moved for reconsideration, commonly insisting on the prosecution's failure to prove its case, but were collectively denied in the Sandiganbayan's February 18, 2010 Resolution.[41] Thus, except Balao who had since passed away,[42] they filed three (3) separate Petitions for *Certiorari*, alleging that the Sandiganbayan gravely abused its discretion when it denied their Demurrers to Evidence.

In G.R. No. 191834, petitioner Espinosa argues that the Sandiganbayan gravely abused its discretion in ordering her to defend herself despite the prosecution's failure to establish her guilt beyond reasonable doubt.[43]

She insists that the prosecution could not rely on the June 24, 1992 Memorandum, it being a mere draft that only bore her signature, without the other signatures needed to accord it finality.[44] Thus, the alleged first set of billings for ₱330,075.76

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

[39] *Id.* at 72-109.

[40] *Id.* at 108-109.

[41] *Id.* at 110-116.

[42] *Rollo* (G.R. No. 191951), p. 233.

[43] *Rollo* (G.R. No. 191834), p. 12.

[44] *Id.* at 15.

could not have existed and be used as basis for comparison with the second set of ₱1,280,964.20.[45] She also asserts that the prosecution failed to present the supposed Final Quantification, rendering the complaint baseless.[46] Accordingly, she argues that a variation order was unnecessary.[47]

Petitioner Espinosa further argues that her continued prosecution despite the admitted absence of the Final Quantification violated her substantial right to be informed of the charges against her.[48] She adds that the prosecution utterly failed to adduce any proof of conspiracy on her part, as her mere signature on a draft memorandum could not suffice on its own.[49]

In G.R. No. 191951, petitioner Lobrido also argues that the absence of the Final Quantification should have been deemed fatal to the prosecution's case. He insists that its very absence was why the first set of billings remained drafts, "set aside and not processed."[50]

In G.R. No. 191900, petitioners Lazarte, Angsico, and Dacalos also adopted this argument, insisting that the criminal case was founded on the Final Quantification; the prosecution's admission of its nonexistence, therefore, contradicted the charges in the Information.[51] Since the draft Memorandum was never forwarded to the National Housing Authority Main Office in Manila, petitioners Lazarte, Angsico, and Dacalos were never made aware of the first set of billings of ₱330,075.76, and never had the chance to act on it. Thus, they concluded that the first set of billings never attained finality and could not be deemed

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[45] *Id.* at 17-20.

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

[47] *Id.* at 23.

[48] *Id.* at 24.

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

[50] *Id.* at 15-16.

[51] *Rollo* (G.R. No. 191900), pp. 15-16.

equivalent in weight to the nonexistent "Final Quantification" indicated in the Information. As such, they insist that conspiracy on their part was not proven.[52]

On June 28, 2010, this Court directed the First Division Clerk of Court to recommend whether the cases may be consolidated.[53] Later, upon recommendation from the Division Clerk of Court,[54] this Court issued its August 2, 2010 Resolution ordering that the cases be consolidated.[55]

Nonetheless, this Court had already ordered the Sandiganbayan, through the Office of the Special Prosecutor and the Office of the Solicitor General, to comment on the Petition in G.R. No. 191834,[56] which they respectively filed on September 21, 2010[57] and on August 15, 2011.[58]

In their separate pleadings, the Offices of the Special Prosecutor and the Solicitor General both insist that the Sandiganbayan did not exceed its jurisdiction as its findings were supported by evidence. In any event, they maintain that any error on the court's determination are errors of judgment not errors of jurisdiction.[59]

On December 28, 2010, the Office of the Special Prosecutor filed a Joint Comment[60] on the now consolidated Petitions in G.R. Nos. 191900 and 191951. It clarifies that the Final Quantification is not a document, but a process by which petitioners adjusted Triad Construction's final billing from

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

[53] *Rollo* (G.R. No. 191951), p. 218.

[54] *Id.* at 219-222.

[55] *Id.* at 223.

[56] *Rollo* (G.R. No. 191834), p. 119.

[57] *Id.* at 134-147.

[58] *Id.* at 190-201.

[59] *Id.* at 142 and 194.

[60] *Rollo* (G.R. No. 191951), pp. 228-244.

₱330,075.76 to ₱1,280,964.20. Just the same, it maintains that the Sandiganbayan properly appreciated the totality of evidence detailing how petitioners approved an amount triple of that originally billed. It asserts that the Sandiganbayan considered "documentary and testimonial evidence of credible and competent witnesses"[61] before deciding to proceed with trial.[62]

On October 10, 2011, this Court directed petitioners to file a Reply.[63] Petitioner Espinosa filed her Reply on October 13, 2011,[64] while petitioners Lazarte, Angsico, Dacalos, and Lobrido filed their Consolidated Reply on March 18, 2011.[65]

Petitioner Espinosa reiterates that the allegations of overpayment were based on an incomplete billing, which should not have been given probative weight. She insists that the Sandiganbayan gravely abused its discretion by relying on the other documentary evidence, creating "a variance between the allegation in the Information and proof adduced during trial"[66] that prejudiced petitioners' substantial rights. Since the prosecution admitted that the Final Quantification mentioned in the Information does not exist, the prosecution fell short of the required proof beyond reasonable doubt.[67]

Similarly, petitioners Lazarte, Angsico, Dacalos, and Lobrido maintain that the absence of the Final Quantification as an actual document was fatal to the prosecution's case.[68] They insist that regardless of the alleged process used in defrauding the government, it should have ultimately resulted in some form of documentation to be presented during trial, which the

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[61] *Id.* at 234.

[62] *Id.*

[63] *Rollo* (G.R. No. 191834), pp. 202-203.

[64] *Id.* at 204-210.

[65] *Rollo* (G.R. No. 191951), pp. 246-255.

[66] *Rollo* (G.R. No. 191834), p. 205.

[67] *Id.* at 206-207.

[68] *Rollo* (G.R. No. 191951), p. 242.

prosecution failed to do. On the contrary, they allege, the "final quantification of the actual work accomplishment" executed by the Inventory and Acceptance Committee, indicating an amount payable of ₱1,280,964.20, remained undisputed.[69] Thus, the Sandiganbayan's conclusions were allegedly "not supported by the evidence on record,"[70] and, thus, reviewable by a petition for *certiorari*.[71]

This Court gave due course to the Petitions and ordered the parties to submit their respective memoranda.[72] Petitioner Espinosa filed her Memorandum on May 27, 2013,[73] petitioner Lobrido filed his on May 7, 2013,[74] and petitioners Lazarte, Angsico, and Dacalos filed theirs on April 18, 2013.[75]

Reiterating their arguments, petitioners maintain that the absence of the Final Quantification should have led to the complaint's outright dismissal. Without this crucial document, petitioners say that an essential element of the offense allegedly remained unproven, calling for their acquittal without further need to present evidence. Instead, the Sandiganbayan gravely abused its discretion when it relied on allegedly unprocessed drafts in finding guilt beyond reasonable doubt.[76]

In any event, petitioners allege that conspiracy was not adequately proven as their respective acts do not indicate a unity of criminal design.[77] Specifically, petitioner Espinosa alleges that her mere signature on an incomplete draft

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[69] *Id*. at 249.

[70] *Id*. at 253.

[71] *Id*.

[72] *Id*. at 262-263.

[73] *Rollo* (G.R. No. 191834), pp. 260-283.

[74] *Rollo* (G.R. No. 191951), pp. 267-287.

[75] *Rollo* (G.R. No. 191900), pp. 207-239.

[76] *Id*. at 218; *rollo* (G.R. No. 191834), pp. 271-273; and *rollo* (G.R. No. 191951), pp. 276-277.

[77] *Rollo* (G.R. No. 191834), pp. 277-278.

Memorandum could not, by itself, indicate bad faith,[78] while petitioners Lazarte, Dacalos, and Angsico deny having any knowledge of the documents supporting the ₱330,075.76 billing.[79]

For their part, the Office of the Special Prosecutor and the Office of the Solicitor General filed their Memoranda on May 27, 2013[80] and on June 18, 2013,[81] respectively.

They argue that the documents bearing petitioners' signatures establish their connivance to increase Triad Construction's collectable billings from ₱330,075.76 to ₱1,280,964.20. According to them, petitioners affixed their signatures on both sets of billings despite knowing that the increased second billing had no factual basis. They also highlight the discrepancies between the supporting documents of the first and second sets of billings, which allegedly indicate their spuriousness and petitioners' apparent intent to give Triad Construction unwarranted benefits.[82]

The Office of the Special Prosecutor and the Office of the Solicitor General also insist that the Final Quantification alleged in the Information was simply a process and not a document.[83] They refer to the parties' stipulations during pre-trial,[84] insisting that petitioners understood the nature of the charges against them. Verily, the parties agreed that the charges pertained to the totality of their questionable actions, rather than on an actual "Final Quantification" with respect to the first billing.[85]

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[78] *Id.* at 279.

[79] *Rollo* (G.R. No. 191900), p. 223.

[80] *Rollo* (G.R. No. 191834), pp. 234-255.

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

[82] *Rollo* (G.R. No. 191951), p. 302.

[83] *Id.* at 307.

[84] *Rollo* (G.R. No. 191834), pp. 291-292.

[85] *Id.* at 290-291.

The Office of the Special Prosecutor and the Office of the Solicitor General also maintain that petitioners' contentions regarding the finality of the first set of billings is best resolved by presenting controverting evidence, not by a petition for *certiorari*.[86] In any event, they argue that the Sandiganbayan did not commit grave abuse of discretion as it based its decision on a sound appreciation of the prosecution's evidence.[87]

The consolidated Petitions task this Court with resolving whether or not public respondent Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction, when it denied the Demurrers to Evidence and subsequent Motions for Reconsideration of petitioners Josephine Espinosa, Noel A. Lobrido, Felicisimo F. Lazarte, Josephine C. Angsico, and Virgilio V. Dacalos.

The consolidated Petitions are denied.

While a petition for *certiorari* may properly warrant a review of the resolution of an interlocutory order — in this case, a motion to dismiss on demurrer to evidence — the Petitions raise matters outside the scope of a petition for *certiorari*. In any event, public respondent did not commit grave abuse of discretion.

I

The rule is clear: a petition for *certiorari* may only correct errors of jurisdiction, or such grave abuse of discretion amounting to lack or excess of jurisdiction. It "*does not include* correction of public respondent's evaluation of the evidence and factual findings thereon."[88]

Here, petitioners assail public respondent's order for them to present controverting evidence despite the prosecution's

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[86] *Id.* at 296.

[87] *Rollo* (G.R. No. 191951), p. 307. See also *rollo* (G.R. No. 191834), p. 293.

[88] *Microsoft Corporation v. Best Deal Computer Center*, 438 Phil. 408, 413 (2002) [Per *J.* Bellosillo, Second Division].

failure to produce certain documents that would have supposedly established their guilt beyond reasonable doubt. They thus question the sufficiency of the prosecution's evidence as determined by public respondent, which is beyond the scope of a petition for *certiorari*.

People v. Court of Appeals[89] likewise distinguished errors reviewable by a petition for *certiorari* from those reviewable by appeal:

> Hence, *where the issue or question involved affects the wisdom or legal soundness of the decision* — not the jurisdiction of the court to render said decision — *the same is beyond the province of a special civil action* for *certiorari. The proper recourse* of the aggrieved party from a decision of the Court of Appeals *is a petition for review on certiorari* under Rule 45 of the Revised Rules of Court.[90] (Emphasis supplied, citation omitted)

The special civil action for *certiorari* will not operate to review the sufficiency of the prosecution's evidence. This rule is echoed in *Joseph v. Villaluz*,[91] where this Court dismissed a petition for *certiorari* assailing the denial of the accused's demurrer to evidence:

> *The Court cannot decide in this special civil action whether or not the evidence adduced by the prosecution has established beyond reasonable doubt the guilt of the petitioners*. It is now petitioners' duty to neutralize the evidence of the State in order to maintain the presumption of their innocence of the crime of which they are charged.
>
> *In the absence of a clear showing that the respondent Judge has committed a grave abuse of discretion or acted in excess of jurisdiction, this Court will not annul an interlocutory order denying a motion to dismiss a criminal case*. Appeal is the proper remedy of the petitioners in order to have the findings of fact of the respondent judge reviewed by a superior court.[92] (Emphasis supplied, citation omitted)

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[89] 468 Phil. 1 (2004) [Per *J.* Ynares-Santiago, First Division].

[90] *Id.* at 10.

[91] 178 Phil. 255 (1979) [Per *J.* Fernandez, *En Banc*].

[92] *Id.* at 262-263.

Likewise, in *Cruz v. People*,[93] this Court dismissed the petition for *certiorari*, holding that the sufficiency of the prosecution's evidence cannot be reviewed in such a petition because the merits of the case cannot be decided in advance of trial:

> Regarding the denial of the demurrer to evidence, we have likewise ruled that *the question of whether the evidence presented by the prosecution is sufficient to convince the court that the defendant is guilty beyond reasonable doubt rests entirely within the sound discretion of the trial court.* The error, if any, in the denial of the demurrer to evidence *may be corrected only by appeal. The appellate court will not review in such special civil action the prosecution's evidence and decide in advance that such evidence has or has not established the guilt of the accused beyond reasonable doubt.* The *orderly procedure prescribed by the Revised Rules of Court is for the accused to present his evidence*, after which the trial court, on its own assessment of the evidence submitted, will then properly render its judgment of acquittal or conviction. *If judgment is rendered adversely against the accused, he may appeal the judgment* and raise the same defenses and objections for review by the appellate court.[94] (Emphasis supplied, citations omitted)

That rule applies here. The alleged errors made by public respondent in its appreciation of the prosecution's evidence cannot be reviewed in these proceedings.

II

Notably, however, petitioners allege that public respondent committed grave abuse of discretion when it issued the assailed Resolutions despite the absence of evidence to that effect. According to them, the prosecution admitted that the Final Quantification mentioned in the Information did not exist, which allegedly renders the criminal charges without basis.

This Court disagrees. Public respondent correctly considered the prosecution's other evidence in deciding to proceed with trial.

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[93] 363 Phil. 156 (1999) [Per *J.* Pardo, First Division].

[94] *Id.* at 161.

Degamo v. Office of the Ombudsman,[95] citing *Joson v. Office of the Ombudsman*,[96] provides the standard for grave abuse of discretion:

> [A]n allegation of grave abuse of discretion must be substantiated before this Court can exercise its power of judicial review. As held in *Tetangco v. Ombudsman*:
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> > It is well-settled that the Court will not ordinarily interfere with the Ombudsman's determination of whether or not probable cause exists except when it commits grave abuse of discretion. 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.[97] (Emphasis supplied, citations omitted)

Philippine National Bank v. Gregorio[98] also detailed what must be established in claiming relief under the extraordinary writ of *certiorari*:

> As the petition is filed under Rule 65, it *must raise not errors of judgment but the acts and circumstances showing grave abuse of discretion amounting to lack or excess of jurisdiction*. Grave abuse of discretion is defined as "an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law" or that the tribunal, board or officer with judicial or quasi-judicial powers "exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility."[99] (Emphasis supplied, citations omitted)

However, petitioners insist on the indispensability of the "Final Quantification." For petitioners Angsico, Dacalos, and

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[95] G.R. No. 212416, December 5, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64805> [Per *J.* Leonen, Third Division].

[96] 816 Phil. 288 (2017) [Per *J.* Leonen, Third Division].

[97] G.R. No. 212416, December 5, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64805> [Per *J.* Leonen, Third Division].

[98] 818 Phil. 321 (2017) [Per *J.* Jardeleza, First Division].

[99] *Id.* at 337.

Lazarte, it is "the very foundation of the criminal case"[100] that cannot be substituted by any other document, it being alleged in the Information.[101] For petitioner Lobrido, it is the "best evidence to prove the fact in issue";[102] its absence should have cast reasonable doubt on their liability.[103] For petitioner Espinosa, its absence was "fatal to the prosecution's cause."[104] According to her, public respondent exceeded its jurisdiction when it considered evidence other than the Final Quantification because this created a material "variance between the allegation in the Information and proof adduced during trial"[105] and prejudiced petitioners' substantive rights.

Petitioners' insistence on a particular document as the only viable proof of their liability is inconsistent with *People v. Pentecostes*:[106]

> *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;
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> (ii) the facts from which the inferences are derived are proven; and
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> (iii) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

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[100] *Rollo* (G.R. No. 191900), p. 213.

[101] *Id.* at 220.

[102] *Rollo* (G.R. No. 191951), p. 273.

[103] *Id.* at 277.

[104] *Rollo* (G.R. No. 191834), pp. 276-277.

[105] *Id.* at 277.

[106] G.R. No. 226158, November 8, 2017, 844 SCRA 610 [Per *J.* Caguioa, Second Division].

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.[107] (Emphasis supplied, citations omitted)

In the earlier case of *Zabala v. People*,[108] this Court disposed of a similar issue regarding the evidence that may be considered in determining the accused's criminal liability:

> It is a settled rule that *circumstantial evidence is sufficient to support a conviction, and that direct evidence is not always necessary. This is but a recognition of the reality that in certain instances, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence*. In *Bacolod v. People*, this Court had the occasion to say:
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> > *The lack or absence of direct evidence does not necessarily mean that the guilt of the accused cannot be proved by evidence other than direct evidence*. Direct evidence is not the sole means of establishing guilt beyond reasonable doubt, because circumstantial evidence, if sufficient, can supplant the absence of direct evidence. *The crime charged may also be proved by circumstantial evidence, sometimes referred to as indirect or presumptive evidence.* Circumstantial evidence has been defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue."[109] (Emphasis supplied, citation omitted)

Thus, public respondent did not exceed its jurisdiction by giving due consideration to the other pieces of evidence presented by the prosecution.

Indeed, the "Final Quantification" could have proven that Triad Construction was only due ₱330,075.76 and, thus, received unwarranted benefit from the subsequent release of ₱1,280,964.20 in its favor. However, nothing precludes the prosecution from adducing other proof to establish this fact. It still sought to prove the same matters alleged in the Information

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[107] *Id.* at 619-620.

[108] 752 Phil. 59 (2015) [Per *J.* Velasco, Jr., Third Division].

[109] *Id.* at 67.

— that Triad Construction was only due ₱330,075.76 for the Pahanocoy Project, but was actually paid ₱1,280,964.20. Whether such other evidence was sufficient to prove these allegations is a matter of defense that must be controverted during trial or raised on appeal.

Romualdez v. People[110] provides an additional perspective in determining the sufficiency of the allegations in an information:

> To restate the rule, *an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage* — matters that are appropriate for the trial. Specifically, *how the two positions of Romualdez were incompatible with each other and whether or not he can legally receive compensation* for his two incompatible positions *are matters of detail* that the prosecution should adduce at the trial to flesh out the ultimate facts alleged in the Information. Whether or not compensation has been earned through proper and commensurate service is a matter *in excess of the ultimate facts* the Information requires and is one that Romualdez, not the Information, should invoke or introduce into the case as a matter of defense.[111] (Emphasis supplied)

Here, petitioners were charged with giving "unwarranted benefits, advantage[,] and preference" to Triad Construction, its president Cruz, and themselves, to the government's damage and prejudice[112] by causing Triad Construction to be paid ₱1,280,964.20, well above the ₱330,075.76 it was due. How the company was given unwarranted benefits, and to what extent the government was prejudiced by this, were subject to proof during trial. Thus, the prosecution forwarded documents allegedly establishing Triad Construction's entitlement to only ₱330,075.76.

There is, therefore, no merit to petitioners' contention that there had been a material and prejudicial "variance between

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[110] 581 Phil. 462 (2008) [Per *J.* Brion, *En Banc*].

[111] *Id.* at 484-485.

[112] *Rollo* (G.R. No. 191834), p. 37.

the allegation in the Information and proof adduced during trial[.]"[113] The prosecution's additional evidence, which public respondent duly considered, pertained to the same allegation that Triad Construction was only due ₱330,075.76.

Public respondent clearly acted within its jurisdiction when it determined the sufficiency of evidence based on documents other than the "Final Quantification" mentioned in the Information. Only after considering the evidence on record, and exercising its jurisdiction to accord appropriate weight to such evidence, did public respondent order petitioners to present their defenses.

Nonetheless, as discussed, these proceedings on the present Petitions do not delve into the sufficiency of the prosecution's evidence. Public respondent's findings are matters addressed to its judgment — reviewable by an appeal, not a petition for *certiorari*.

WHEREFORE, the consolidated Petitions for *Certiorari* are **DISMISSED**, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent Sandiganbayan. The January 29, 2008 and February 18, 2010 Resolutions of the Sandiganbayan, which denied the demurrers to evidence and subsequent motions for reconsideration of petitioners Josephine Espinosa, Noel A. Lobrido, Felicisimo F. Lazarte, Josephine C. Angsico, and Virgilio V. Dacalos are **AFFIRMED**. The case shall proceed to trial.

SO ORDERED.

Carandang, Zalameda, Delos Santos,[*] and *Gaerlan, JJ.*, concur.

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[113] *Id.* at 277.

[*] Designated additional Member per Raffle dated February 26, 2020.

SECOND DIVISION

[G.R. No. 212894. March 4, 2020]

DEPARTMENT OF HEALTH (DOH), represented by the Secretary of Health; and the SECRETARY OF HEALTH, as Head of the Procuring Entity, *petitioners, vs.* **HON. BONIFACIO S. PASCUA, in his capacity as the Presiding Judge of Branch 56, Regional Trial Court in Makati City; and J.D. LEGASPI CONSTRUCTION,** *respondents*.

[G.R. No. 213820. March 4, 2020]

DEPARTMENT OF HEALTH (DOH), represented by the Secretary of Health; and the SECRETARY OF HEALTH, as Head of the Procuring Entity, *petitioners, vs.* **HON. BONIFACIO S. PASCUA, in his capacity as the Presiding Judge of Branch 56, Regional Trial Court in Makati City; and J.D. LEGASPI CONSTRUCTION,** *respondents*.

[G.R. No. 213889. March 4, 2020]

DEPARTMENT OF HEALTH (DOH), represented by the Secretary of Health; and the SECRETARY OF HEALTH, as Head of the Procuring Entity, *petitioners, vs.* **J.D. LEGASPI CONSTRUCTION,** *respondent*.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CASES RENDERED MOOT WHEN IT CEASED TO PRESENT JUSTICIABLE CONTROVERSY BY VIRTUE OF A SUPERVENING EVENT.— The Court acknowledges that the reliefs prayed for in the petitions *i.e.*, to declare that respondent judge committed grave abuse of discretion in issuing the 20-day TRO in violation of RA 8975, which bans the lower courts form issuing restraining orders against government infrastructure

projects; to declare that respondent judge committed grave abuse of discretion in granting the prayer for, and issuing the writ of preliminary injunction; and to declare that the RTC committed reversible error in ordering the petitioners to award the project to respondent JDLC have been rendered moot[.] x x x The cases before the Court cease to present a justiciable controversy by virtue of the DOH's issuance of the Notices to Proceed Phase I and II of the Project in favor of respondent JDLC. As a consequence of the award of the Project in favor of respondent JDLC, the latter already commenced the modernization of the subject hospital. Any decision regarding the legality of the act of respondent judge [on the issues] x x x would be of no practical use or value because of the above-mentioned supervening events. Hence, the petitions should be dismissed for being moot.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Julieanne R. Jorque for respondent J.D. Legaspi Construction.

R E S O L U T I O N

INTING, *J.*:

Before the Court are three petitions docketed as G.R. Nos. 212894,[1] 213820,[2] and 213889[3] all filed by the Department of Health (DOH), represented by the Secretary of Health, then Secretary Enrique T. Ona, and the Secretary of Health, as Head of the Procuring Entity (collectively, petitioners) against Hon. Bonifacio S. Pascua (respondent judge), in his capacity as Presiding Judge of Branch 56, Regional Trial Court (RTC), Makati City and J.D. Legaspi Construction (respondent JDLC).

G.R. No. 212894 is a Petition for *Certiorari* (with Urgent Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) under Rule 65 of the Rules of Court.

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[1] *Rollo* (G.R. No. 212894), pp. 3-46.

[2] *Rollo* (G.R. No. 213820), pp. 3-49.

[3] *Rollo* (G.R. No. 213889, Vol. 1), pp. 3-54.

It assails the Order[4] dated June 18, 2014 of the RTC which granted a temporary restraining order (TRO) for a period of 20 days in favor of respondent JDLC enjoining the DOH from conducting a rebidding or award to a third party of the subject Dr. Jose Fabella Memorial Hospital Infrastructure Project (Project) or any aspect thereof.[5]

G.R. No. 213820 is a Petition for *Certiorari* (with Urgent Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) under Rule 65 of the Rules of Court. It assails the Order[6] dated August 7, 2014 and the Writ of Preliminary Injunction[7] dated August 18, 2014 issued by the RTC. The RTC granted respondent JDLC's application for the issuance of a writ of preliminary injunction conditioned upon the posting of an injunctive bond in the amount of ₱2,000,000.00 to "answer for all damages which [petitioners] may sustain by reason of an injunction (and temporary restraining order earlier issued), if the court should finally decide that the applicant is not entitled thereto."[8]

G.R. No. 213889 is a Petition for Review on *Certiorari* (With Extremely Urgent Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) under Rule 45 of the Rules of Court. It assails the Decision[9] dated August 29, 2014 of the RTC which granted the writs of *certiorari* and *mandamus* in favor of respondent JDLC and awarded the Project in its favor as the lowest calculated and responsive bidder.[10]

The Facts

The antecedents of these consolidated petitions are as follows:

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[4] *Rollo* (G.R. No. 212894), pp. 50-55; penned by Judge Bonifacio S. Pascua.

[5] *Id.* at 55.

[6] *Rollo* (G.R. No. 213820), pp. 52-57.

[7] *Id.* at 58.

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

[9] *Rollo* (G.R. No. 213889, Vol. I), pp. 58-100.

[10] *Id.* at 99-100.

The controversy arose from the bidding of the infrastructure project for Dr. Jose Fabella Memorial Hospital (Fabella Hospital). The modernization project has become imperative since the land it occupied is owned by Home Guaranty Corporation, and Fabella Hospital has been required to transfer to a new site.

On February 14, 2013, Architect Maria Rebecca M. Peñafiel of the National Center for Health Facility Development (NCHFD) of the DOH submitted the approved terms of reference of Phase 1 of the Project to the Central Office Bids and Awards Committee (COBAC) Secretariat, Dr. Ma. Theresa G. Vera. On April 6, 2013, the Invitation to Bid (ITB) for Phase 1 was posted on the Philippine Government Electronic Procurement System (PhilGEPS). On June 4, 2013, the ITB was published in two national newspapers, the *Philippine Star* and the *Philippine Daily Inquirer*, and posted in conspicuous places within the premises of the DOH. On June 11, 2013, the pre-bid conference was conducted.[11]

On June 25, 2013, the bids were opened. Out of the four bidders, only three were declared eligible, including respondent JDLC. On July 1, 2013, Tokwing Construction Corporation (Tokwing Construction) was declared to have submitted the Lowest Calculated Bid. However, on July 25, 2013, the COBAC informed Tokwing Construction that it failed to pass the criteria for post-qualification because it did not submit certified true copies of the necessary documents. On August 6, 2013, COBAC sent a letter to JDLC informing the latter that it was declared as having submitted the Lowest Calculated Bid. After conducting review and deliberations on respondent JDLC's bid, COBAC resolved that JDLC had submitted the second Lowest Calculated and Responsive Bid. On December 11, 2013, COBAC submitted its resolution to the head of the Procuring Entity.[12]

Thereafter, the DOH was advised to review the financing options for the modernization project of Fabella Hospital. As

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[11] *Rollo* (G.R. No. 212894), pp. 85-86.

[12] *Id.* at 86-87.

a result of the instruction, DOH had to cancel the procurement for the project. The NCHFD informed the COBAC Secretariat of the cancellation of the procurement for the project.

As a result of the cancellation of the project, JDLC filed a Petition for the Issuance of the Writ of *Mandamus*[13] dated January 24, 2014 before the RTC. After petitioners filed their Comment[14] to the petition, respondent JDLC filed a Motion for Leave to File and Admit Attached Amended and Supplemental Petition for *Mandamus* and *Certiorari* (With Extremely Urgent Application for Issuance of a TRO and/or Writ of Preliminary Injunction)[15] assailing the cancellation by petitioners of the procurement process of the Project and seeking relief for the award of the Project to respondent JDLC.

The Ruling of the RTC

On June 18, 2014, the RTC issued the assailed Order which granted respondent JDLC's prayer for the issuance of TRO for a period of 20 days, thus:

> Accordingly, without going to the merits of the case and to prevent the issues raised in the principal case from becoming moot and academic causing grave and irreparable damage or injury, in the meantime, this Court resolves to GRANT the application and issue a temporary restraining order for a period of twenty (20) days ENJOINING respondent DOH, its agents, assigns and all persons acting for and in its behalf from conducting a re-bidding or award to a third party of the subject Dr. Jose Fabella Hospital Infrastructure Project, or of any aspect thereof, or any other such acts as would render moot and academic the issues raised in the Amended and Supplemental Petition for *Certiorari* and *Mandamus* with prayer for issuance of Temporary and/or Preliminary Injunction or as would prejudice the rights of the Petitioner.
>
> In the meantime, respondent is hereby directed to show cause on July 11, 2014 at 8:30 a.m. why the issuance of the writ of preliminary injunction should not be granted.

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[13] *Id.* at 71-83.

[14] *Id.* at 84-97.

[15] *Id.* at 98-101.

SO ORDERED.[16]

Hence, petitioners filed the petition, docketed as G.R. No. 212894, alleging that respondent judge committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he issued the TRO in favor of respondent JDLC in violation of Republic Act No. (RA) 8975,[17] which bans lower courts from issuing TRO against National Government Infrastructure Projects.

The RTC then granted respondent JDLC's application for the issuance of a writ of preliminary injunction in its Order dated August 7, 2014 which states:

> WHEREFORE, premises considered, the prayer for the issuance of a writ of preliminary injunction is GRANTED upon posting of an injunctive bond in the amount of Two Million Pesos (₱2,000,000.00), that will answer for all damages which respondents may sustain by reason of an injunction (and temporary restraining order earlier issued), if the court should finally decide that the applicant is not entitled thereto. Upon approval of the requisite bond, let a writ of preliminary [injunction] be issued.
>
> SO ORDERED.[18]

A Writ of Preliminary Injunction[19] was issued on August 18, 2014.

The issuance of the Order dated August 7, 2014 and of the Writ of the Preliminary Injunction dated August 18, 2014 prompted petitioners to file the Petition for *Certiorari* (with Urgent Application for TRO and/or Writ of Preliminary Injunction) docketed as G.R. No. 213820.

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[16] *Rollo* (G.R. No. 212894), p. 55.

[17] 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.

[18] *Rollo* (G.R. No. 213820), pp. 56-57.

[19] *Id.* at 58.

On August 29, 2014, the RTC rendered a Decision granting the writ of *certiorari* and *mandamus* to JDLC. Likewise, the RTC ordered petitioners to award the project to JDLC; thus:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. GRANTING the writ of *certiorari* in favor [of the] petitioner to correct and reverse the cancellation of the procurement process of the Design and Build of Dr. Jose Fabella [Memorial] Hospital Infrastructure Project, under ITB No. 2013-215, ANNULLING thereby all consequences of such cancellation including the re-bidding of the Design and Construction Management aspect of the Dr. Jose Fabella [Memorial] Hospital Infrastructure Project, under Solicitation No. 2014-12, and the consequences thereof;
>
> 2. GRANTING the writ of *mandamus* in favor of petitioner, ordering respondents to immediately and without further delay, issue the Notice of Award to petitioner for the Dr. Jose Fabella [Memorial] Hospital Infrastructure Project of which it has been declared the Lowest Calculated and Responsive Bidder within seven (7) days from receipt of *Writ of Mandamus* in accordance with the maximum period provided for the issuance of a Notice of Award under Annex "C" of the IRR of RA 9184, and execute all necessary succeeding procedures consequent to the issuance of such Notice of Award within the maximum period provided by RA 9184 and its IRR;
>
> 3. AWARDING the contract to petitioner as the Lowest Calculated and Responsive Bidder for the Dr. Jose Fabella [Memorial] Hospital Infrastructure Project;
>
> Let this judgment be served personally upon Respondents pursuant to Section 9, Rule 65 of the Rules of Court.
>
> SO ORDERED.[20]

Aggrieved, petitioners filed a Petition for Review on *Certiorari*, docketed as G.R. No. 213889. In G.R. No. 213889, petitioners insisted that their right to due process was violated when respondent judge failed to conduct hearing of the main case before issuing the subject TRO. JDLC filed its Comment/

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[20] *Rollo* (G.R. No. 213889, Vol. 1), pp. 99-100.

Opposition dated September 12, 2014,[21] December 22, 2014,[22] and December 22, 2014,[23] respectively, praying for the dismissal of the petitions. On February 17, 2015, petitioners filed a Reply[24] to respondent JDLC's Comment/Opposition to the Petition for Review on *Certiorari* in G.R. No. 213889.

Meanwhile, on October 8, 2014, petitioners filed a Motion to Consolidate[25] the three cases. In its Resolution[26] dated September 22, 2014, the Court consolidated the petitions. Respondent JDLC filed a Motion for Reconsideration dated November 11, 2014 praying that the Court's Resolution consolidating the instant petitions be recalled. Petitioners filed a Comment[27] dated December 16, 2014 on respondent JDLC's Motion for Reconsideration.

In a Resolution[28] dated October 17, 2016, the Court required the parties to *MOVE IN THE PREMISES* by informing the Court, within 10 days from notice, of any supervening events or subsequent developments pertinent to the cases which may be of help in the immediate disposition of the petitions or may have rendered the consolidated cases moot.

Petitioners filed their Compliance[29] dated March 16, 2017 which provides in part:

2. As stated in its motions for extension of time, the OSG wrote to the Secretary of Health to request for the required information.

3. In a letter-reply dated March 8, 2017, the Director IV, Legal Service, DOH, Atty. Romela D. Devera, informed the OSG that:

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[21] *Rollo* (G.R. No. 212894), pp. 243-293.

[22] *Rollo* (G.R. No. 213820), pp. 458-499.

[23] *Rollo* (G.R. No. 213889, Vol. 2), pp. 578-640.

[24] *Id.* at 664-683.

[25] *Rollo* (G.R. No. 212894), pp. 354-357.

[26] *Id.* at 338-339.

[27] *Id.* at 383-390.

[28] *Id.* at 428.

[29] *Id.* at 449-454.

> As far as this Office is concerned, there has been no significant circumstance or incident that ensued from the time of the issuance of COBAC Resolution No. 2014-027-A dated October 10, 2014, awarding the Design and Build of Infrastructure Project for Dr. Jose Fabella Memorial Hospital in favor of J.D. Legaspi Construction and from the filing of Compliance with Manifestation on October 13, 2014.
>
> At present, after J.D. Legaspi Construction has finalized the planning and its design, the construction of the Dr. Jose Fabella Memorial Hospital is now in progress.[30]

On the other hand, respondent JDLC submitted its Compliance[31] dated March 20, 2017 and informed the Court that on January 23, 2015, the DOH issued a Notice to Proceed (NTP) with the project and that on May 31, 2015, respondent JDLC commenced works on the Project pursuant to the NTP, thus:

> 1. On 23 January 2015, Petitioner DOH issued the *Notice to Proceed* (NTP) to herein respondent JDLC for the project Procurement of the Design and Build of Infrastructure Project for Dr. Jose Fabella Memorial Hospital (DJFMH) Transfer and Redevelopment (Phase 1) — Rebid under IB No. 2013-215' (the Project), signed by then Secretary of Health Janette Loreto Garin, MD, MBA-H. Respondent commenced works on the Project pursuant to the NTP on 31 May 2015.
>
> 1.1 Since the issuance of the NTP, respondent has been diligently working on the Project with the full cooperation of the end user. To date, respondent has an estimated accomplishment of around 70%, taking into account recently completed works, ongoing works and materials on site. Barring factors beyond the control of the respondent, the project shall be completed on schedule.
>
> 1.2 The budget for the Project was not reverted and had instead been allotted and is being successfully utilized by petitioner DOH. In fact, on 24 February 2017, respondent JDLC's 5th Progress Billing had been indorsed to the Finance Management

[30] *Id.* at 450.

[31] *Id.* at 498-504.

> Services of the DOH for payment in the amount of Eighty Three Million Seven Hundred Ninety Three Thousand Eight Hundred Seventy Three Pesos and 43/100 (PhP83,793,873.43) for accomplishment as of 31 December 2016.

2. On 16 November 2015, the Government Procurement Policy Board issued GPPB Resolution No. 30-2015 approving the DOH's request to resort to Negotiated Procurement to award Phase II of the DJFMH Transfer and Redevelopment to respondent JDLC under Section 53.4 of the Revised IRR of R.A. 9184. Thereafter, on 29 December 2015, respondent JDLC was awarded and issued the corresponding Notice to Proceed for the Phase II of the Project in the total contract amount of Seven Hundred Thirteen Million Eight Hundred Sixty Eight Thousand Five Hundred Fifty Pesos and 65/100 (PhP713,868,550.65). Phase II consists of the construction of the second to sixth floors of the same hospital and is being simultaneously implemented with and on top of the Project subject of the instant petitions.

> 2.1 It must be noted that the award of Phase II to herein respondent is in effect a recognition of the respondent's eligibility and qualification for the Project thereby disproving the petitioners' false claim of ineligibility. The procurement rules explicitly require adjacent projects to be *within the contracting capacity of the contractor* to whom such will be awarded. Respondent submits that the subsequent award of Phase II completely negates the former Health Secretary's erroneous claims and has thereby rendered the petitions moot.[32]

In the Resolution[33] dated July 19, 2017, the Court noted the parties' respective Compliances.

Our Ruling

The petitions have become moot.

The Court acknowledges that the reliefs prayed for in the petitions *i.e.*, to declare that respondent judge committed grave abuse of discretion in issuing the 20-day TRO in violation of RA 8975, which bans the lower courts from issuing restraining orders

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[32] *Id.* at 498-500.

[33] *Id.* at 516-517.

against government infrastructure projects; to declare that respondent judge committed grave abuse of discretion in granting the prayer for, and issuing the writ of preliminary injunction; and to declare that the RTC committed reversible error in ordering the petitioners to award the project to respondent JDLC have been rendered moot by the following:

1. Notice to Proceed issued by petitioner DOH in favor of respondent JDLC on January 23, 2015 giving the latter the green light to commence the Infrastructure Project;

2. Commencement of works by petitioner JDLC of the first phase of the Project on May 31, 2015;

3. 70% estimated accomplishment by respondent JDLC of the Project; and

4. Notice to Proceed issued by petitioner DOH in favor of respondent JDLC to commence the Phase II of the Project in the total contract amount of ₱713,868,550.65.

In *Prof. David v. Pres. Macapagal-Arroyo*[34] *(David)*, the Court defined a moot and academic case in this wise:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.[35]

Although the Court recognized in *David*[36] that there are instances[37] wherein the Court can decide the merit of *moot and academic* cases, none of the exceptions are present in the instant petitions.

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[34] 522 Phil. 705 (2006).

[35] *Id.* at 753-754. Citations omitted.

[36] *Id.* at 754.

[37] *Id.* the following are the exceptional instances: *(1)* there is a grave violation of the Constitution; *(2)* the exceptional character of the situation and the paramount public interest is involved; *(3)* when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *(4)* the case is capable of repetition yet evading review.

The cases before the Court cease to present a justiciable controversy by virtue of the DOH's issuance of the Notices to Proceed Phase I and II of the Project in favor of respondent JDLC. As a consequence of the award of the Project in favor of respondent JDLC, the latter already commenced the modernization of the subject hospital. Any decision regarding the legality of the act of respondent judge in issuing the subject TRO and writ of preliminary injunction and his subsequent issuance of a decision awarding the Project to respondent JDLC would be of no practical use or value because of the above-mentioned supervening events. Hence, the petitions should be dismissed for being moot.

WHEREFORE, the petitions in G.R. No. 212894 and G.R. No. 213820 are **DISMISSED** for being moot. The petition in G.R. No. 213889 is **DENIED** for being moot.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 214647. March 4, 2020]

EDWIN TALABIS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; THE QUESTION OF JURISDICTION MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS, EVEN ON APPEAL; THE CASE OF *TIJAM V. SIBONGHANOY* IS AN

EXCEPTIONAL CASE BECAUSE OF THE PRESENCE OF LACHES.— [T]he question of jurisdiction may be raised at any stage of the proceedings, even on appeal. Although this doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in *Tijam v. Sibonghanoy (Sibonghanoy)*, this Court maintains that the ruling in *Sibonghanoy* is the exception rather than the general rule. In *Calimlim v. Ramirez*, we held that the ruling in *Sibonghanoy* is an exception to the general rule that the lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. The Court stated further that *Sibonghanoy* is an exceptional case because of the presence of laches. Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case, *i.e.*, where the issue of jurisdiction was only raised for the first time in a motion to dismiss filed almost 15 years after the questioned ruling had been rendered by the lower court. In applying the principle of estoppel by laches in *Sibonghanoy*, we considered the patent inequity and unfairness of "having the judgment creditors go up their Calvary once more after more or less 15 years." In such controversy, laches was clearly present; that is, lack of jurisdiction was raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; REVISED FORESTRY CODE OF THE PHILIPPINES (PD 705); SECTION 80 ON THE TWO INSTANCES WHEN A FOREST OFFICER MAY COMMENCE A PROSECUTION FOR VIOLATIONS OF PD 705.—** Section 80 of PD 705 contemplates two instances when a forest officer may commence a prosecution for violations of PD 705. The first instance, on one hand, contemplates a situation where a forest officer arrests without a warrant any person who has committed or is committing, in his presence, any of the offenses described in PD 705. On the other hand, the second instance contemplates a situation where an offense described in PD 705 is not committed in the presence of the forest officer and the commission is brought to his attention by a report or a complaint. In *People v. Court of First Instance of Quezon*, this Court held that "reports and complaints" cover only such reports and complaints as might be brought to the forest officer assigned to the area by other

forest officers, or any deputized officers or officials, for violations of forest laws not committed in their presence, x x x In both cases, the forest officer shall investigate the offender and file a complaint with the appropriate official authorized by law to conduct a preliminary investigation and file the necessary information in court. In other words, Section 80 of PD 705 contemplates situations where acts in violation of the law were committed in the presence of forest officers, or when reports or complaints of violations of PD 705, *albeit* not committed in their presence, are brought to the attention of forest officers by other forest officers or any deputized officers or officials. In such cases, PD 705 specifically recognizes the special authority of forest officers to file the necessary complaint with the appropriate official authorized by law to conduct a preliminary investigation of criminal cases after said forest officer has conducted a warrantless arrest, seizure or confiscation of property, or after his receipt of a complaint of report of violations of PD 705, as the case may be.

3. ID.; ID.; ID.; PRIVATE INDIVIDUALS ARE NOT PRECLUDED BY LAW FROM FILING A COMPLAINT WITH THE PROVINCIAL PROSECUTOR FOR VIOLATION OF SECTION 68 (CUTTING, GATHERING AND/OR COLLECTING TIMBER OR OTHER FOREST PRODUCTS WITHOUT LICENSE) OF PD 705.— [Private individuals are] not precluded by law from filing a complaint with the Provincial Prosecutor for petitioner's alleged violation of Section 68 of PD 705. Section 3, Rule 110 of the Rules of Court enumerates the persons who are authorized to file a criminal complaint. The "complaint" mentioned in this provision, however, refers to one filed in court for the commencement of a criminal prosecution for violation of a crime. This does not refer to a complaint filed with the Prosecutor's Office. As a rule, a criminal action contemplated under Rule 110 is commenced by a complaint or information, both of which are filed in court. Thus, if a complaint is filed directly in court, the same must be filed by those persons delineated in Sections 3 and 5 of the same rule, such as the offended party. In the case of an information, the same must be filed by the fiscal or prosecutor. However, a "complaint" filed with the fiscal or prosecutor from which he/she may initiate a preliminary investigation may be filed by any person. In this regard, Section 80 of PD 705 clearly shows

that a preliminary investigation is commenced after a complaint for violations of the law is filed with a fiscal or prosecutor. x x x Considering the foregoing, the complaint may thus be filed with the Provincial Prosecutor not only by a forest officer, but also by private individuals such as Leonora and Rhoda.

4. CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS.— "For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present, to wit: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture."

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUE RAISED FOR THE FIRST TIME ON APPEAL IS BARRED BY ESTOPPEL.— It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. "Points of law, theories, issues and arguments not brought to the attention of the lower court x x x need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule." x x x [I]ssues raised for the first time on appeal is barred by estoppel. Failure to assert issues and arguments "within a reasonable time" warrants a presumption that the party entitled to assert it either has abandoned or declined to assert it.

6. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED FORESTRY CODE OF THE PHILIPPINES (PD 705); SECTION 68 ON CUTTING, GATHERING AND/OR COLLECTING TIMBER OR OTHER FOREST PRODUCTS WITHOUT LICENSE; VIOLATION IS PUNISHED AS QUALIFIED THEFT; PENALTIES; CASE AT BAR.— Section 68 of PD 705, as amended, refers to Articles 309 and 310 of the RPC for the penalties to be imposed on violators. Violation of Section 68 of PD 705, as amended, is punished as qualified theft. The law treats cutting, gathering, collecting and possessing timber or other forest products without

license as an offense as grave as and equivalent to the felony of qualified theft. Articles 309 and 310 read: Art. 309. *Penalties*.- Any person guilty of theft shall be punished by: x x x 3. The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000) but does not exceed Six hundred thousand pesos (₱600,000). x x x Art. 310. *Qualified theft.*- The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles x x x The RTC found that the value of the cut trees was Twenty-Two Thousand Four Hundred Ninety-Six Pesos And Seventy-Six Centavos (₱22,496.76). With the value of the trees exceeding ₱20,000.00, the basic penalty is *prisión correccional* in its minimum and medium periods. This penalty shall be imposed in its medium period. The indeterminate minimum penalty shall be fixed anywhere within the range of *arresto mayor* in its medium and maximum periods (2 months and 1 day to 6 months) and *prisión correccional* in its minimum and medium periods, medium (1 year, 8 months and 21 days to 2 years, 11 months and 10 days). Considering that the crime of violation of Section 68 of PD 705, as amended, is punished as qualified theft under Article 310 of the RPC, pursuant to the said decree, the imposable penalty on petitioner shall be increased by two degrees, that is, *prisión correccional* in its maximum period to *prision mayor* in its minimum period (4 years, 2 months and 1 day to 8 years). Owing to petitioner's advanced age, the penalty shall be imposed in its minimum period pursuant to Article 64(2) of the RPC. Applying the Indeterminate Sentence Law, the "minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense" or *prisión correccional* in its minimum and medium periods, or anywhere between 6 months and 1 day to 4 years and 2 months, while the maximum penalty shall be fixed anywhere between 4 years, 2 months and 1 day to 8 years of *prisión correccional* in its maximum period to *prision mayor* in its minimum period. We find it proper to impose upon petitioner, under the circumstances obtaining in the instant case, the indeterminate penalty of 1 year, 8 months and 20 days of *prisión correccional*, as minimum, to 5 years, 5 months and 10 days of *prisión correccional*, as maximum.

APPEARANCES OF COUNSEL

Mangallay-Dampac & Partners Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

HERNANDO, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by petitioner Edwin Talabis (petitioner) seeking to reverse the January 16, 2014 Decision[2] and the September 2, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 33097 affirming with modifications the September 9, 2009 Judgment[4] of the Regional Trial Court (RTC), Branch 64 of Abatan, Buguias, Benguet in Criminal Case No. 464-CR-06, finding petitioner and deceased co-accused Arsebino Talabis (Arsebino) guilty beyond reasonable doubt of violating Section 68[5] of Presidential Decree No. 705 (PD 705), otherwise known as the Revised Forestry Code of the Philippines.[6] The September 2, 2014 Resolution of the CA denied petitioner's Motion for Reconsideration.

Factual Antecedents

Leonora Edoc (Leonora) and Rhoda E. Bay-An (Rhoda) filed a Joint Affidavit-Complaint[7] against petitioner and Arsebino

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[1] Under Rule 45 of the Revised Rules of Court.

[2] *Rollo*, pp. 30-48; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Melchor Quirino C. Sadang.

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

[4] CA *rollo*, pp. 41-53; penned by Presiding Judge Agapito K. Laoagan, Jr.

[5] Re-numbered as Section 77 under Section 7, Republic Act No. 7161.

[6] As amended by Presidential Decree No. 1559, Presidential Decree No. 865, Presidential Decree No. 1775, Batas Pambansa Blg. 701, Batas Pambansa Blg. 83, Republic Act No. 7161, and Executive Order No. 277.

[7] Records, pp. 1-2.

before the Office of Provincial Prosecutor Felix T. Cabading of La Trinidad, Benguet. After preliminary investigation, petitioner and Arsebino were charged with the crime of violation of Section 68 of PD 705 in an Information[8] that reads:

> That on or about the 4th day of December 2005, at Sinto Bangao, Municipality of Buguias, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another without any lawful permit or authority whatsoever granted by competent authority to them, did then and there willfully, unlawfully and knowingly cut, collect and gather pine trees having a total volume of 3.1464 cu.m. with a market value of TWENTY[-]TWO THOUSAND FOUR HUNDRED NINETY[-]SIX PESOS AND SEVENTY[-]SIX CENTAVOS (₱22,496.76), Philippine Currency, to the detriment and prejudice of the REPUBLIC OF THE PHILIPPINES, in violation of the said law.
>
> CONTRARY TO LAW.

The RTC thus proceeded with the arraignment of the accused who entered separate pleas of not guilty.[9] Thereafter, trial ensued.

The facts are not in dispute. In the morning of December 4, 2005, while Eric Lanta-an (Eric) and Raymundo Abuyog (Raymundo) were doing gardening work on the land of Leonora in Sinto, Upper Cotcot, Bangao, Buguias, Benguet, they heard the sound of a power chainsaw coming from the edge of the garden. From their vantage point, they saw four men cutting pine trees on the lower part of the land. In particular, they saw one man holding a power chainsaw, and another holding a bolo (who was later identified as Arsebino) while chopping off small branches of felled pine trees, both of whom were with two other men following them. Arsebino then informed Eric that he and his companions were cutting pine trees since they would need to do some work on the land where the said trees were planted.[10]

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[8] *Id.* at 1.

[9] *Id.* at 53-54.

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

Upon arriving at her house at around noontime of the same day, Leonora and her husband, Galbones Edoc (Galbones), noticed that the pine trees planted at the edge of the garden were missing. Eric and Raymundo then informed Leonora and Galbones that four men were cutting pine trees with the use of a power chainsaw. From where she was standing near the cutting site, Leonora saw Arsebino and petitioner, together with two other male companions, cutting pine trees. She also saw herein petitioner directing the man holding a chainsaw, while Arsebino was pointing at certain trees to be cut.[11]

Heeding the advice of Galbones, Leonora immediately went to the residence of Cesar Kitayan (Kitayan), a Forester and Reforestation Unit Head of the Community Environment and Natural Resources Office-Department of Environment and Natural Resources (CENRO-DENR). After reporting to Kitayan that petitioner and Arsebino were cutting pine trees at Cotcot, Buguias, both Leonora and Kitayan proceeded to the cutting site where they saw several felled pine trees. Standing near the felled trees were four men, two of whom were Arsebino and petitioner. Leonora then inquired from petitioner and Arsebino if they have a permit to cut from a competent authority but petitioner and Arsebino only smiled at Leonora without, however, offering a response to her query. Leonora further inquired from Arsebino why he and his companions were cutting pine trees without the required permit. In response thereto, Arsebino relayed to Leonora that he is the owner of the land where the pine trees were located. Leonora, however, insisted that the land belonged to her daughter, Rhoda. This led to a heated argument between Leonora and Arsebino.[12]

Kitayan, on his part, counted a total of 18 felled Benguet pine trees lying on the cutting site. He then took pictures of the felled trees and submitted a report[13] to his superior at the CENRO-DENR. Kitayan instructed Forest Rangers Benny

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[11] *Id.* at 42.

[12] *Id.* at 42-44.

[13] Records, pp. 10-11.

Pesnek, Elias Botangen, and Roland Yawan of Buguias CENRO-DENR to conduct an inventory, and scale and photograph the felled pine trees. In their Inventory and Scaled Report,[14] the Forest Rangers observed that the total volume of the cut pine trees measured 3.1464 cubic meters valued at Twenty-Two Thousand Four Hundred Ninety-Six Pesos and Seventy-Six Centavos (₱22,496.76) in forest charges. As per Leonora's request, the CENRO-DENR issued a certification[15] stating that no permit or authority to cut was issued or granted to Arsebino and/or petitioner.

Ruling of the Regional Trial Court

After trial on the merits, the RTC found petitioner and Arsebino guilty as charged. The dispositive portion of the Judgment reads:

> **WHEREFORE**, the Court finds both Accused Arsebino Talabis and Edwin Talabis, GUILTY beyond reasonable doubt, for Violation of Sec. 68 of P.D. 705, as amended. Both are hereby sentenced to suffer imprisonment of 14 years, 4 months and 1 day to 15 years of *Reclusion Temporal, medium*.
>
> **SO ORDERED.**[16]

In reaching said conclusions, the RTC noted that:

> From the foregoing, the elements of the crime charged are:
>
> (1) That Accused cuts, gathers, collects or removes timber or other forest products;
>
> (2) That timber or other forest products are cut, gathered, collected or removed from the forest land;
>
> (3) That the cutting, gathering, collecting or removing of timber or other forest products is without authority (Law on Illegal Logging by Peñaflor and Perez, page 6, 1997 Edition).
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> x x x x x x x x x

[14] *Id.* at 13.

[15] *Id.* at 18.

[16] CA *rollo*, p. 53.

On this first element, the Court is of the opinion, that the prosecution was able to prove this element beyond reasonable doubt. As between the positive testimony of the prosecution witnesses, that Accused cut the subject trees, and the negative testimonies of Accused, denying the acts imputed to them, the Court is inclined to believe the positive testimonies of the prosecution witnesses. Although it is to be admitted that Edoc has an ax to grind against Arsebino Talabis, because she accused him of land grabbing, to the mind of the Court, it is not sufficient to disregard the testimony of Leonora Edoc, which testimony was sufficiently corroborated by the other prosecution witnesses.

x x x x x x x x x

On the second element, while the Information did not allege, whether or not the subject pine trees were cut from a forest land, this, however, can be inferred from the fact that the same Information did not allege that the subject trees were cut from a private land or alienable and disposable land. Besides, the cutting area is very near the Mt. Data Forest Reservation.

On the third element, it was testified by Sylvia Kitayan, the OIC-Records Officer of the CENRO, Buguias, Benguet, that per records of their office, no cutting permits or authority were granted to Arsebino and Edwin Talabis, to cut pine trees at Cotcot, Bangao, Buguias, Benguet, from the period of November to December 2005. x x x[17]

The motion for reconsideration[18] filed by petitioner and Arsebino was denied by the RTC in its December 1, 2009 Order.[19]

Ruling of the Court of Appeals

Petitioner, in his Brief, although not raised as an assignment of error, discussed for the consideration of the CA that since the offended party under PD 705 is the government, the complaint against petitioner and Arsebino should have been filed by a DENR official, and not by Leonora and Rhoda who are merely private individuals.

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[17] *Id.* at 50-52.

[18] Records, pp. 205-217.

[19] *Id.* at 226.

Pending resolution of petitioner's and Asebino's appeal,[20] a Manifestation with Motion[21] dated November 5, 2010 was filed before the CA which informed the court that Arsebino died on September 30, 2010 as shown by a certified true copy of a Certificate of Death[22] issued by the Office of the Civil Registrar General of San Fernando City, La Union. In a Resolution[23] dated February 8, 2011, the CA dismissed the appeal insofar as Arsebino was concerned. The pertinent portion of the February 8, 2011 Resolution is as follows:

> In *People vs. Bayotas*, the Supreme Court held that the death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. Thus, We hold that the death of the accused-appellant Arsebino Talabis extinguished his criminal liability and the civil liability based solely on the act complaint of. Consequently, the appeal is hereby dismissed without qualification as regards accused-appellant Arsebino Talabis only.[24] (Citation omitted)

Thereafter, the CA, in its January 16, 2014 Decision, affirmed the Judgment of the RTC with modifications. The CA held that the RTC erroneously fixed the minimum period of the penalty at fourteen (14) years, four (4) months and one (1) day of *reclusion temporal* medium. In so ruling, the CA explained that since none of the qualifying circumstances in Article 310 of the Revised Penal Code (RPC) was alleged in the Information, the penalty cannot be increased to two degrees higher. Thus, the proper imposable penalty is that which is prescribed under Article 309 of the RPC.[25] The dispositive portion of the decision reads:

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

[21] CA *rollo*, pp. 96-97.

[22] *Id.* at 98.

[23] *Id.* at 128-130; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Bienvenido L. Reyes (now as retired Member of this Court) and Estella M. Perlas-Bernabe (now a Member of this Court).

[24] *Id.* at 129.

[25] *Id.* at 176.

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The assailed 09 September 2009 Decision and 01 December 2009 Order of Branch 64 of the Regional Trial Court in Abatan, Buguias, Benguet, are hereby **AFFIRMED** with the **MODIFICATION** that appellant Edwin Talabis is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years of *prision correccional* as minimum, to ten (10) years of *prision mayor* as maximum.

The felled Baguio pine trees subject of the instant case are also hereby ordered **CONFISCATED** and **FORFEITED** in favor of the Government.

SO ORDERED.[26]

Petitioner thus sought reconsideration of the January 16, 2014 Decision of the CA. In his Motion for Reconsideration,[27] petitioner imputed error on the CA for its failure to appreciate two mitigating circumstances of voluntary surrender and old age in modifying and imposing the proper penalty against him.

In its Resolution[28] dated September 2, 2014, the CA denied petitioner's Motion for Reconsideration racionating in this wise:

An exhaustive review of the record and the Decision rendered by this Court revealed that x x x the two (2) mitigating circumstances mentioned in the instant motion were never raised by the appellant during his trial as part of his defense. There is, thus, no compelling reason to modify, reverse, or set aside the assailed Decision.[29]

Issues

Undeterred, petitioner filed the instant petition raising the following assignment of errors:

I.

WITH ALL DUE RESPECT, UNDER THE FACTS AND CIRCUMSTANCES SURROUNDING THE CASE, THE COURT

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[26] *Id.* at 177.

[27] *Id.* at 182-186.

[28] *Id.* at 210-211.

[29] *Id.* at 211.

OF APPEALS ERRED IN DENYING THE PETITIONER'S MOTION FOR RECONSIDERATION AS THE TRIAL [COURT] NEVER ACQUIRED JURISDICTION OVER THE INSTANT CASE SINCE THE COMPLAINT WAS FILED BY A PRIVATE INDIVIDUAL AND NOT THE INVESTIGATING FOREST OFFICER.

II.

WITH ALL DUE RESPECT, ASSUMING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE INSTANT CASE, THE COURT OF APPEALS ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCES OF OLD AGE AND VOLUNTARY SURRENDER IN FAVOR OF THE PETITIONER.[30]

Simply put, the issues of the case are as follows: (1) Whether the RTC acquired jurisdiction over Criminal Case No. 464-CR-06 even though it was based on a complaint filed by Leonora and Rhoda, who are private individuals, and not by a DENR forest officer; and (2) Whether petitioner is entitled to the mitigating circumstances of old age and of voluntary surrender.

Our Ruling

The RTC acquired jurisdiction over the criminal case

In his Petition, petitioner maintains that the instant case should be dismissed on the ground of lack of jurisdiction because the complaint against him was filed by private individuals and not by any forest officer as prescribed in Section 80[31] of PD 705, as amended. Section 80 of PD 705 provides, in part:

SEC. 80.[89]. Arrest: Institution of Criminal Actions. — A forest officer or employee of the Bureau or any personnel of the Philippine Constabulary/Integrated National Police shall arrest even without warrant any person who has committed or is committing in his presence any of the offenses defined in this Chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, and the forest products cut, gathered or taken by the offender in the process of committing the offense. The

[30] *Rollo*, p. 16.

[31] Renumbered as Section 89 under Section 7, Republic Act No. 7161.

arresting forest officer or employee shall thereafter deliver within six (6) hours from the time of arrest and seizure, the offender and the confiscated forest products, tools and equipment, **and file the proper complaint with, the appropriate official designated by law to conduct preliminary investigation and file information in Court**.

x x x x x x x x x

Reports and complaints regarding the commission of any of the offenses defined in this Chapter, not committed in the presence of any forest officer or employee, or any personnel of the Philippine Constabulary/Integrated National Police or any of the deputized officers or officials, shall immediately be investigated by the forest officer assigned in the area or any personnel of the Philippine Constabulary/ Integrated National Police where the offense was allegedly committed, who shall thereupon receive the evidence supporting the report or complaint.

If there is a *prima facie* evidence to support the complaint or report, **the investigating forest officer and/or members of the Philippine Constabulary/Integrated National Police shall file the necessary complaint with the appropriate official authorized by law to conduct a preliminary investigation of criminal case and file an information in Court**. [As amended by PD No. 1775] (Emphasis ours)

Given the above recitals, petitioner insists that only the investigating forest officers have the exclusive authority to file the complaint for violation of any of the provisions of PD No. 705 and non-compliance therewith ousts the court of its jurisdiction.

In support of his defense, petitioner pleads this Court to re-evaluate its pronouncement in *Merida v. People*[32] *(Merida)*, where it held that *Section 80 of PD 705 does not prohibit a private individual from filing a complaint before any qualified officer for violation of Section 68 of PD 705*. Notably, the issue raised in *Merida* is identical to the one at bar — whether the trial court acquired jurisdiction over the criminal case even though it was based on a complaint filed by a private individual and not by a DENR forest officer.

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[32] 577 Phil. 243, 251-252 (2008).

Respondent, on its part, argues that by actively participating in the court proceedings, petitioner is already estopped from assailing the jurisdiction of the RTC.

At the outset, the question of jurisdiction may be raised at any stage of the proceedings, even on appeal. Although this doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in *Tijam v. Sibonghanoy*[33] *(Sibonghanoy)*, this Court maintains that the ruling in *Sibonghanoy* is the exception rather than the general rule.

In *Calimlim v. Ramirez*,[34] we held that the ruling in *Sibonghanoy* is an exception to the general rule that the lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. The Court stated further that *Sibonghanoy* is an exceptional case because of the presence of laches. Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case,[35] *i.e.*, where the issue of jurisdiction was only raised for the first time in a motion to dismiss filed almost 15 years after the questioned ruling had been rendered by the lower court. In applying the principle of estoppel by laches in *Sibonghanoy*, we considered the patent inequity and unfairness of "having the judgment creditors go up their Calvary once more after more or less 15 years."[36] In such controversy, laches was clearly present; that is, lack of jurisdiction was raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.[37]

The factual settings attendant in *Sibonghanoy*[38] are not present in the case at bar. It bears noting that petitioner, in his Brief

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[33] 131 Phil. 556 (1968).

[34] 204 Phil. 25, 34-35 (1982).

[35] *Figueroa v. People*, 580 Phil. 58, 71 (2008).

[36] *Id.* at 77.

[37] *Id.* at 74.

[38] *Tijam v. Sibonghanoy*, *supra* note 33.

and during appeal before the CA, already raised the issue on Leonora's and Rhoda's authority to file the complaint against him and Arsebino for violating the provisions of PD 705. At that time, no considerable period had yet elapsed for laches to attach.

Having disposed of the procedural issue, this Court will now proceed with the issue of whether the RTC acquired jurisdiction over the criminal case based on a complaint filed by private individuals and not by a forest officer.

To be clear, Section 80 of PD 705 contemplates two instances when a forest office[39] may commence a prosecution for violations of PD 705. The first instance, on one hand, contemplates a situation where a forest officer arrests without a warrant any person who has committed or is committing, in his presence, any of the offenses described in PD 705. On the other hand, the second instance contemplates a situation where an offense described in PD 705 is not committed in the presence of the forest officer and the commission is brought to his attention by a report or a complaint.[40]

In *People v. Court of First Instance of Quezon*,[41] this Court held that "reports and complaints" cover only such reports and complaints as might be brought to the forest officer assigned to the area by other forest officers, or any deputized officers or officials, for violations of forest laws not committed in their presence, thus:

> The trial court erred in dismissing the case on the ground of lack of jurisdiction over the subject matter because the information was filed not pursuant to the complaint of any forest officer as prescribed in Section 80 of P.D. 705. We agree with the observation of the Solicitor General that:

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[39] Presidential Decree No. 1775, which amended Section 80 of PD 705, authorized members of the Philippine Constabulary/Integrated National Police to file complaints against forestry law violators.

[40] *People v. Court of First Instance of Quezon*, 283 Phil. 78, 87-88 (1992).

[41] *Id.* at 88.

> x x x [T]he authority given to the forest officer to investigate reports and complaints regarding the commission of offenses defined in P.D. No. 705 by the said last and penultimate paragraphs of Section 80 may be considered as covering only such reports and complaints as might be brought to the forest officer assigned to the area by other forest officers or employees of the Bureau of Forest Development, or any of the deputized officers or officials, for violations of forest laws not committed in their presence. Such interpretation becomes cogent when we consider that the whole of Section 80 deals precisely with the authority of forest officers or employees to make arrests and institute criminal actions involving offenses defined in the Decree.[42] (Citation omitted)

In both cases, the forest officer shall investigate the offender and file a complaint with the appropriate official authorized by law to conduct a preliminary investigation and file the necessary information in court.

In other words, Section 80 of PD 705 contemplates situations where acts in violation of the law were committed in the presence of forest officers, or when reports or complaints of violations of PD 705, *albeit* not committed in their presence, are brought to the attention of forest officers by other forest officers or any deputized officers or officials. In such cases, PD 705 specifically recognizes the special authority of forest officers to file the necessary complaint with the appropriate official authorized by law to conduct a preliminary investigation of criminal cases after said forest officer has conducted a warrantless arrest, seizure or confiscation of property, or after his receipt of a complaint of report of violations of PD 705, as the case may be.[43]

The factual milieus of the case readily show that none of the two situations or instances contemplated under Section 80 of PD 705 are present which would thereby trigger the application of its provisions relating to commencement of criminal

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[42] *Id.*

[43] *Id.* at 89.

prosecution by a forest officer. In this case, it was not a forest officer who reported to Kitayan the tree-cutting activities of petitioner and Arsebino in Cotcot, Bangao, Buguias, Benguet, but Leonora, a private individual, who had a land dispute with Arsebino over the land covering the cutting site. Hence, Section 80, particularly the second category thereof, will not apply in the instant case.

To further support his argument, petitioner cites Rule 110 of the Rules of Court which provides, among others, for certain crimes that may not be prosecuted unless the complaint has been filed by specific individuals. Petitioner maintains that cases involving violations of PD 705 fall within the contemplation of the said rule — that violations of PD 705 may not be prosecuted unless the complaint has been filed by the investigating forest officer. This contention deserves scant consideration.

Whether Section 80 of PD 705 contemplates complaints or reports coming from private individuals or by other forest officers or deputized officials, Leonora and/or Rhoda were not precluded by law from filing a complaint with the Provincial Prosecutor for petitioner's alleged violation of Section 68 of PD 705.

Section 3, Rule 110[44] of the Rules of Court enumerates the persons who are authorized to file a criminal complaint. The "complaint" mentioned in this provision, however, refers to one filed in court for the commencement of a criminal prosecution for violation of a crime. This does not refer to a complaint filed with the Prosecutor's Office.[45]

As a rule, a criminal action contemplated under Rule 110 is commenced by a complaint or information, both of which are filed in court. Thus, if a complaint is filed directly in court, the same must be filed by those persons delineated in Sections

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[44] Section 3. *Complaint defined*. — A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.

[45] *Ebarle v. Sucaldito*, 240 Phil. 772, 790-791 (1987).

3 and 5 of the same rule, such as the offended party. In the case of an information, the same must be filed by the fiscal or prosecutor. However, a "complaint" filed with the fiscal or prosecutor from which he/she may initiate a preliminary investigation may be filed by any person.[46]

In this regard, Section 80 of PD 705 clearly shows that a preliminary investigation is commenced after a complaint for violations of the law is filed with a fiscal or prosecutor. *People v. Court of First Instance of Quezon*[47] is instructive:

> Likewise, the Solicitor General was correct in insisting that P.D. 705 did not repeal Section 1687 of the Administrative Code giving authority to the fiscal to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the crime.
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> x x x x x x x x x
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> **With the exception of the so-called "private crimes" and in election offenses, prosecutions in Courts of First Instance may be commenced by an information signed by a fiscal after conducting a preliminary investigation**. Section 80 of P.D. 705 did not divest the fiscals of this general authority. Neither did the said decree grant forest officers the right of preliminary investigations. In both cases under said Sec. 80 namely, 1) after a forest officer had made the arrest (for offenses committed in his presence) or; 2) after conducting an investigation of reports or complaints of violations of the decree (for violations not committed in his presence) — **he is still required to file the proper complaint with the appropriate official designated by law to conduct preliminary investigations in court**. Said section should not be interpreted to vest exclusive authority upon forest officers to conduct investigations regarding offenses described in the decree rather, it should be construed as granting forest officers and employees special authority to arrest and investigate offenses described in P.D. 705, to reinforce the exercise of such authority by those upon whom it is vested by general law.

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[46] *Salazar v. People*, 439 Phil. 762, 776-777 (2002). See also *Ebarle v. Sucaldito, id.* at 791.

[47] *Supra* note 40 at 88-89.

Considering the foregoing, the complaint may thus be filed with the Provincial Prosecutor not only by a forest officer, but also by private individuals such as Leonora and Rhoda.

Petitioner, nonetheless, further argues that PD 705, being a special law, should prevail over the general rule provided in Rule 110 of the Rules of Court that anyone, whether a private individual or not, may initiate criminal proceedings through the filing of a complaint before officers authorized to conduct preliminary investigation.

We disagree. As already held by this Court in *Merida*:[48]

> The Revised Rules of Criminal Procedure (Revised Rules) list the cases which must be initiated by a complaint filed by specified individuals, non-compliance of which ousts the trial court of jurisdiction from trying such cases. However, these cases concern only defamation and other crimes against chastity and not to cases concerning Section 68 of PD 705, as amended. x x x (Citations omitted)

Hence, *a complaint for purposes of preliminary investigation by the fiscal need not be filed by the offended party. "The rule has been that, unless the offense subject thereof is one that cannot be prosecuted de oficio* [or is private in nature], *the same may be filed, for preliminary investigation purposes, by any competent person."*[49] *Proceeding from the foregoing discussion, the complaint thus filed by Leonora and Rhoda with the Provincial Prosecutor was valid.*

While we are not unaware that prosecution for violation of special laws shall be governed by its provisions,[50] this Court is not inclined to interpret Section 80 of PD 705 as to limit the authority to file criminal complaints to forest officers.

Admittedly, there are certain instances when an administrative body is vested exclusive authority to determine when to institute

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[48] *Merida v. People, supra* note 32 at 251, citing RULES OF COURT, Rule 110, Sec. 5.

[49] *Santos-Concio v. Department of Justice*, 567 Phil. 70, 83-84 (2008), citing *Soriano v. Casanova*, 520 Phil. 963, 971 (2006).

[50] RULES OF COURT, Rule 110, Sec. 5.

a criminal action for a violation of the law entrusted to it for administration or enforcement to the exclusion of the regular prosecution service of the government. Thus, in Mead v. Argel[51] *(Mead),* this Court held that a prosecutor may only file an information for violations of the Anti-Pollution Law (Republic Act No. 3931) only after the National Water and Air Pollution Control Commission has determined that the offender indeed caused pollution. The filing of the information for violation of the law prior to such determination is premature and unauthorized. Thus, the court is without jurisdiction to take cognizance of the offense charged in the information.

Along the same lines, this Court, in *Yao Lit v. Geraldez*,[52] ***upheld the authority of the Commissioner of Immigration to determine whether to impose an administrative fine or to prosecute criminally the offender before the court for committing acts in violation of the provisions of the Alien Registration Act of 1950 (Republic Act No. 751). Consequently, we held that the prosecuting fiscal acted in excess of his authority in immediately prosecuting the offender in court without first affording the Commissioner of Immigration an opportunity to exercise his discretion over the matter involved in the offense charged***.

Notably, the recognition of such exclusive authority of the officials in these cases is not without significance. As in *Mead*,[53] the determination of the existence of "pollution" requires specialized knowledge of technical and scientific terms — matters which are not ordinarily within the competence of fiscals or of those sitting in a court of justice, more so on the part of ordinary private individuals. In *Yao Lit*,[54] the exclusive authority of the Commissioner was recognized ***for the reason that said official "has better facilities than the prosecuting***

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[51] 200 Phil. 650, 664 (1982).

[52] 106 Phil. 545, 548-549 (1959).

[53] *Mead v. Argel, supra* note 51 at 662-663.

[54] *Yao Lit v. Geraldez, supra* note 52.

officials to carry out the provisions of said Act, the former official being the keeper of records pertaining to aliens."[55] Simply put, the determination of whether criminal prosecution should be instituted is premised on the supposition that specific technical expertise are required to ascertain whether the act committed constitutes an offense as defined by law, or where there is a need to collect various information relating to the offense committed which are within the exclusive possession, custody, or care of the administrative body or agency.

Such is not the case at bar. If the intent of the law was to conform with the principles enunciated in *Mead*[56] and *Yao Lit*,[57] thereby limiting the authority to file criminal complaints against forestry law violators to forest officers, an amendatory law[58] would not have been enacted which likewise expressly authorized the National Police to file complaints against violators of PD 705. Moreover, PD 705 was further amended precisely to "encourage and further expand the participation of the *private sector* in forest management, protection and development as well as in wood processing activities within the concept of joint or co-management of the forest resources."[59]

All told, Section 89 of PD 705 should not be interpreted to vest exclusive authority upon forest officers to conduct investigations and file criminal complaints regarding offenses described in PD 705. Rather, said provision should be construed as a recognition and reinforcement of their special authority to conduct warrantless arrests, seize and confiscate property, and proceeding therefrom, file the necessary complaints against forestry law offenders.

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[55] *Id.* at 549.

[56] *Mead v. Argel, supra* note 51.

[57] *Yao Lit v. Geraldez, supra* note 52.

[58] Presidential Decree No. 1775. Approved January 14, 1981.

[59] Third Whereas Clause, Presidential Decree No. 1559. Approved June 11, 1978.

Petitioner is not entitled to the mitigating circumstance of voluntary surrender.

As earlier mentioned, petitioner filed his motion for reconsideration of the January 16, 2014 Decision of the CA where, for the first time, he brought to the attention of the CA the mitigating circumstances of voluntary surrender and old age for the purpose of modifying and imposing the proper penalty against him. As his motion for reconsideration was denied, petitioner now imputes fault on the CA for not appreciating the two mitigating circumstances in his favor.

The CA was correct in refusing to take cognizance of the belatedly-raised issue of whether or not petitioner is entitled to the mitigating circumstance of voluntary surrender.

It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. "Points of law, theories, issues and arguments not brought to the attention of the lower court x x x need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule."[60]

"For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present, to wit: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture."[61]

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[60] *Jamaca v. People*, 764 Phil. 683, 692 (2015), citing *S.C. Megaworld Construction and Development Corporation v. Parada*, 717 Phil. 752, 760 (2013).

[61] *People v. Manzano*, G.R. No. 217974, March 5, 2018, 857 SCRA 322, 356.

Thus, if such mitigating circumstance was considered by the CA, or this Court for that matter, the prosecution would be denied due process as it would have been denied the opportunity to present evidence to disprove that petitioner did surrender spontaneously and voluntarily to the authorities.

In any event, issues raised for the first time on appeal is barred by estoppel.[62] Failure to assert issues and arguments "within a reasonable time" warrants a presumption that the party entitled to assert it either has abandoned or declined to assert it.[63]

Accordingly, the supposed failure on the part of the CA to appreciate the mitigating circumstance of voluntary surrender in petitioner's favor cannot now be raised as an assignment of error in the present petition.

This Court, however, is aware that herein petitioner is 83 years old as of date as evidenced by his Certificate of Live Birth[64] issued by the Municipal Civil Registrar of Buguias, Benguet. While petitioner could have likewise alleged his advanced age before the RTC, this Court, for equitable and humanitarian considerations, cannot simply ignore and disregard the same for the sole purpose of determining the proper penalty to be meted out against him.

The penalty to be imposed upon petitioner

The CA held that the RTC erroneously fixed the minimum period of the penalty at fourteen (14) years, four (4) months and one (1) day of *reclusion temporal* medium. In so ruling, the CA explained that since none of the qualifying circumstances in Article 310 of the Revised Penal Code (RPC) was alleged in the information, the penalty cannot be increased to two degrees

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[62] *Jamaca v. People, supra* note 60 at 692.

[63] *United Church of Christ in the Philippines, Inc. v. Bradford United Church of Christ, Inc.*, 688 Phil. 408, 419 (2012).

[64] CA *rollo*, p. 187.

higher. Thus, the proper imposable penalty is that which is prescribed under Article 309 of the RPC. As to the imposable penalty on the petitioner, the CA imposed an indeterminate penalty of imprisonment of six (6) years of *prision correccional* as minimum, to ten (10) years of *prision mayor* as maximum in accordance with the penalty prescribed under Article 309 of the RPC.

The Court does not agree.

Section 68 of PD 705,[65] as amended, refers to Articles 309 and 310 of the RPC for the penalties to be imposed on violators. Violation of Section 68 of PD 705, as amended, is punished as qualified theft.[66] The law treats cutting, gathering, collecting and possessing timber or other forest products without license as an offense as grave as and equivalent to the felony of qualified theft.[67]

Articles 309[68] and 310 read:

Art. 309. *Penalties*. — Any person guilty of theft shall be punished by:

x x x x x x x x x

3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000) but does not exceed Six hundred thousand pesos (₱600,000).

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[65] Section 68 provides: "Sec. 68. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products without License*. — Any person who shall x x x possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code. x x x"

[66] *Merida v. People*, *supra* note 32 at 257, citing *People v. Dator*, 398 Phil. 109, 124 (2000). See also *Crescencio v. People*, 747 Phil. 577, 589 (2014), and Presidential Decree No. 330, Penalizing Timber Smuggling or Illegal Cutting of Logs from Public Forests and Forest Reserves as Qualified Theft.

[67] *Taopa v. People*, 592 Phil. 341, 345 (2008).

[68] As amended by Republic Act No. 10951, August 29, 2017.

x x x x x x x x x

Art. 310. *Qualified theft*. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles x x x (emphasis supplied).

The RTC found that the value of the cut trees was Twenty-Two Thousand Four Hundred Ninety-Six Pesos and Seventy-Six Centavos (₱22,496.76).[69] With the value of the trees exceeding ₱20,000.00, the basic penalty is *prision correccional* in its minimum and medium periods. This penalty shall be imposed in its medium period.[70] The indeterminate minimum penalty shall be fixed anywhere within the range of *arresto mayor* in its medium and maximum periods (2 months and 1 day to 6 months) and *prision correccional* in its minimum and medium periods, medium (1 year, 8 months and 21 days to 2 years, 11 months and 10 days).

Considering that the crime of violation of Section 68 of PD 705, as amended, is punished as qualified theft under Article 310 of the RPC, pursuant to the said decree, the imposable penalty on petitioner shall be increased by two degrees, that is, *prision correccional* in its maximum period to *prision mayor* in its minimum period (4 years, 2 months and 1 day to 8 years).

Owing to petitioner's advanced age, the penalty shall be imposed in its minimum period pursuant to Article 64 (2) of the RPC. Applying the Indeterminate Sentence Law, the "minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense" or *prision correccional* in its minimum and medium periods, or anywhere between 6 months and 1 day to 4 years and 2 months, while the maximum penalty shall be fixed anywhere between 4 years, 2 months and 1 day to 8 years of *prision correccional* in its maximum period to *prision mayor* in its minimum period.

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[69] Records, p. 13.

[70] REVISED PENAL CODE, Article 64, par. 1.

We find it proper to impose upon petitioner, under the circumstances obtaining in the instant case, the indeterminate penalty of 1 year, 8 months and 20 days of *prision correccional*, as minimum, to 5 years, 5 months and 10 days of *prision correccional*, as maximum.

WHEREFORE, the Petition is **DENIED**. The assailed January 16, 2014 Decision and the September 2, 2014 Resolution of the Court of Appeals in CA-G.R. CR No. 33097 are **AFFIRMED** with the modification that petitioner Edwin Talabis is sentenced to suffer imprisonment of one (1) year, eight (8) months and twenty (20) days of *prision correccional*, as minimum, to five (5) years, five (5) months and ten (10) days of *prision correccional*, as maximum.

SO ORDERED.

Reyes, A. Jr. (Acting Chairperson), Reyes, J. Jr.,[*] *Inting,* and *Delos Santos, JJ.*, concur.

FIRST DIVISION

[G.R. No. 223335. March 4, 2020]

TEROCEL REALTY, INC. (now PECHATEN CORPORATION), *petitioner, vs.* **LEONARDO MEMPIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF; MAY BE MADE BY MOTION WITHIN

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[*] Designated Additional Member Per February 19, 2020 Raffle vice Senior Associate Justice Estela M. Perlas-Bernabe who recused from the case due to prior participation in the Court of Appeals.

FIVE (5) YEARS FROM ENTRY OF JUDGMENT, AND WHEN SUCH PERIOD EXPIRED, BY AN INDEPENDENT ACTION WITHIN TEN (10) YEARS FROM FINALITY OF JUDGMENT; BY PURSUING A MOTION FOR EXECUTION ONLY AFTER TWELVE (12) YEARS FROM ENTRY OF JUDGMENT, PETITIONER IS NOT ENTITLED TO EXECUTION EITHER BY MOTION OR INDEPENDENT ACTION SINCE ITS RIGHT TO DO SO IS ALREADY BARRED BY PRESCRIPTION.— [A] final and executory judgment may be executed by motion within five (5) years from entry of judgment. x x x [E]xecution by independent action is available in cases where the five-year period had already expired. The action then must be filed before it is barred by the statute of limitations which under the Civil Code is ten (10) years from finality of judgment. Here, it is undisputed that although petitioner filed its first motion for execution in the unlawful detainer case within the prescribed five-year period, it never pursued the same and was therefore deemed to have abandoned it. When petitioner, nonetheless, filed its second motion for execution, twelve (12) years had already elapsed from entry of judgment (September 20, 2001). Undoubtedly, the second motion was filed seven (7) years beyond the five-year period. Verily, therefore, MeTC–Branch 28 correctly denied the second motion. x x x [P]etitioner is no longer entitled to execution of judgment either by motion or independent action since its right to do so is already barred by prescription. Surely, it is the duty of the courts not to enforce a stale judgment.

2. ID.; ID.; ID.; ID.; *MANDAMUS* IS NOT A PROPER REMEDY TO COMPEL EXECUTION OF A JUDGMENT.— Under the Rules on Civil Procedure, a writ of *mandamus* may issue when there is a clear legal duty imposed upon the office or the officer to perform an act, and when the party seeking *mandamus* has a clear legal right to the performance of such act. Certainly, *mandamus* is never issued in doubtful cases. It cannot be availed of against an official or government agency whose duty requires the exercise of discretion or judgment. The writ of *mandamus* will not issue either to compel officials to do something which is not their duty to do or which it is their duty not to do, or to give to the applicant anything to which he is not entitled by law.

APPEARANCES OF COUNSEL

Cruz & Capule Law Offices for petitioner.
Neil L. Salcedo for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 137368 entitled "*Terocel Realty, Inc. (now Pechaten Corporation) v. Hon. Andy S. De Vera, in his capacity as Presiding Judge of the Metropolitan Trial Court of Manila, Branch 28 and Leonardo Mempin,"* for *mandamus*:

1) Decision[1] dated July 23, 2015, affirming the dismissal of the petition for *mandamus* to compel the Metropolitan Trial Court (MeTC) - Branch 28, Manila to issue the writ of execution in Civil Case No. 166014; and

2) Resolution[2] dated March 8, 2016, denying petitioner's motion for reconsideration.

Antecedents

In Civil Case No. 166014 entitled "*Terocel Realty, Inc. v. Leonardo Mempin*" for unlawful detainer, MeTC-Branch 28 rendered its Decision dated April 26, 2000, granting the complaint of petitioner Terocel Realty, Inc. (now Pechaten Corporation) and requiring respondent Leonardo Mempin to vacate subject property known as Lot 68, Block 5-E in Sampaloc, Manila.

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[1] Penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court) with the concurrence of Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Stephen C. Cruz, *rollo*, pp. 24-36.

[2] *Id*. at 39-40.

On appeal, the Regional Trial Court - Branch 12, Manila (RTC-Branch 12), by Decision dated August 10, 2001, affirmed. Following the finality of the RTC decision, petitioner moved for execution of judgment on September 13, 2001. Respondent opposed. He claimed that he was one of the prospective beneficiaries of the complaint for expropriation being then pursued by the City of Manila pursuant to its Ordinance No. 8012. Among the properties sought to be expropriated was the lot in question.[3]

By Order dated January 8, 2003, RTC-Branch 12 granted petitioner's motion for execution and issued the corresponding writ of execution. It also denied respondent's motion to defer execution under Order dated November 14, 2003. Per Sheriffs Report dated July 1, 2003, respondent was alleged to have refused to vacate the property.[4] On this score, respondent called the trial court's attention to the expropriation complaint filed by the City of Manila sometime in December 2003 against petitioner, Alegar Corporation, and Filomena *Vda*. *De* Legarda. The complaint was docketed SP No. 03-108565 and raffled to RTC-Branch 47.[5]

Records showed, however, that RTC-Branch 47 dismissed the complaint for expropriation. The decree of dismissal was affirmed twice, first by the Court of Appeals[6] and next, by this Court.[7] This Court's decree became final and executory per Entry of Judgment dated August 6, 2012.[8]

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[3] *Id*. at 25.

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

[5] *Id*. at 26.

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

[7] *City of Manila v. Alegar Corporation*, 689 Phil. 31, 43 (2012). "WHEREFORE, the Court DENIES the petition and AFFIRMS the decision of the Court of Appeals dated February 27, 2009 in CA-G.R. CV 90530 subject to the following MODIFICATIONS:

1. Petitioner City of Manila is ordered to indemnify respondents Alegar Corporation, Terocel Realty Corporation, and Filomena *Vda*. *De* Legarda in the amount of ₱50,000.00 as attorney's fees;

Thereafter, petitioner went back to MeTC-Branch 28 through another motion for execution. MeTC-Branch 28 denied the same on the ground that it was filed beyond the prescribed five-year period for execution by motion. Petitioner's motion for execution was filed only on February 15, 2013 or twelve (12) years after the Decision dated August 10, 2001 became final and executory. According to MeTC-Branch 28, the complaint for expropriation was not a supervening event which served to toll the five-year prescriptive period. Besides, respondent was not even a party to the expropriation case.[9] Petitioner's motion for reconsideration was denied through Order dated July 30, 2013.[10]

Petitioner went to RTC-Manila via a petition for *mandamus* docketed as SCA No. 13-131042. It sought to compel MeTC-Branch 28 to issue the writ of execution in the unlawful detainer case. The case was raffled to RTC-Branch 54 which ruled that *mandamus* did not lie to direct a lower court on how it should resolve a motion for execution.[11]

On petitioner's appeal,[12] the Court of Appeals affirmed under Decision dated July 23, 2015. It ruled that the expropriation case was not a supervening event which had the effect of freezing the five-year period for execution of judgment by motion. The court emphasized that respondent was only a prospective beneficiary of the City of Manila's land grant program, thus,

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2. Respondents Alegar Corporation, Terocel Realty Corporation, and Filomena *Vda. De* Legarda are in turn ordered to return the advance deposit of ₱1,500,000.00 that they withdrew incident to the expropriation case; and

3. This decision is without prejudice to the right of the City of Manila to re-file their action for expropriation after complying with what the law requires.

SO ORDERED."

[8] *Rollo*, p. 27.

[9] *Id*.

[10] *Id*. at 28.

[11] *Id*.

[12] *Id*. at 29.

his right, if any, was merely inchoate.[13] Besides, the expropriation case did not have the effect of precluding petitioner from enforcing its own writ of execution against respondent in the unlawful detainer case.[14]

Too, it noted that even the ten-year period for execution by action had already expired as of September 20, 2011. More important, a writ of *mandamus* will not lie to compel the lower courts to execute judgment beyond the five-year or ten-year limits.

The Court of Appeals subsequently denied petitioner's motion for reconsideration under its assailed Resolution[15] dated March 8, 2016.

The Present Petition

Petitioner now invokes the Court's discretionary appellate jurisdiction to review and reverse the Decision dated July 23, 2015 and Resolution dated March 8, 2016. Petitioner reiterates that the expropriation case and the subsequent writ of possession affecting the property were supervening events which had the effect of suspending the execution of judgment in the unlawful detainer case.[16]

In his Comment[17] dated July 30, 2018, respondent essentially counters that the expropriation case and unlawful detainer case are distinct actions which may proceed independently of each other and that *mandamus* will not lie to compel a court of law to issue a writ of execution.

Issues

1) Did the complaint for expropriation constitute a supervening event which had the effect of interrupting

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

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

[15] *Id*. at 39-40.

[16] *Id*. at 14-19.

[17] *Id*. at 159-163.

the five-year period for execution of judgment by motion in the unlawful detainer case?

2) Does *mandamus* lie to compel execution of judgment by motion beyond the five-year period?

Ruling

The petition utterly lacks merit.

Petitioner's motion for execution is already barred by prescription

Section 6, Rule 39 of the Rules of Court governs execution of judgment by motion or by independent action, *viz.*:

> Section 6. Execution by motion or by independent action. — A final and executory judgment or order may be executed on motion with in five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)

On one hand, a final and executory judgment may be executed by motion within five (5) years from entry of judgment.[18] On the other, execution by independent action is available in cases where the five-year period had already expired. The action then must be filed before it is barred by the statute of limitations which under the Civil Code is ten (10) years from finality of judgment.[19]

Here, it is undisputed that although petitioner filed its first motion for execution in the unlawful detainer case within the prescribed five-year period, it never pursued the same and was therefore deemed to have abandoned it. When petitioner, nonetheless, filed its second motion for execution, twelve (12)

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[18] *Villareal, Jr. v. MWSS*, G.R. No. 232202, February 28, 2018, 857 SCRA 162, 169-170.

[19] *Funk v. Santos Ventura Hocorma Foundation, Inc.*, 789 Phil. 348, 360 (2016).

years had already elapsed from entry of judgment (September 20, 2001). Undoubtedly, the second motion was filed seven (7) years beyond the five-year period. Verily, therefore, MeTC –Branch 28 correctly denied the second motion.

In petitioner's attempt to take out the case from the five-year prescriptive period, however, it asserts that the filing of the expropriation case was a supervening event which served to suspend the five-year period.

The issue is not novel. *Republic v. Mangrobang*[20] enunciated: "*In the ejectment case, the issue is possession of the disputed property, while in the eminent domain case, the issue is the taking by the State of the property by virtue of its power of eminent domain. Note, however, that the decision in one will not necessarily affect the decision in the other.*" So must it be.

In any event, while in exceptional cases, the Court had allowed execution by motion even after the lapse of the five-year period, these cases had one common denominator: the judicial debtor itself caused or incurred the delay for its personal benefit or advantage.[21]

This is not the case here. As judicial debtor, respondent did not have any hand in the filing of the expropriation complaint, the issuance of the writ of execution, or the supposed pronouncement of the City of Manila that it did not plan to eject the actual occupants of the affected properties. In fact, respondent himself was not even a party to the expropriation case nor a recognized beneficiary thereof by the City of Manila.

Mandamus is not a proper remedy to compel execution of judgment

Under the Rules on Civil Procedure, a writ of *mandamus* may issue when there is a clear legal duty imposed upon the office or the officer to perform an act, and when the party seeking *mandamus* has a clear legal right to the performance of such

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[20] 422 Phil. 178, 186 (2001).

[21] *Yau v. Silverio, Jr.*, 567 Phil. 493, 503 (2008).

act.[22] Certainly, *mandamus* is never issued in doubtful cases. It cannot be availed of against an official or government agency whose duty requires the exercise of discretion or judgment.[23] The writ of *mandamus* will not issue either to compel officials to do something which is not their duty to do or which it is their duty not to do, or to give to the applicant anything to which he is not entitled by law.[24]

Here, petitioner is no longer entitled to execution of judgment either by motion or independent action since its right to do so is already barred by prescription. Surely, it is the duty of the courts not to enforce a stale judgment.

ACCORDINGLY, the petition is **DENIED.** The Decision dated July 23, 2015 and Resolution dated March 8, 2016 of the Court of Appeals in CA-G.R. SP No. 137368 are **AFFIRMED**.

SO ORDERED.

Caguioa (Acting Chairperson), Inting,[*] and *Lopez, JJ.,* concur.

Peralta, C.J. (Chairperson), on official business.

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[22] *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 527 (2017).

[23] *First Class Cadet Aldrin Jeff P. Cudia v. The Superintendent of the Philippine Military Academy*, 754 Phil. 590, 638 (2015).

[24] *Uy Kiao Eng v. Nixon Lee*, 624 Phil. 200, 207 (2010).

[*] Designated as additional member per raffle held on June 19, 2019.

FIRST DIVISION

[G.R. No. 223628. March 4, 2020]

EDNA S. KONDO, represented by Attorney-in-fact, LUZVIMINDA S. PINEDA, *petitioner*, *vs.* **CIVIL REGISTRAR GENERAL,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR NEW TRIAL; GROUNDS.— For the court to grant a new trial on ground of newly discovered evidence, the following requirements must be met: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been presented during the trial with the exercise of reasonable diligence, it cannot be considered newly discovered.

2. ID.; ID.; RULES OF PROCEDURE; MEANT TO FACILITATE ADMINISTRATION OF FAIRNESS AND MAY BE RELAXED WHEN A RIGID APPLICATION HINDERS SUBSTANTIAL JUSTICE; CASE AT BAR.— [W]hat is at stake is not merely Edna's status, but also her actual marital and family life. In fact, Edna addressed a handwritten letter, dated April 22, 2017, to this Court stating she had been anxiously worried for years about the possible repercussions that Philippine laws may have on her because she, too, had remarried in Japan in November 2014. Considering the recent jurisprudence on mixed marriages under Article 26 of the Family Code, the trial court should have been more circumspect in strictly adhering to procedural rules. For these rules are meant to facilitate administration of fairness and may be relaxed when a rigid application hinders substantial justice.

CAGUIOA, *J., separate concurring opinion*:

1. CIVIL LAW; FAMILY CODE; ARTICLE 26(2) THEREOF; CRAFTED TO SERVE AS AN EXCEPTION TO THE NATIONALITY PRINCIPLE EMBODIED IN ARTICLE 15 OF THE CIVIL CODE; INTENDED ONLY TO ADDRESS THE UNFAIR SITUATION THAT RESULTS WHEN A FOREIGN NATIONAL OBTAINS A DIVORCE DECREE AGAINST A FILIPINO CITIZEN, LEAVING THE LATTER STUCK IN A MARRIAGE WITHOUT A SPOUSE.— Article 26(2) of the Family Code had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code. This exception is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse.

2. ID.; ID.; ID.; PARAMETERS FOR THE APPLICATION OF THE NATIONALITY PRINCIPLE FOUND IN ARTICLE 15 OF THE CIVIL CODE AND THE EXCEPTION THERETO FOUND IN ARTICLE 26(2) OF THE FAMILY CODE.— As stated in my *Dissenting Opinion* in *Manalo*: x x x [R]ather than serving as bases for the blanket recognition of foreign divorce decrees in the Philippines, I believe that the Court's rulings in [*Van Dorn v. Romillo, Jr.*], [*Republic v. Orbecido III*] and [*Dacasin v. Dacasin*] merely clarify the parameters for the application of the nationality principle found in Article 15 of the Civil Code, and the exception thereto found in Article 26(2) [of] the Family Code. These parameters may be summarized as follows: 1. Owing to the nationality principle, all Filipino citizens are covered by the prohibition against absolute divorce. As a consequence of such prohibition, a divorce decree obtained abroad by a Filipino citizen cannot be enforced in the Philippines. To allow otherwise would be to permit a Filipino citizen to invoke foreign law to evade an express prohibition under Philippine law. 2. Nevertheless, the effects of a divorce decree obtained by a foreign national may be extended to the Filipino spouse, provided the latter is able to prove (i) the issuance of the divorce decree, and (ii) the personal law of the foreign spouse allowing such divorce. This exception, found under Article 26(2) of the Family Code, respects the binding effect of the divorce decree on the foreign national, and merely recognizes the residual effect of such decree on the Filipino spouse.

3. ID.; ID.; ID.; TWIN REQUIREMENTS FOR APPLICATION OF EXCEPTION UNDER ARTICLE 26(2), PRESENT IN CASE AT BAR.— Unlike the divorce decree in question in *Manalo*, the divorce decree in this case had been obtained *not* by the Filipino citizen alone, but *jointly*, by the Filipino and alien spouse. Verily, a divorce decree granted upon a joint application filed by the parties in a mixed marriage is still one "obtained by the alien spouse," *albeit* with the conformity of the latter's Filipino spouse. Thus, the twin requisites for the application of the exception under Article 26(2) are present — there is a valid marriage that has been celebrated between a Filipino citizen and a foreign national; and **a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.**

APPEARANCES OF COUNSEL

Tomas Caspe for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] seeks to reverse the Decision[2] of the Court of Appeals dated March 16, 2016 in CA-G.R. CV No. 103150 which affirmed the trial court's denial of petitioner's Motion for New Trial.

Antecedents

On March 15, 1991, petitioner Edna S. Kondo and Katsuhiro Kondo, a Filipina and Japanese national, respectively, were

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[1] *Rollo*, pp. 8-14.

[2] Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan-Castillo and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 15-23.

married before the Head of Hirano Ward in Japan.[3] They registered their Marriage Certificate of even date with the National Statistics Office[4] in the Philippines. But on July 3, 2000, after around nine (9) years of marriage, they obtained a divorce by agreement in Japan for which they were issued a Report of Divorce.[5]

On November 7, 2012, Edna, through her sister and Attorney-in-Fact Luzviminda S. Pineda, filed a petition for judicial recognition of the divorce decree,[6] citing Article 26 (2) of the Family Code, *viz.*:

x x x x x x x x x

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.

Edna essentially alleged that the divorce capacitated Katsuhiro to remarry under Japanese laws. She sought formal recognition of the divorce decree and asked the trial court to direct the Civil Registrar to annotate the same in her Marriage Certificate. Docketed as Civil Case No. 12-128981, the case was raffled to the Regional Trial Court (RTC)-Branch 4, Manila.

In compliance with the trial court's order dated May 28, 2013, Edna duly established the trial court's jurisdiction over her petition[7] which was unopposed, except by the Republic of the Philippines through the Office of the Solicitor General (OSG). Trial on the merits ensued.

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[3] Original Record, pp. 4-5, marked as Annexes "A" and "A-1" (photocopies); Original copies in pp. 67-68.

[4] Now Philippine Statistics Authority.

[5] Original Record, pp. 6-16, marked as Annexes "B" to "B-7", photocopies of Report of Divorce dated July 3, 2000 in Japanese and in English translation.

[6] *Id.* at 1-3.

[7] *Id.* at 39-44.

During the trial, Luzviminda testified[8] that in June 2000, Edna informed her that Katsuhiro will be divorcing her to marry a Japanese woman. She (Luzviminda) was able to confirm this with Katsuhiro himself.

Luzviminda presented, among others, the Report of Divorce and Katsuhiro's authenticated Family Register record, both with English translation, stating that he and Edna divorced by agreement on July 3, 2000. She offered the following exhibits in evidence:[9]

"A"	Petition for Judicial Recognition of Foreign Decree of Divorce
"B"	Order of the Court dated December 18, 2012
"C"	Copy of summons dated January 11, 2013
"D"	Compliance dated January 25, 2013
"E to E-1-A"	Copy of Affidavit of Publication dated January 25, 2013; Copy of Police Files Tonite newspaper issue dated January 24, 2013
"F to F-4"	Authenticated Special Power of Attorney dated July 2, 2012
"G to G-1"	Authenticated Report of Divorce in Japanese Language
"H to H-1"	English translation of the Report of Divorce
"I to I-4"	Authenticated Original copy of the Family Register of Katsuhiro
"J to J-1"	Authenticated copy of marriage certificate of petitioner and Katsuhiro
"K to K-4"	Judicial Affidavit of Luzviminda S. Pineda

Luzviminda withdrew her offer though to present additional evidence, including an authenticated English translation of Articles 763 to 769 of the Japanese Civil Code on divorce by

[8] *Id.* at 74-78.

[9] *Id.* at 86-88; Formal Offer of Evidence.

agreement.[10] By Order dated December 3, 2013, the trial court allowed the reception of additional evidence, citing no objection on the part of the State.[11] On the other hand, the Republic did not present its own evidence. Thus, the case was submitted for decision.

The Trial Court's Ruling

By Decision[12] dated April 10, 2014, the trial court denied the petition, *viz.*:

> WHEREFORE, premises considered, the relief sought by the petitioner is DENIED. The above-captioned petition is DISMISSED.
>
> Following Section 9, Rule 13 of the Rules of Court and considering publication was required by this court in is Order dated December 18, 2012, counsel for petitioner is directed to cause the publication of this Decision in a newspaper of general circulation once within a period of fifteen (15) days from receipt of this Decision.
>
> Let copy of this Decision be sent to petitioner as well as to her counsel for their information and guidance.
>
> SO ORDERED.

It noted that under Article 26 (2) of the Family Code, the foreign divorce should have been obtained by the alien spouse, not by mutual agreement, as here. More, the provisions of the Japanese Civil Code, as presented to the trial court, did not show that Katsuhiro was allowed to remarry upon obtaining a divorce.

On May 20, 2014, Edna filed a Motion for New Trial,[13] alleging she had newly discovered evidence which could alter the result of the case — a copy of Katsuhiro's Report of Divorce, allegedly indicating that he had already married a

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[10] *Id.* at 100-105. Exhibits "L" to "L-5".

[11] *Id.* at 97.

[12] Penned by Presiding Judge Jose Lorenzo R. Dela Rosa; CA *rollo*, pp. 16-17; Original Record pp. 108-109.

[13] Original Record, pp. 112-115.

certain Tsukiko Umegaki. She requested for thirty (30) days to secure a duly authenticated English copy of the document to prove its contents.

She emphasized that an absurd situation would occur if the trial court would not admit the second Report of Divorce to prove Katsuhiro's second marriage. For she would still be deemed married to Katsuhiro even though he had already remarried on May 30, 2001.

By Resolution[14] dated June 30, 2014, the RTC denied Edna's Motion for New Trial for failure to file an Affidavit of Merit, as required under Rule 37, Section 2 of the Rules of Court.[15] Further, the Report of Divorce was not sufficient to establish that Katsuhiro contracted a subsequent marriage, unauthenticated as it was. Her failure to present a duly authenticated copy during trial was by no means excusable.

As for the applicability of Article 26 (2) of the Family Code, the trial court ruled that Edna's divorce from Katsuhiro was by mere agreement and, therefore, beyond the coverage of the provision, which requires the divorce to have been obtained by the foreign spouse.

Proceedings before the Court of Appeals

Aggrieved, Edna assailed the trial court's Resolution[16] dated June 30, 2014 before the Court of Appeals. In her *Brief*,[17] she

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[14] CA *rollo*, p. 24.

[15] Contents of motion for new trial or reconsideration and notice thereof. — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motion. A motion for the cause mentioned in paragraph (a) of the preceding section **shall be supported by affidavits of merits** which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence. (Emphasis supplied)

[16] CA *rollo*, p. 7; Notice of Appeal.

[17] *Id.* at 19-23; Appellant's Brief.

faulted the trial court for (1) not allowing her to introduce evidence to prove Katsuhiro's subsequent marriage and (2) finding that Article 26 (2) of the Family Code was inapplicable simply because the divorce was obtained by mutual agreement.

Meanwhile, the OSG through Assistant Solicitor General Eric Remegio O. Panga and Senior State Solicitor Maricar S.A. Prudon-Sison defended the trial court's ruling.[18] It argued that the second Report of Divorce cannot be considered "newly discovered" and the evidence on record was not sufficient to warrant the grant of Edna's petition.

The Court of Appeals' Ruling

Through its Decision[19] dated March 16, 2016, the Court of Appeals affirmed. It emphasized that Rule 37, Section 2 (2) of the Rules of Court required supporting evidence by way of affidavits of witnesses or duly authenticated documents. But Edna appended a mere photocopy of Katsuhiro's records and asked for relaxation of technical rules.

Too, the Court of Appeals did not consider the second Report of Divorce as newly discovered evidence as Edna could have easily presented it during the trial. Despite the trial court's earlier Order dated December 3, 2013 allowing Edna to present additional evidence, she still failed to adduce the necessary documents in support of her case.

Be that as it may, it disagreed with the trial court's ruling on the supposed inapplicability of Article 26 (2) of the Family Code, citing the rationale behind the law — it is a corrective measure to prevent the anomalous situation where the foreign spouse is free to contract a subsequent marriage while the Filipino spouse cannot do so.

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[18] *Id.* at 44-62; Brief for the Appellee.

[19] *Id.* at 70-78; Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan-Castillo and Zenaida T. Galapate-Laguilles, concurring.

The Present Appeal

Petitioner now seeks affirmative relief from the Court for the disposition of the Court of Appeals to be reversed and the case remanded to the trial court.[20] She, too, begs the indulgence of the Court to allow her to present additional evidence to establish her case.

Petitioner admits to lapses on her part due to logistical and financial difficulties. She claims that although the divorce and remarriage took place in 2000 and 2001, respectively, it was only in November 2012 when she secured the adequate financial capacity to institute the petition before the trial court. Hence, the delayed acquisition and presentation of documentary evidence.

In its Comment,[21] the OSG maintains that the appeal does not raise a question of law. More, the Court of Appeals was correct in affirming the denial of Edna's Motion for New Trial as the second Report of Divorce was not newly discovered evidence within the contemplation of the Rules of Court.

Although it agrees with the rulings of the courts below, the OSG submits to the Court's sound discretion on the possibility of relaxing the rules, considering Edna's predicament. Further, the denial of a petition for recognition of foreign judgment pertaining to a person's status is never barred by *res judicata*. Thus, the rulings below would simply force Edna to refile the petition, clogging the trial court's docket and wasting the time of both parties.

Issue

Should the case be remanded to the trial court for reception of additional evidence?

Ruling

We grant the petition.

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[20] *Rollo,* pp. 8-14.

[21] *Id.* at 31-43.

Rule 37, Section 1 of the Rules of Court sets forth the grounds for a motion for new trial, *viz.*:

Section 1. Grounds of and period for filing motion for new trial or reconsideration. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law. (1a) (Emphasis supplied)

For the court to grant a new trial on ground of newly discovered evidence, the following requirements must be met: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been presented during the trial with the exercise of reasonable diligence, it cannot be considered newly discovered.[22]

We find the first and second requirements sorely missing.

Here, Edna herself did not deny, as she in fact admitted that the second Divorce Report was already existing during the

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[22] *Ybiernas, et al. v. Tanco-Gabaldon, et al.*, 665 Phil. 297, 311 (2011), citing *Brig. Gen. Custodio v. Sandiganbayan*, 493 Phil. 194, 203-204 (2005).

proceedings below. To be sure, Katsuhiro allegedly married Tsukiko as early as May 30, 2001. If this were true, she should have promptly secured and presented a copy of the document during the trial. The Divorce Report could not therefore be deemed as newly discovered evidence. More so, since the trial court gave her an additional opportunity to present evidence through its Order dated December 3, 2013, but she still failed to present the second Divorce Report.

Be that as it may, what is at stake is not merely Edna's status, but also her actual marital and family life. In fact, Edna addressed a handwritten letter,[23] dated April 22, 2017, to this Court stating she had been anxiously worried for years about the possible repercussions that Philippine laws may have on her because she, too, had remarried in Japan in November 2014. Considering the recent jurisprudence on mixed marriages under Article 26 of the Family Code, the trial court should have been more circumspect in strictly adhering to procedural rules. For these rules are meant to facilitate administration of fairness and may be relaxed when a rigid application hinders substantial justice.[24]

The landmark case of ***Republic v. Manalo***[25] is instructive. Respondent therein offered the following in evidence: 1) Decision of the Japanese Court allowing the divorce; 2) the Authentication/Certificate issued by the Philippine Consulate General in Osaka, Japan of the Decree of Divorce; and 3) Acceptance of Certificate of Divorce by Petitioner and the Japanese national. The Court found though that the Japanese law on divorce was not duly established. It noted, nonetheless, that the existence of the divorce decree was not denied, jurisdiction of the divorce court was not impeached, nor the validity of the foreign proceedings challenged. Thus, the Court exercised liberality and remanded the case for further

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[23] *Rollo*, p. 59.

[24] *City of Dagupan v. Maramba*, 738 Phil. 71, 87 (2014), citing *Samala v. Court of Appeals*, 416 Phil. 1 (2001).

[25] G.R. No. 221029, April 24, 2018 [Per (now Chief Justice) Peralta, *En Banc*].

proceedings, specifically for reception of evidence to prove the relevant Japanese law.

In ***Racho v. Tanaka***,[26] therein petitioner was divorced by her Japanese husband. She obtained an authenticated Divorce Certificate from the Japanese embassy which the trial court deemed insufficient to prove the divorce decree. The Court, nonetheless, ruled that the Filipino spouse may be granted the capacity to remarry once it is proven that the foreign divorce was validly obtained and that the foreign spouse's national law considers the dissolution of the marital relationship to be absolute. For it would be unjust to insist, as the OSG did, that petitioner should still be considered married to her foreign husband. The Court noted that justice would not have been served if petitioner was discriminated against by her own country's law.

In the recent case of ***Moraña v. Republic of the Philippines***,[27] therein petitioner offered mere printouts of pertinent portions of the Japanese law on divorce and its English translation from a website, sans any proof of its correctness. The lower courts denied her action for recognition of divorce report because she did not present an authenticated Divorce Certificate issued by the Japanese government. The Court acknowledged that petitioner duly proved the fact of divorce but failed to prove the Japanese law on divorce. Relying on ***Racho***[28] and ***Manalo***,[29] the Court nonetheless relaxed procedural requirements and granted the petition. It likewise remanded the case to the trial court for presentation of the pertinent Japanese law on divorce for a new decision on the merits.

In ***Garcia v. Recio,***[30] the Court could not determine if respondent, a naturalized Australian citizen, was legally

[26] G.R. No. 199515, June 25, 2018.

[27] G.R. No. 227605, December 5, 2019.

[28] G.R. No. 199515, June 25, 2018.

[29] G.R. No. 221029, April 24, 2018.

[30] 418 Phil. 723, 738-739 (2001).

recapacitated to remarry despite the evidence already offered which included: Family Law Act 1975 Decree Nisi of Dissolution of Marriage in the Family Court of Australia; Decree Nisi of Dissolution of Marriage in the Family Court of Australia; and Decree Nisi of Dissolution of Marriage in the Family Court of Australia Certificate, among others. Hence, the Court remanded the case to the trial court to receive evidence to show respondent's legal capacity to remarry.

Indeed, the Court has time and again granted liberality in cases involving the recognition of foreign decrees to Filipinos in mixed marriages and free them from a marriage in which they are the sole remaining party. In the aforementioned cases, the Court has emphasized that procedural rules are designed to secure and not override substantial justice, especially here where what is involved is a matter affecting lives of families.

The Court sees no reason why the same treatment should not be applied here. Consider:

First. Edna presented an Authenticated Report of Divorce in Japanese Language; an English translation of the Report of Divorce; and an Authenticated Original copy of the Family Register of Katsuhiro. Too, she actively participated throughout the proceedings through her sister and attorney-in-fact, Luzviminda, despite financial and logistical constraints. She also showed willingness to provide the final document the trial court needed to prove Katsuhiro's capacity to remarry.

Second. As the OSG noted, the present case concerns Edna's status. Hence, *res judicata* shall not apply and Edna could simply refile the case if dismissed. This process though would be a waste of time and resources, not just for both parties, but the trial court as well.[31] In ***RCBC v. Magwin Marketing Corp.***,[32] the Court surmised that there was no substantial policy upheld had it simply dismissed the case and required petitioner to pay the

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[31] *Sps. Chan v. Regional Trial Court of Zamboanga del Norte*, 471 Phil. 822, 832-833 (2004).

[32] 450 Phil. 720, 734 (2003).

docket fees again, file the same pleadings as it did in the proceedings with the trial court, and repeat the belabored process. This reenactment would have been a waste of judicial time, capital and energy.

Third. In its Comment, the OSG did not object to Edna's prayer to have the case remanded, *viz.*:

> Hence, the OSG interposes no objection if this Honorable Court remands this case to the trial court and allows petitioner to present evidence to prove her case bearing in mind that only this High Court can relax its own rules for compassionate justice.

Finally. The present case stands on meritorious grounds, as petitioner had actually presented certified documents establishing the fact of divorce and relaxation of the rules will not prejudice the State.[33]

Verily, a relaxation of procedural rules is in order.

ACCORDINGLY, the petition is **GRANTED.** The Decision of the Court of Appeals dated March 16, 2016 in CA-G.R. CV No. 103150 is **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court–Branch 4, Manila for presentation in evidence of the pertinent Japanese law on divorce and the document proving Katsuhiro was recapacitated to marry.

SO ORDERED.

Reyes, J. Jr. and *Lopez, JJ.*, concur.

Caguioa, J. (Acting Chairperson), see separate concurring opinion.

Peralta, C.J., on official leave.

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[33] See *Barnes v. Hon. Quijano Padilla*, 482 Phil. 903, 915 (2004).

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur in the result.

However, I submit, as I did in the case of *Republic v. Manalo*[1] (*Manalo*), that Article 26(2) of the Family Code had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code. This exception is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse.[2]

As stated in my *Dissenting Opinion* in *Manalo*:

> x x x [R]ather than serving as bases for the blanket recognition of foreign divorce decrees in the Philippines, I believe that the Court's rulings in [*Van Dorn v. Romillo, Jr.*[3]], [*Republic v. Orbecido III*[4]] and [*Dacasin v. Dacasin*[5]] merely clarify the parameters for the application of the nationality principle found in Article 15 of the Civil Code, and the exception thereto found in Article 26(2) [of] the Family Code. These parameters may be summarized as follows:
>
> 1. Owing to the nationality principle, all Filipino citizens are covered by the prohibition against absolute divorce. As a consequence of such prohibition, a divorce decree obtained abroad by a Filipino citizen cannot be enforced in the Philippines. To allow otherwise would be to permit a Filipino citizen to invoke foreign law to evade an express prohibition under Philippine law.
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> 2. Nevertheless, the effects of a divorce decree obtained by a foreign national may be extended to the Filipino spouse, provided the latter is able to prove (i) the issuance of the

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[1] G.R. No. 221029, April 24, 2018, 862 SCRA 580.

[2] *Id.* at 638.

[3] 223 Phil. 357 (1985).

[4] 509 Phil. 108 (2005).

[5] 625 Phil. 494 (2010).

> divorce decree, and (ii) the personal law of the foreign spouse allowing such divorce. This exception, found under Article 26(2) of the Family Code, respects the binding effect of the divorce decree on the foreign national, and merely recognizes the residual effect of such decree on the Filipino spouse.[6] (Emphasis and underscoring omitted)

Petitioner Edna S. Kondo is a Filipino citizen seeking recognition of the divorce decree issued upon a joint application filed with her husband Katsuhiro Kondo, a Japanese national.

Unlike the divorce decree in question in *Manalo*, the divorce decree in this case had been obtained *not* by the Filipino citizen alone, but *jointly*, by the Filipino and alien spouse. Verily, a divorce decree granted upon a joint application filed by the parties in a mixed marriage is still one "obtained by the alien spouse", *albeit* with the conformity of the latter's Filipino spouse. Thus, the twin requisites for the application of the exception under Article 26(2) are present — there is a valid marriage that has been celebrated between a Filipino citizen and a foreign national; and **a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.**[7]

Based on these premises, I vote to **REMAND** the case to the Regional Trial Court of Manila to allow Edna S. Kondo to present evidence to prove the pertinent provisions of the Japanese Civil Code allowing Katsuhiro Kondo to remarry.

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[6] *Republic v. Manalo*, *supra* note 1, at 641.

[7] See *Republic v. Orbecido III*, *supra* note 4, at 115.

SECOND DIVISION

[G.R. No. 225718. March 4, 2020]

JOSE M. ROY III, *petitioner*, *vs.* **THE HONORABLE OMBUDSMAN, CONCHITA CARPIO MORALES and FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN as represented by LUISITO S. SUAREZ,** *respondents*.

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(E); ELEMENTS.— In *Garcia, et al. v. Sandiganbayan, et al.*, the Court ruled that the elements of x x x [Section 3(e) of R.A. No. 3019] are as follows: (a) the accused must be a public officer discharging administrative, judicial, or official function; (b) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Here, it is indisputable that the first element is present, petitioner being the acting president of PLM. However, the second and third element are lacking. The second element refers to the three modes by which the offense may be committed, by: (a) manifest partiality (b) evident bad faith, or (c) gross inexcusable negligence. x x x Otherwise stated, "manifest partiality" is present when there is a clear, notorious, or plain inclination or predilection to support one side or person rather than another. On the other hand, "evident bad faith" means not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind favorably operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DECISIONS IN ADMINISTRATIVE CASES ARE GENERALLY NOT BINDING ON CRIMINAL PROCEEDINGS.— In the present case, the CA found no substantial evidence to hold the petitioner liable for grave misconduct as it was shown that the petitioner

did not conspire with the other respondents. x x x The prosecution was not able to satisfy the burden of proof which is only substantial evidence. Hence, it is more difficult to prove the guilt of the petitioner in a criminal case against him involving the same set of facts and law being used. It is true that generally, decisions in administrative cases are not binding on criminal proceedings.

3. ID.; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; PROBABLE CAUSE; THE COURT DOES NOT INTERFERE WITH THE OMBUDSMAN'S FINDING OF AN EXISTENCE OR ABSENCE OF PROBABLE CAUSE SUBJECT TO CERTAIN EXCEPTIONS.— The Court, as a general rule, does not interfere with the Ombudman's finding of an existence or absence of probable cause. However, certain exceptions must be made such as the case at bar. In the case of *Brocka v. Enrile*, this Court enumerated several exceptions to the principle of interference, one of them is when there is no *prima facie* case against the respondent. In another case, specifically *Principio v. Barrientos*, the case was ordered to be dismissed for want of probable cause. x x x Here, the elements of the offense in Section 3(e) of R.A. No. 3019 are absent. There is no evidence that petitioner acted with manifest partiality, evident bad faith, or gross inexcusable negligence in signing the BAC Resolution and Purchase Order. Furthermore, there is no showing that any party, especially the government, incurred actual injury in the purchase of the Starex van. In line with the current jurisprudence, there is no probable cause to prosecute the petitioner and his criminal case should be dismissed.

APPEARANCES OF COUNSEL

Roy Law Offices Corporate Consulting & Litigation for petitioner.
The Solicitor General for respondents.

D E C I S I O N

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

In this Special Civil Action for *Certiorari*[1] under Rule 65 of the Rules of Court filed on August 2, 2016, petitioner seeks

[*] Acting Chairperson per Special Order No. 2775, dated February 27, 2020.

[1] *Rollo*, pp. 3-28.

that a Temporary Restraining Order or a Writ of Preliminary Injunction be issued, restraining the filing of an information against him and that the Resolution[2] of the Ombudsman dated November 9, 2015 and the Joint Order[3] dated April 29, 2016 be reversed and set aside for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Factual Antecedents

In January 2006, Domingo B. Nuñez (Dean Nuñez), the former dean of the Pamantasan ng Lungsod ng Maynila (PLM), requested the purchase of a vehicle intended for the use of the PLM-Open University Distance Learning Program with the following specifications:

> Vehicle, 10-seater, equipped with D4BH 2476 cc diesel engine turbo intercooler; maximum power 145 @ 2500 rpm; GVW 2512 kg; 5-speed manual transmission; power/tilt steering, windows, side mirrors; glass antenna; door locks; premium stereo with 6-speakers; dual aircon/heater; driver side airbag; keyless entry with alarm; automatic lights; digital odometer; 2-tone paint with side garnish; rear spoiler with break light; back-up warning sensor; rear wiper/washer; rotating seat (2nd row) with arm rests; ABS with 4 wheel disc brakes; 205 wide tires with aluminum 15" wheels.

Dimensions of:	Exterior:	Interior:
Overall length	4695 mm	2835 mm
Overall width	1820 mm	1605 mm
Overall height	1685 mm	1240 mm[4]

On January 19, 2006, then PLM President Benjamin G. Tayabas (President Tayabas) approved the request.[5]

Supply Officer Alfredo C. Ferrer (Ferrer), Jr., on February 13, 2006, told President Tayabas that only a Hyundai Starex van had the requirement of the requested vehicle and therefore

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

[3] *Id.* at 50-56.

[4] *Id.* at 149.

[5] *Id.*

suggested buying the same. Dean Nuñez subsequently prepared the Purchase Application, which was accepted by President Tayabas. Angelita G. Solis (Solis), Vice President for Finance and Planning, certified that the funds were available. A favorable recommendation was given by Atty. Lawrence Villanueva on the application and directed the Bids and Awards Committee (BAC) to determine the applicability of an alternative method of procurement.[6]

Nevertheless, as early as February 10, 2006, the sum of the equivalent cash price of a Hyundai Starex or ₱1,168,000.00 was already allocated, as shown in the Budget Utilization Slip (BUS) before the BAC, by means of pre-procurement conference, wherein the budget for the purchase of the vehicle was calculated and approved.[7]

The vehicle's procurement was not reported nor advertised as per Republic Act (R.A.) No. 9184. Alternatively, Ferrer demanded and obtained their cost quotes for the requested vehicle from a few car dealers. Several suppliers or dealers then submitted their quotations and during the meeting of the BAC, composed of Solis, Felix F. Aspiras, Albert S. Dela Cruz, and Eloisa M. Macalinao, Ferrer, reiterated that only Hyundai Starex van had qualified and suggested that the procurement be done through direct contracting instead of public bidding.[8]

On February 24, 2006, petitioner was appointed as the Acting President of PLM with full exercise of all rights, powers, functions, and authority thereunto appertaining.[9] Thereafter, on May 10, 2006, the members of the BAC met to evaluate the quotations submitted to them and they decided to purchase the van from Hyundai Otis.[10] In Resolution No. 09-G-06, dated May 17, 2006, the BAC recommended direct contracting as an

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[6] *Id.* at 149-150.

[7] *Id.* at 107.

[8] *Id.*

[9] *Id.* at 4.

[10] *Id.* at 108, 150.

alternative mode of procurement in lieu of public bidding which was signed by petitioner, who was then the acting president of PLM.[11]

The petitioner, on May 18, 2006, signed the Purchase Order of the purchase of the Starex van at Hyundai Quezon Avenue, Quezon City.[12] Eventually, the vehicle was purchased from Hyundai Quezon Avenue as provided in the Disbursement Voucher, and Check No. 890045, both dated June 6, 2006.[13]

The Commission on Audit (COA) issued a Notice of Suspension of the purchase of the Starex van by the PLM on March 29, 2010, the document contained the following:

(a) The Board of Regents (BOR) as Head of the Procuring Entity (HOPE) of the PLM did not approve any (i) contract, (ii) authority of the award of the contract to Hyundai Otis, (iii) Annual Procurement Plan (APP) pursuant to Section 7, RA 9184, and (iv) authority to resort to alternative modes of procurement (direct contracting) *in lieu* public bidding, as required under Section 48 of R.A. No. 9184;

(b) The conditions stated under BAC Resolution No. 09-G-06 for direct contracting is not in accordance with Section 50, RA 9184, considering that "Hyundai Otis is not an exclusive dealer or manufacturer of the motor vehicle that was purchased [and] there are other Hyundai dealers in the market"; and

(c) Although the recommendation for the purchase of the motor vehicle per BAC Resolution No. 09-G-06 was Hyundai Otis, premised on its accessibility to PLM and as a goodwill gesture for being a favored taxpayer in Manila, documents showed that the purchase was made at Hyundai Quezon Avenue, Inc., Quezon City.[14]

The Field Investigation Office (FIO) of the Office of the Ombudsman, on August 7, 2013, instituted a complaint against

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[11] *Id.*

[12] *Id.* at 109.

[13] *Id.*

[14] *Id.* at 109-110.

the petitioner and other PLM officials to hold them criminally and administratively liable for grave misconduct, conduct prejudicial to the best interest of the service, gross neglect of duty, inefficiency, and incompetence, as well as violation of R.A. No. 9184[15] and Section 3 (e) of R.A. No. 3019.[16]

The FIO argued that the vehicle should have undergone public bidding because Hyundai Otis was not an exclusive dealer or manufacturer of the Hyundai Starex and it was done without getting authorization from the Board of Regents. Furthermore, it noted that the COA also issued a Notice of Suspension dated March 29, 2010, which specified that there might have been irregularities committed in the procurement of the vehicle. It also discovered that there was no Annual Procurement Plan prepared for 2006.[17]

The other PLM officials, except the petitioner, submitted their counter-affidavits and argued that the procurement of the vehicle was in accordance with the Government Procurement Reform Act (GPRA).[18]

On November 9, 2015, the Ombudsman issued a Resolution finding probable cause to indict petitioner and his co-respondents for violation of Section 3 (e) of R.A. No. 3019. The dispositive portion of the assailed Resolution reads:

FOREGOING CONSIDERED, this Office finds probable cause to indict respondents **BENJAMIN G. TAYABAS, DOMINGO B. NUÑEZ, ANGELITA G. SOLIS, JOSE M. ROY III, ELOISA M. MACALINAO, ALFREDO C. FERRER, JR., CECILIA L. CALMA, ANGELES C. RAMOS, LAWRENCE VILLANUEVA, FELIX F. ASPIRAS, ALBERT S. DELA CRUZ, JUSTINA A. BONTUYAN**, and **VIRGINIA N. SANTOS** for violation of Sec. 3(e) of R.A. 3019. Accordingly, let the corresponding Information be filed with the appropriate court.

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[15] An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes.

[16] Anti-Graft and Corrupt Practices Act.

[17] *Rollo*, p. 151.

[18] *Id.* at 151-152.

x x x x x x x x x

SO ORDERED.[19] (Emphasis in the original)

On November 23, 2015, COA issued a Notice of Settlement of Suspension/Disallowance/Charge (NSSDC), which pronounced as settled the earlier suspension of PLM's purchase of the Starex van. Petitioner, armed with the NSSDC as newly discovered evidence, filed motions for reconsideration/reinvestigation of the assailed Resolution and the Decision. However, the Ombudsman, subsequently denied it through a Joint Order dated April 29, 2015.

The present petition seeks to annul the Resolution dated November 9, 2015 and Joint Order dated April 29, 2016 of the Ombudsman in the criminal case.

Acting on the Court's Resolution,[20] dated August 15, 2016, the Office of the Solicitor General (OSG) filed its Manifestation and Motion (In Lieu of Comment).[21] Therein, the OSG recommended that the Court grant the instant Petition and that the criminal case against the petitioner be dismissed for want of probable cause.[22] The Court noted the OSG's manifestation and ordered the petitioner to file a Reply.[23]

The petitioner filed his Comment (to the Manifestation of the Office of the Solicitor General)[24] on July 24, 2018, praying that the Court adopts the Manifestation of the OSG and for the Court to issue a writ of *certiorari* setting aside and terminating any proceedings before the Sandiganbayan relative to OMB-C-C-13-0235.[25]

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[19] *Id.* at 47.

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

[21] *Id.* at 105-133.

[22] *Id.* at 170.

[23] *Id.* at 105-133.

[24] *Id.* at 175-185.

[25] *Id.* at 182-183.

The Issue

WHETHER THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING PROBABLE CAUSE TO INDICT PETITIONER FOR VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019.[26]

The Court's Ruling

We grant the petition.

The second and third elements of Section 3 (e) of R.A. No. 3019 are lacking.

Section 3 (e) of R.A. No. 3019 provides:

> Sec. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> x x x x x x x x x
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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.

In *Garcia, et al. v. Sandiganbayan, et al.*,[27] the Court ruled that the elements of the above offense are as follows: (a) the accused must be a public officer discharging administrative, judicial, or official function; (b) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[28]

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[26] *Id.* at 6.

[27] 730 Phil. 521 (2014).

[28] *Id.* at 534.

Here, it is indisputable that the first element is present, petitioner being the acting president of PLM. However, the second and third element are lacking. The second element refers to the three modes by which the offense may be committed, by: (a) manifest partiality, (b) evident bad faith, or (c) gross inexcusable negligence. In *Coloma, Jr. v. Sandiganbayan, et al.*,[29] the Court defined the foregoing terms as follows:

> Partiality "is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.[30] (Citation omitted)

Otherwise stated, "manifest partiality" is present when there is a clear, notorious, or plain inclination or predilection to support one side or person rather than another. On the other hand, "evident bad faith" means not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind favorably operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[31]

After a careful perusal of the records of the case, the Court finds that the acts of the petitioner do not manifest partiality. First, the contents of BAC Resolution No. 09-G-06 already contained a list of selected dealers. Petitioner himself did not

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[29] 744 Phil. 214 (2014).

[30] *Id.* at 229.

[31] *Uriarte v. People*, 540 Phil. 474, 494 (2006).

have any participation in the procurement proceedings nor in the actual selection of said dealers. His participation was limited to the approval of the recommendation of the PLM BAC.

In *Sistoza v. Desierto*,[32] the Court discussed at length how misguided it would be to ascribe fraudulent and corrupt intent, solely on the basis of a signature on a purchase order. It categorically rejected the contention that the mere act of affixing one's signature, even if coupled with repeated endorsement of the award to the bidder who did not offer the lowest price, is a clear sign of evident bad faith, *to wit*:

> We disagree with the conclusions of the Office of the Ombudsman. We have meticulously analyzed the arguments raised by the parties in the various pleadings and motions, together with their documentary evidence, which all formed the basis for the issuance of the questioned resolutions, and we are convinced that no probable cause exists to warrant the filing of charges against petitioner Sistoza for violation of Sec. 3, par. (e), *RA 3019*.
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> Simply alleging each or all of these methods is not enough to establish probable cause, for it is well settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of petitioner as with any other person is presumed. The facts themselves must demonstrate *evident* bad faith which connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.
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> Since petitioner had no reason to doubt the validity of the bidding process and given the urgency of the situation since the tomato paste had by then been delivered and consumed by the inmates of the New Bilibid Prison, **we certainly cannot infer malice, evident bad faith or gross inexcusable negligence from his signing of the purchase order and endorsing the same to the Department of Justice**. Considering that his duties as Director of the Bureau of Corrections

[32] 437 Phil. 117 (2002).

entailed a lot of responsibility not only on the management side but also in the rehabilitation and execution of convicted prisoners, public relations and other court-imposed duties, it is unreasonable to require him to accomplish direct and personal examination of every single detail in the purchase of a month-long supply of tomato paste and to carry out an in-depth investigation of the motives of every public officer involved in the transaction before affixing his signature on the *pro-forma* documents as endorsing authority.[33] (Citations omitted, italics in the original and emphasis supplied)

Thus, despite petitioner's signature on the BAC Resolution and the Purchase Order, the Court cannot automatically infer malice or fraudulent intent on the former's part.

Third, as to the alleged gross inexcusable negligence. It is important to point out that it was PLM who purchased the Starex van according to the price and technical specifications set by the PLM BAC. The money which was allotted for its purchase was used according to its purpose. It is undisputed that petitioner did not partake in the discussion of the procurement of the requested vehicle.

Anent the third and last element, there are two ways by which a public official commits a violation of Section 3 (e), thus: (a) by causing undue injury to any party, including the government; or (b) by giving any private party any unwarranted benefit.

Assuming *arguendo* that petitioner was negligent by relying on the acts of the PLM BAC, which had the expertise over procurement processes, any omissions committed by the petitioner along the way were due only to either mere inadvertence, or simple over-eagerness to proceed with the purchase of the vehicle, or placing too much confidence in the declarations of his subordinates. His omissions would result, at worst, only to gross negligence, which is want or absence of reasonable care and skill.

Similarly, the Court in *Arias v. Sandiganbayan*,[34] ruled that:

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[33] *Id.* at 131-132, 137.

[34] 259 Phil. 794 (1989).

We would be setting a bad precedent if a head of office plagued by all too common problems—dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence — is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing, his signature as the final approving authority.

x x x x x x x x x

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. x x x It is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. **All heads of offices have to rely to a reasonable extent 'on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.** If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of document, letters and supporting paper that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.[35] (Emphasis supplied)

That being said, there can be no probable cause in filing an information in court if there is no manifest partiality, evident bad faith, or gross inexcusable negligence.[36]

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[35] *Id.* at 801-802.

[36] *Catindig v. People*, 616 Phil. 718, 734 (2009).

The burden of proof in the administrative case was not met

In the present case, the CA found no substantial evidence to hold the petitioner liable for grave misconduct as it was shown that the petitioner did not conspire with the other respondents. The CA ruled that:

> Here, we find no substantial evidence to prove the elements constitutive of grave misconduct. The Ombudsman's finding of grave misconduct against the petitioner is anchored on the finding that the petitioner merely relied on the recommendation of the BAC without scrutinizing the document submitted for approval. There is insufficient evidence from which it may be reasonably concluded that the petitioner's approval of Resolution No. 09-G-06 as well as the issuance of the purchase order were all done due to corruption, willful intent to violate the law or persistent disregard of well-known legal rules. There is likewise no finding that the petitioner unlawfully or wrongfully used his office to procure some benefit for himself or for another or that he intentionally violated the GPRA in committing the above mentioned acts.
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> Section 12 of the GPRA defines the functions of the BAC as follows:
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> > Section 12. *Functions of the BAC*. — Shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity of his duly authorized representative: Provided, That in the event the Head of the Procuring shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.
> >
> > **In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.**

> **The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.**[37] (Emphasis in the original)

The prosecution was not able to satisfy the burden of proof which is only substantial evidence. Hence, it is more difficult to prove the guilt of the petitioner in a criminal case against him involving the same set of facts and law being used. It is true that generally, decisions in administrative cases are not binding on criminal proceedings. The court has ruled in a number of cases that:

> It is indeed a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. *Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or vice versa.* One thing is administrative liability; quite another thing is the criminal liability for the same act.
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> Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other. Notably, the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal cases.[38]

The Court, as a general rule, does not interfere with the Ombudman's finding of an existence or absence of probable cause. However, certain exceptions must be made such as the case at bar. In the case of *Brocka v. Enrile*,[39] this Court enumerated several exceptions to the principle of interference,

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[37] *Rollo*, p. 161.

[38] *Paredes v. Court of Appeals*, 555 Phil. 538, 549-550 (2007).

[39] 270 Phil. 271, 277 (1990).

one of them is when there is no *prima facie* case against the respondent. In another case, specifically *Principio v. Barrientos*,[40] the case was ordered to be dismissed for want of probable cause. The Court held that:

> Clearly, where the evidence patently demonstrates the innocence of the accused, as in this case, we find no reason to continue with his prosecution; otherwise, persecution amounting to grave and manifest injustice would be the inevitable result.[41]

Here, the elements of the offense in Section 3 (e) of R.A. No. 3019 are absent. There is no evidence that petitioner acted with manifest partiality, evident bad faith, or gross inexcusable negligence in signing the BAC Resolution and Purchase Order. Furthermore, there is no showing that any party, especially the government, incurred actual injury in the purchase of the Starex van. In line with the current jurisprudence, there is no probable cause to prosecute the petitioner and his criminal case should be dismissed.

WHEREFORE, the Petition dated August 2, 2016 is hereby **GRANTED**. The Resolution dated November 9, 2015, and the Joint Order dated April 29, 2016 of the Office of the Ombudsman is hereby **REVERSED** and **SET ASIDE**. Accordingly, the criminal case against the Petitioner before the Sandiganbayan is **DISMISSED**.

SO ORDERED.

Hernando, Lazaro-Javier,[**] *Inting,* and *Delos Santos, JJ.*, concur.

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[40] 514 Phil. 799 (2005).

[41] *Id.* at 813.

[**] Designated additional Member per raffle dated February 19, 2020.

FIRST DIVISION

[G.R. No. 226089. March 4, 2020]

COCA-COLA FEMSA PHILIPPINES, INC., (formerly known as COCA-COLA BOTTLERS PHILS., INC.), *petitioner, vs.* **JESSE L. ALPUERTO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTION OF FACT AND QUESTION OF LAW, DISTINGUISHED.— In *Century Iron Works, Inc. v. Bañas*, the Court differentiated between a question of fact and a question of law in this manner: A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; SERIOUS MISCONDUCT; DEFINED; REQUISITES; CASE AT BAR.— In *Caltex Philippines, Inc. v. Agad*, it was held that theft of company property is akin to serious misconduct or willful disobedience by the employee of the lawful orders of his employer in connection with his work, which is a just cause for termination of employment. In *Nagkakaisang Lakas Ng Manggagawa sa Keihin v. Keihin Philippines Corp.*, the Court laid down what constitutes misconduct to justify dismissal: Misconduct is defined as "the transgression of some established and definite rule of action, a

forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." "For serious misconduct to justify dismissal under the law, "(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."

3. ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; REQUISITES.— As regards loss of trust and confidence, in *Bravo v. Urios College*, the Court discussed the parameters when such may be invoked as a valid ground for dismissal, to wit: A dismissal based on willful breach of trust or loss of trust and confidence under Article 297 of the Labor Code entails the concurrence of two (2) conditions. First, the employee whose services are to be terminated must occupy a position of trust and confidence. x x x The second condition that must be satisfied is the presence of some basis for the loss of trust and confidence. This means that "the employer must establish the existence of an act justifying the loss of trust and confidence." Otherwise, employees will be left at the mercy of their employers.

4. ID.; ID.; ID.; ID.; ID.; TWO TYPES OF POSITIONS IN WHICH TRUST AND CONFIDENCE ARE REPOSED BY THE EMPLOYER.— [In *Bravo*, the Court also discussed the] x x x two (2) types of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees. Managerial employees are considered to occupy positions of trust and confidence because they are "entrusted with confidential and delicate matters." On the other hand, fiduciary rank-and-file employees refer to those employees, who, "in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property." Examples of fiduciary rank-and-file employees are "cashiers, auditors, property custodians," selling tellers, and sales managers. It must be emphasized, however, that the nature and scope of work and not the job title or designation determine whether an employee holds a position of trust and confidence.

5. ID.; ID.; ID.; ID.; ID.; RULES IN DETERMINING WHETHER LOSS OF TRUST AND CONFIDENCE MAY VALIDLY BE USED AS A JUSTIFICATION IN TERMINATION CASES.— [Also in *Bravo*, the Court explained the] [d]ifferent

rules [that] apply in determining whether loss of trust and confidence may validly be used as a justification in termination cases. Managerial employees are treated differently than fiduciary rank-and-file employees. In *Caoile v. National Labor Relations Commission*: [W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But, as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position. Although a less stringent degree of proof is required in termination cases involving managerial employees, employers may not invoke the ground of loss of trust and confidence arbitrarily. The prerogative of employers in dismissing a managerial employee "must be exercised without abuse of discretion."

6. ID.; ID.; ID.; ID.; INFRACTIONS COMMITTED BY AN EMPLOYEE SHOULD MERIT ONLY THE CORRESPONDING PENALTY DEMANDED BY THE CIRCUMSTANCE AND THE PENALTY MUST BE COMMENSURATE WITH THE ACT, CONDUCT OR OMISSION IMPUTED TO THE EMPLOYEE; CASE AT BAR.— Of course, this is not to say that respondent was entirely faultless in this case. As correctly held by the CA, while respondent committed an act which should not go unpunished, the penalty of dismissal was too harsh and disproportionate. Infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance, and the penalty must be commensurate with the act, conduct or omission imputed to the employee. Hence, the Court holds that a lesser penalty would have been sufficient for the infraction he committed, taking also into consideration that he had no previous derogatory record in his 11 years in petitioner's employ. While this Court is aware that there is jurisprudence to the effect that

"in cases of breach of trust and loss of confidence, the length of time, if considered at all, shall be taken against the employee, x x x" for '[u]nlike other just causes for dismissal, trust in an employee, once lost is difficult, if not impossible, to regain," such must be understood to mean that when loss of trust and confidence has been duly established, length of service may be considered as an aggravating circumstance instead. Such is not applicable in this case since as already discussed, the second requisite for loss of trust and confidence is lacking.

7. ID.; ID.; ID.; REINSTATEMENT WITHOUT BACKWAGES; REQUISITES; PROPER PENALTY IN CASE AT BAR.— It is true that in *Integrated Microelectronics, Inc. v. Pionilla*, the Court recognized an exception to the general rule that backwages are to be paid to an illegally dismissed employee. The Court held therein that reinstatement without backwages may be ordered on account of the following: (a) the fact that dismissal of the employee would be too harsh of a penalty; and (b) that the employer was in good faith in terminating the employee. Said ruling was applied in *Universal Robina Sugar Milling Corp. v. Ablay* and *Holcim Philippines, Inc. v. Obra*. However, it must be emphasized that under the parameters set forth in *Integrated Microelectronics*, the denial of backwages was deemed to be the penalty sufficient for the infraction committed by the employee instead of dismissal from employment. While it may be argued that the two above-mentioned requisites are present in this case, the Court finds no compelling reason to disturb the CA's finding that suspension for one month would be the more reasonable and commensurate penalty under the circumstances. Hence, to impose a one-month suspension and delete the award of backwages in its entirety at the same time would amount to respondent being penalized twice for the same infraction. Thus, instead of deleting the award of backwages in its entirety, the Court affirms the CA in awarding backwages but with deduction corresponding to the suspension for one month, with modification that said monetary award shall earn legal interest of 6% per annum from finality of this Decision until full satisfaction thereof.

APPEARANCES OF COUNSEL

Nograles Law Offices for petitioner.
Nenita C. Mahinay for respondent.

D E C I S I O N

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

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated March 14, 2016 and the Resolution[2] dated July 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139155.

Factual Antecedents

Jesse L. Alpuerto (respondent) worked for Coca-Cola Bottlers Phils., Inc. (petitioner) as a Finance Clerk, and was assigned at petitioner's warehouse and sales office in San Fernando, Pampanga. He was positioned at the gates of the warehouse and his duties, among others, involved goods receipt inventory, full goods verification at the office's gate, encoding and recording duties of assets that get in and out of said warehouse.[3] He oversaw that all levels of control and procedures were in order to ensure accuracy and timely input of data that tracks the location, quantity, condition, maintenance status of all managed assets.[4] Petitioner also averred that respondent was specifically tasked, among others, to do the following:

- Performs physical checking of goods and all items/objects for accuracy of cost, sales and volume records at assigned location ensuring that it is in accordance with the proper processes and procedures;

- Performs real-time encoding of all assets moving in and out of the gates, and ensures the recording and reporting of all non-trade assets received and transferred out of the designated gate;

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[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justice Edwin D. Sorongon and Associate Justice Marie Christine Azcarraga-Jacob, concurring; *rollo*, pp. 61-70.

[2] *Id.* at 72.

[3] *Id.* at 61.

[4] *Id.* at 263.

- Issues and processes claim memo of all Driver's shortages that make-up for lost or damaged inventory;
- Provides the raw inputs of financial data and information in each location for roll-up to plant and company financials;
- Ensures that all goods, supplies and materials received and dispatched are in order and complete according to manifests and delivery receipts;
- Responsible for proper physical checking and recording of input or data/information per Company procedures during specific assigned locations and times;
- Also handles the monitoring and directing of internal and external deliveries and movement of assets to various parts of the grounds or buildings;
- Prevents unauthorized removal of company property or products and ensures the complete system input of all assets entering and leaving; and
- Counts truck inventory and keeps accurate records of finished goods transported out of the facility for sales delivery or distribution to another warehouse. Receives finished goods into inventory and maintains appropriate records.[5]

Respondent had been petitioner's employee for 11 years.

On March 12, 2012 at 6:20 p.m., respondent, who was then on leave, arrived at petitioner's warehouse together with his family to pick up nine cases of 237 ml Coke Zero products that were allegedly classified as bad orders (BOs) which they intend to take to their trip to Batangas. He took out the nine cases of soft drink and replaced them with empty bottles.[6] Respondent alleged that Rodel Padua (Padua), the site Operations Manager of The Redsystems Company, Inc. (TRCI), told him that it was alright to drink the said soft drinks. TRCI is petitioner's independent contractor for logistics and warehousing. The event that transpired above was noted in the guard's logbook.

[5] *Id.* at 120; *see* also LA Decision dated June 17, 2014; *id.* at 196-197.

[6] *Id.* at 263.

Later, petitioner issued a Notice to Explain[7] dated August 15, 2012 requiring respondent to explain why he should not be subjected to disciplinary action or dismissed for violation of petitioner's 2010 Employee's Code of Disciplinary Rules and Regulations (Red Book)[8] and the Code of Business Conduct (COBC),[9] particularly theft or unauthorized taking of funds or property which may carry the penalty of discharge and criminal prosecution.[10] The charge was based on the record of the security guard stationed at the warehouse.

On August 22, 2012, respondent gave an explanation[11] where he admitted that he took the Coke Zero products and explained that they were already classified as BOs subject to condemnation since their expiry dates were either December 23, 2011 or February 22, 2012. He also claimed that he was the only one being charged with theft when everyone was benefiting from the BOs, and he believed that it was alright to take them since everyone was allowed to consume them.

A hearing[12] was held on December 4, 2012, where respondent elaborated that before the incident, he already solicited for BOs and such was granted by the checker. Respondent claimed that Richard Guamos (Guamos), an inventory analyst of TRCI, also allegedly told him and other employees that such bad orders were considered as empties. Respondent elaborated that he had to bring bottles because the checker said that he should bring replacements before he can get the BOs since the bottles still have peso value. Respondent said that since it was alright with the "big bosses," he believed that he did not need to get approval from his superiors.

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[7] *Id.* at 121.

[8] *Id.* at 116-118.

[9] *Id.* at 113-115.

[10] Section 20 of the Red Book.

[11] *Rollo*, p. 122.

[12] *Id.* at 126-132.

In an Inter-Office Memorandum[13] dated January 8, 2013, petitioner dismissed respondent for theft of company products, serious misconduct and loss of trust and confidence. Petitioner explained that the respondent's taking of the Coke Zero products and appropriating them for his personal use deprived them of the opportunity to write them off as tax deductions for expenses. Respondent's 11 years of service was taken as an aggravating circumstance since his long stay in the position should be taken against him since he knows very well that every movement should be followed by documentation and that he failed to ask permission from his superiors.

On January 21, 2013, respondent filed for illegal dismissal and unfair labor practices (ULP) against petitioner and its former finance manager, Roberto Luistro (Luistro) and the plant's asset and inventory manager, Jovita Carbelledo (Carbelledo). Respondent prayed for payment of back wages, reinstatement, benefits and other damages. Respondent presented the testimonies of seven employees including a security guard (Alvin G. Cabrera) who claimed to have heard Padua saying that it was alright to consume the subject soft drinks.

Ruling of the Labor Arbiter

The Labor Arbiter[14] (LA) dismissed the complaint and upheld the legality of respondent's dismissal. The LA found as credible the statements of Guamos, who denied directing anyone to re-classify any of petitioner's products or property for recording purposes, and Padua, who denied giving permission to respondent to take petitioner's products out of the warehouse without consent from superiors and without proper documentation.[15] The LA noted that respondent failed to disprove the said statements. Moreover, respondent's admission that he failed to observe the procedure and that it was an error of judgment was construed to be an admission of theft.[16]

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[13] *Id.* at 133-135.

[14] Acting Executive Labor Arbiter Mariano L. Bactin.

[15] *Rollo*, p. 201.

[16] *Id.*

The LA also dismissed the charge of ULP for failure to present proof that petitioner interfered with respondent's right to self-organization.[17] Finally, the LA ordered that Luistro and Carbelledo be dropped from the case for failure to present evidence of their direct participation in respondent's dismissal.[18]

The dispositive portion of the Decision[19] dated June 17, 2014 reads:

> WHEREFORE, premises considered, a DECISION is hereby rendered DISMISSING this case with prejudice for lack of merit.
>
> All other money claims, damages and attorney's fees of the [respondent] as raised in his complaint are likewise ordered DISMISSED with prejudice for lack of merit.
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> x x x x x x x x x
>
> SO ORDERED.[20]

Respondent elevated the case to the NLRC.

Ruling of the NLRC

In a Decision[21] dated September 30, 2014, the NLRC denied respondent's appeal and affirmed the LA's ruling. The NLRC held that respondent failed to prove the authenticity and due execution of the Inventory Write-Off Form (IWOF) which he presented to prove that the Coke Zero products which were taken were already expired. The NLRC opined that while administrative and quasi-judicial bodies are not bound by technical rules of procedure, this should not be construed as a license to disregard certain fundamental evidentiary rules,[22]

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[17] *Id.* at 204.

[18] *Id.*

[19] *Id.* at 193-206.

[20] *Id.* at 204-206.

[21] Penned by Commissioner Joseph Gerard E. Mabilog, Commissioner Isabel G. Panganiban-Ortiguerra and Commissioner Nieves E. Vivar-De Castro; *id.* at 261-277.

[22] *Id.* at 268.

and that the evidence presented must at least have a modicum of admissibility to be given some probative value.[23] Furthermore, even assuming that the IWOF is admissible in evidence, it failed to establish that the Coke Zero products enumerated therein were the same with the ones taken by respondent.[24]

The NLRC also found that the statements of Cabrera as well as respondent's co-employees do not support his claim that the Coke Zero products were already considered as BOs and that their taking was done with the permission of Padua and Guamos. The statements reveal that the permission given was to drink the Coke Zero 240 ml. or 8 ounce products and not to take them outside the premises. On this score, the NLRC also noted that the Coke Zero products which were allowed to be consumed were different from the ones taken by respondent (Coke Zero 237 ml.).[25] Finally, the NLRC noted that if indeed the Coke Zero products taken by respondent were already expired, it would have posed a serious health risk and petitioner's reputation as manufacturer of non-alcoholic beverages would be seriously damaged if said products were to be consumed by the public.[26]

Respondent filed a Motion for Reconsideration (MR) but the same was denied in a Resolution[27] dated November 19, 2014. Respondent then filed a Petition for *Certiorari* under Rule 65 to the CA.

Ruling of the CA

In its assailed Decision, the CA reversed the NLRC Decision. On the respondent's non-compliance with Section 3, Rule 46 of the Rules of Court for failure to attach material portions of the record, *i.e*. the complaint and petitioner's rejoinder, the

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[23] *Id.* at 269.

[24] *Id.* at 272.

[25] *Id.* at 272-275.

[26] *Id.* at 276.

[27] *Id.* at 302-303.

CA held that an outright dismissal is not mandatory and that respondent was able to submit all the material portions of the record necessary to resolve the petition. At any rate, a dismissal based on this ground would be hollow considering that petitioner already attached said portions of the record to its own pleadings before the CA.[28]

On the merits, the CA agreed with the NLRC in not considering the IWOF but ruled that respondent's argument that the Coke Zeros in question were already expired was amply supported by evidence on record. First, petitioner itself repeatedly referred to the Coke Zeros as BOs that would be written-off in its notice of dismissal to respondent. The CA held that this supports respondent's claim that they already expired on December 23, 2011 and February 22, 2012 — a claim which petitioner has not categorically denied. Furthermore, although the subject Coke Zero products were described as full goods, the CA took it to mean that the bottles still contained soft drinks as opposed to empty bottles.[29]

The CA noted that while the LA gave more weight to the denials made by Guamos and Padua in giving permission to take out the Coke Zero products, the NLRC gave more weight to the statements of respondent's co-employees that they were given permission to drink them. While the CA agreed with the NLRC on this point, it arrived at a different conclusion that the products taken by respondent were not different from the ones permitted to be consumed, considering that 8 ounces (which was allowed to be consumed) is equivalent to 236.5882 ml or 237 ml (which was taken by respondent) when rounded-off.[30]

The CA also held that respondent's act was not attended by malice as he relied on the approval of Padua and Guamos, whom he regarded as TRCI's "big bosses," believing that such was sufficient and that he was under the impression that he can take it out since it was approved for consumption. The CA

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[28] *Id.* at 64.

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

[30] *Id.* at 66.

also found the following circumstances that would negate ill motive and bad faith on respondent's part in taking the said BOs: (1) he asked the checker a day before he took them if he can have some bad orders; (2) he brought his family; (3) he replaced the old bottles with new bottles; (4) he picked up the beverages despite knowing that the security guard will note it down; (5) the beverages taken were for his family trip in Batangas; and (6) he readily admitted to the taking when he was required to explain.[31]

The CA construed the charge of theft to be akin to theft under Article 308 of the Revised Penal Code (RPC) since criminal prosecution, aside from dismissal, is also possible as stated in the Red Book. Thus, the charge against respondent was akin to the crime of theft where intent has to be proved. Thus, respondent's act which was done in good faith cannot be regarded as theft.[32]

The CA, however, held that respondent's act was indicative of lack of prudence as he was careless in relying solely on the permission of the TRCI superiors in order to take out the Coke Zeros, which was an improper procedure. However, while such carelessness should be punished, the penalty for such carelessness should be commensurate with the gravity of the offense. Taking into account respondent's 11 years of service without evidence that his employment record was previously tarnished, and the fact that the value of the products he took was ₱1,215.00 only while his monthly salary at the time of his dismissal was ₱20,800.00, the CA concluded that a penalty of suspension for one month is reasonable.[33] The CA also held that petitioner's officers, Robert Luistro and Jovita Carbelledo, should not be held liable in the absence of evidence that they acted maliciously or in bad faith in dismissing respondent.[34]

The dispositive of the Decision dated March 14, 2016 reads:

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

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

[33] *Id.* at 68.

[34] *Id.* at 69.

WHEREFORE, the petition is **GRANTED**. The assailed decision and resolution dated November 19, [2014] of the NLRC in NLRC LAC NO. 07-00185-14 are set aside. Respondent Coca Cola Bottlers Philippines, Incorporated is hereby **ORDERED** to reinstate Alpuerto to his former or equivalent position without loss of seniority rights, benefits, and privileges and to pay backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from January 8, 2013, the date of Alpuerto's dismissal, up to the time of his reinstatement, with a deduction for the one-month suspension.

The Computation and Examination Unit of the NLRC is hereby ordered to compute said award of back wages, benefits and allowances.

SO ORDERED.[35]

Petitioner filed a Motion for Reconsideration but the same was denied in a Resolution[36] dated July 19, 2016.

Hence, the present Petition based on the following ground:

WITH ALL DUE RESPECT, THE COURT OF APPEALS GRAVELY ERRED IN RENDERING THE QUESTIONED DECISION AND QUESTIONED RESOLUTION WHEN IT FAILED TO APPLY THE LAW AND THE PERTINENT RULINGS OF THIS HONORABLE COURT IN RULING THAT [RESPONDENT] WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.[37]

Ruling of the Court

Petitioner argues that a review of the factual and legal findings of the CA is warranted in this case considering that it was in conflict with the findings of the LA and the NLRC[38] and that the CA gravely erred in finding that respondent was illegally dismissed from employment.[39] Finally, petitioner states that in the event this Court sustains the finding that respondent's

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[35] *Id.*

[36] *Id.* at 72.

[37] *Id.* at 28.

[38] *See* Petition for Review on *Certiorari*, *id.* at 29-31; *see* also petitioner's Reply to respondent's Comment, *id.* at 504-507.

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

dismissal was too harsh, it should not be made to pay respondent backwages as it was in good faith in dismissing respondent.[40]

Respondent, on the other hand, prays that the petition be dismissed for failure to raise a question of law.[41] In particular, respondent argues that the matters of whether his act was done in good faith or constitutes theft, of whether it constitutes unlawful taking of company property, and of whether it constitutes serious misconduct as well as willful breach of trust, are factual in nature.[42]

In *Century Iron Works, Inc. v. Bañas,*[43] the Court differentiated between a question of fact and a question of law in this manner:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
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> Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[44] (Citations omitted)

In the present case, there is no dispute that respondent took out nine cases of Coke Zeros from petitioner's warehouse, relying on the permission supposedly given by Guamos and Padua. The crucial question that this Court must resolve, therefore, is whether said act by respondent constitutes a just cause for

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[40] *Id.* at 42-43, 515-519.

[41] *Id.* at 496.

[42] *Id.*

[43] 711 Phil. 586 (2013).

[44] *Id.* at 585-586.

termination under Article 282 (now Article 297[45]) of the Labor Code. Stated differently, the question is whether respondent's dismissal was warranted (as what the LA and the NLRC concluded) or was too harsh for the infraction he committed (as found by the CA). To our mind, this question is one of law, for "[w]hen there is no dispute as to the facts, the question of whether or not the conclusion drawn from these facts is correct is a question of law.[46]

We now resolve the main issue.

Respondent's dismissal was too harsh a penalty for the infraction he committed.

Respondent was dismissed by petitioner on the ground of theft, serious misconduct, and willful breach of trust and confidence.[47] Section 20 of the Red Book provides:

> Section 20: Theft or unauthorized taking of property or funds of the Company, or that of co-employees or third persons within Company premises.
>
> First Offense-Discharge[48]

On the other hand, the COBC provides:

> "Theft of Company assets-whether physical theft such as unauthorized removal of Company product, equipment or information, or theft through embezzlement or intentional misreporting of time or expenses-**may result in termination and criminal prosecution**[49] x x x (Emphasis supplied)

To recall, the CA, quoting these provisions, concluded that there must be malice or intent to gain in order for respondent

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[45] Renumbered per Department of Labor and Employment (DOLE) Department Advisory No. 1, s. 2015.

[46] *Heirs of Nicolas S. Cabigas v. Limbaco*, 670 Phil. 274, 288 (2011).

[47] *Rollo*, p. 135.

[48] *Id.* at 117.

[49] *Id.* at 115.

to be dismissed from employment because the theft or unauthorized taking of property under the Red Book and COBC is akin to theft as defined under the RPC, since the commission of said acts may also lead to criminal prosecution. Thus, the CA held that respondent cannot be said to have committed theft or unauthorized taking of company property since his act of taking out the Coke Zero products was done in good faith, as he relied on the permission given by Padua and Guamos.

We agree with the CA that respondent's dismissal was too harsh a penalty for the infraction he committed. Thus, such dismissal is invalid. While petitioner's company rules provide for the penalty of dismissal in case of theft or unauthorized taking of company property, "such cannot preclude the State from inquiring whether the strict and rigid application or interpretation thereof would be harsh to the employee."[50]

Article 282 (now Article 297) of the Labor Code enumerates the just causes for termination:

> Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:
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> a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> b. Gross and habitual neglect by the employee of his duties;
>
> c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> e. Other causes analogous to the foregoing.

In *Caltex Philippines, Inc. v. Agad*,[51] it was held that theft of company property is akin to serious misconduct or willful

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[50] *Farrol v. Court of Appeals*, G.R. No. 133259, February 10, 2000, 325 SCRA 331, 340.

[51] 633 Phil. 216 (2010).

disobedience by the employee of the lawful orders of his employer in connection with his work, which is a just cause for termination of employment.[52] In *Nagkakaisang Lakas Ng Manggagawa sa Keihin v. Keihin Philippines Corp.*,[53] the Court laid down what constitutes misconduct to justify dismissal:

> Misconduct is defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." "For serious misconduct to justify dismissal under the law, "(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."[54] (Citations omitted)

Taking into consideration the particular circumstances of this case, the Court is of the view that respondent's act of taking company property without compliance with the proper procedure may not be considered as tantamount to serious misconduct to warrant dismissal. As aptly found by the CA, the following circumstances negate a finding that respondent was impelled by a wrongful intent: (1) he asked the checker a day before he took them if he can have some bad orders; (2) he brought his family with him when they took the soft drinks; (3) he replaced the old bottles with new bottles; (4) he picked up the beverages despite knowing that the security guard will note it down; (5) the beverages taken were for his family trip in Batangas; and (6) he readily admitted to the taking when he was required to explain.[55] Surely, if respondent's taking was driven by a wrongful intent, he would not have taken the Coke Zeros in this case

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[52] *Id.* at 233.

[53] 641 Phil. 300 (2010).

[54] *Id.* at 310. Under Sec. 5.2 (a), Rule 1-A of DOLE Department Order No. 147-15, s. 2015, the requisites for serious misconduct to be a valid ground for termination, citing several decisions of this Court, are the following: (1) there must be a misconduct; (2) the misconduct must be of such grave and aggravated character; (3) it must relate to the performance of the employee's duties; and (4) there must be showing that the employee becomes unfit to continue working for the employer.

[55] *Rollo*, pp. 66-67.

knowing very well that other people would have easily noticed what he was doing. Hence, rather than being impelled by wrongful intent, the Court finds that respondent's act was a mere exercise of bad judgment, considering that he believed that the verbal permission given by Padua and Guamos to drink the Coke Zero products were sufficient for him to be able to take them out for the family trip.

As regards loss of trust and confidence, in *Bravo v. Urios College*,[56] the Court discussed the parameters when such may be invoked as a valid ground for dismissal, to wit:

> A dismissal based on willful breach of trust or loss of trust and confidence under Article 297 of the Labor Code entails the concurrence of two (2) conditions.
>
> First, the employee whose services are to be terminated must occupy a position of trust and confidence.
>
> There are two (2) types of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees. Managerial employees are considered to occupy positions of trust and confidence because they are "entrusted with confidential and delicate matters." On the other hand, fiduciary rank-and-file employees refer to those employees, who, "in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property." Examples of fiduciary rank-and-file employees are "cashiers, auditors, property custodians," selling tellers, and sales managers. It must be emphasized, however, that the nature and scope of work and not the job title or designation determine whether an employee holds a position of trust and confidence.
>
> The second condition that must be satisfied is the presence of some basis for the loss of trust and confidence. This means that "the employer must establish the existence of an act justifying the loss of trust and confidence." Otherwise, employees will be left at the mercy of their employers.
>
> Different rules apply in determining whether loss of trust and confidence may validly be used as a justification in termination cases.

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[56] 810 Phil. 603 (2017).

Managerial employees are treated differently than fiduciary rank-and-file employees. In *Caoile v. National Labor Relations Commission*:

> [W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But, as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.

Although a less stringent degree of proof is required in termination cases involving managerial employees, employers may not invoke the ground of loss of trust and confidence arbitrarily. The prerogative of employers in dismissing a managerial employee "must be exercised without abuse of discretion."[57] (Citations omitted)

As to the first requisite, the question of whether an employee "occupied a position of trust and confidence, or was routinely charged with the care and custody of the employer's money or property" is factual.[58] Notably, while the LA and the NLRC upheld the validity of respondent's dismissal for causes invoked by petitioner (including lost of trust and confidence or willful breach of trust and confidence), it did not discuss in detail whether respondent's position as Finance Clerk is one of trust and confidence. The CA, on the other hand, also did not discuss this particular point and instead focused the discussion on the taking of the Coke Zero products. Nevertheless, respondent does not appear to dispute the petitioner's assertion that the position of Finance Clerk is one of trust and confidence. From the pleadings submitted by the parties as well as the findings

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[57] *Id.* at 620-622.

[58] See *Century Iron Works, Inc. v. Bañas*, *supra* note 43, at 586.

of the labor tribunals and the CA as to the nature of the respondent's work and functions as a Finance Clerk, this Court concludes that respondent occupied a position of trust and confidence. As mentioned, he was positioned at the gates of the warehouse and his duties, among others, involved goods receipt inventory, full goods verification at the office's gate, and encoding and recording duties of assets trafficked in and out of said warehouse. He also oversaw that all levels of control and procedures regarding company assets were in order. Furthermore, his specific tasks revealed that aside from conducting physical checking, inventory, and recording, he was also tasked with monitoring and directing the movements of assets to various locations and with safeguarding company assets from unauthorized removal.[59] In the case, however, respondent falls within the second class of positions of trust and confidence, namely, fiduciary rank-and-file employees, since in the course of his work, he regularly handled significant amounts of the employer's property and was entrusted with its care and protection.

As to the second requisite, respondent argues in his Comment to the present Petition that there can be no such breach, much less a willful one, when he acted in good faith when he took the Coke Zero products.[60] We find merit in respondent's assertion and hold that the second requisite for loss of trust and confidence is not present considering that from the circumstances of this case, the breach of trust was not willful. In *Inocente v. St. Vincent Foundation For Children and Aging, Inc.*,[61] we stated that the loss of trust and confidence must be through a willful breach thereof:

> Significantly, loss of confidence is, by its nature, subjective and prone to abuse by the employer. Thus, the law requires that the breach of trust — which results in the loss of confidence — must be willful. The breach is willful if it is done intentionally, knowingly and purposely,

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[59] See *supra* note 5.

[60] *Rollo*, p. 500.

[61] G.R. No. 202621, June 22, 2016, 794 SCRA 299.

without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.

We clarify, however, that it is the breach of the employer's trust, not the specific employee act/s which the employer claims caused the breach, which the law requires to be willful, knowingly and purposefully done by the employee to justify the dismissal on the ground of loss of trust and confidence.

In *Vitarich Corp. v. NLRC*, we laid out the guidelines for the application of the doctrine of loss of confidence, namely: (1) the loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. In short, there must be an actual breach of duty which must be established by substantial evidence.[62] (Citations omitted)

Although it is already not disputed that he failed to comply with the proper procedure for the taking out of the Coke Zeros, the circumstances of the case negate a finding that his infraction constitutes a willful breach of the trust reposed in him by petitioner. The Court finds that respondent's infraction was brought about by carelessness rather than by willful and intentional act of stealing from his employer. His failure to comply with proper procedures was brought about by his erroneous belief that the actions he had undertaken (such as securing permission from Padua and Guamos, whom he regarded as "big bosses") were enough for him to validly take the Coke Zeros in question.

Of course, this is not to say that respondent was entirely faultless in this case. As correctly held by the CA, while respondent committed an act which should not go unpunished, the penalty of dismissal was too harsh and disproportionate. Infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance, and the penalty must be commensurate with the act, conduct or omission

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[62] *Id.* at 328-329.

imputed to the employee.[63] Hence, the Court holds that a lesser penalty would have been sufficient for the infraction he committed, taking also into consideration that he had no previous derogatory record in his 11 years in petitioner's employ. While this Court is aware that there is jurisprudence[64] to the effect that "in cases of breach of trust and loss of confidence, the length of time, if considered at all, shall be taken against the employee, x x x"[65] for '[u]nlike other just causes for dismissal, trust in an employee, once lost is difficult, if not impossible, to regain,"[66] such must be understood to mean that when loss of trust and confidence has been duly established, length of service may be considered as an aggravating circumstance instead. Such is not applicable in this case since as already discussed, the second requisite for loss of trust and confidence is lacking.

Backwages and reinstatement

Petitioner prays, in the alternative, that in case respondent's dismissal be declared illegal, it should not be made liable to pay backwages for they were in good faith in terminating respondent's employment. Furthermore, they pray that they should just be allowed to pay separation pay in lieu of reinstatement, since reinstatement is no longer feasible considering the length of time that respondent has been dismissed, that he occupied a position of trust and confidence, and reinstatement would no longer serve the best interest of the parties.

We find no merit to both of petitioner's alternative prayers.

It is true that in *Integrated Microelectronics, Inc. v. Pionilla*,[67] the Court recognized an exception to the general rule that

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[63] *Farrol v. Court of Appeals*, *supra* note 50, at 339.

[64] See *Matis v. Manila Electric Co.*, 795 Phil. 319 (2016).

[65] *Id.* at 325.

[66] *Id.*

[67] G.R. No. 200222, August 28, 2013, 704 SCRA 362.

backwages are to be paid to an illegally dismissed employee. The Court held therein that reinstatement without backwages may be ordered on account of the following: (a) the fact that dismissal of the employee would be too harsh of a penalty; and (b) that the employer was in good faith in terminating the employee.[68] Said ruling was applied in *Universal Robina Sugar Milling Corp. v. Ablay*[69] and *Holcim Philippines, Inc. v. Obra*.[70] However, it must be emphasized that under the parameters set forth in *Integrated Microelectronics*, the denial of backwages was deemed to be the penalty sufficient for the infraction committed by the employee instead of dismissal from employment.

While it may be argued that the two above-mentioned requisites[71] are present in this case, the Court finds no compelling reason to disturb the CA's finding that suspension for one month would be the more reasonable and commensurate penalty under the circumstances. Hence, to impose a one-month suspension and delete the award of backwages in its entirety at the same time would amount to respondent being penalized twice for the same infraction. Thus, instead of deleting the award of backwages in its entirety, the Court affirms the CA in awarding backwages but with deduction corresponding to the suspension for one month, with modification that said monetary award shall earn legal interest of 6% per annum from finality of this Decision until full satisfaction thereof.[72]

Furthermore, the Court cannot sustain petitioner's other alternative prayer as regards the payment of separation pay in lieu of reinstatement. Considering that payment of separation

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[68] *Id.* at 367.

[69] G.R. No. 218172, March 16, 2016, 787 SCRA 593.

[70] 792 Phil. 594 (2016).

[71] Notably, as to the second requisite, the CA did not award moral and exemplary damages in favor of respondent upon a finding that the latter's dismissal was not attended with bad faith.

[72] See *Claret School of Quezon City v. Sinday*, G.R. No. 226358, October 9, 2019.

pay is an exception to the general rule that an employee who was illegally dismissed should be reinstated,[73] we cannot apply such exception on the basis of petitioner's bare assertion that reinstatement would no longer serve the best interest of the parties. In fact, on the side of the respondent, he has reiterated his prayer for reinstatement in his Memorandum of Appeal[74] and MR[75] before the NLRC, his Petition for *Certiorari*[76] before the CA, and in his Comment[77] to the present Petition where he prayed that the same be dismissed (thus, he is in effect praying for this Court to affirm the CA ruling which ordered his reinstatement).

In sum, the Court finds that respondent's dismissal was too harsh a penalty for the infraction he committed. Hence, the CA was correct in finding that the NLRC committed grave abuse of discretion in upholding the validity of respondent's dismissal.

WHEREFORE, premises considered, the Petition is **DENIED.** The Decision dated March 14, 2016 and the Resolution dated July 19, 2016 of the Court of Appeals in CA-G.R. SP No. 139155 are hereby **AFFIRMED with MODIFICATION** that the monetary award made therein shall earn legal interest of 6% per annum reckoned from the finality of this Decision until full satisfaction thereof.

SO ORDERED.

Caguioa[*] (*Acting Chairperson*), *Lazaro-Javier*, and *Lopez, JJ.*, concur.

Peralta, C.J. (Chairperson), on official business.

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[73] See Art. 279 (now Art. 294) of the Labor Code.

[74] *Rollo*, p. 229.

[75] *Id.* at 285.

[76] *Id.* at 320.

[77] *Id.* at 501.

[*] Designated Acting Chairperson per S.O. No. 2776 dated February 27, 2020.

SECOND DIVISION

[G.R. No. 226420. March 4, 2020]

ABDON A. IMINGAN, *petitioner, vs.* **THE OFFICE OF THE HONORABLE OMBUDSMAN, THE HONORABLE SANDIGANBAYAN, and THE NATIONAL BUREAU OF INVESTIGATION-CORDILLERA ADMINISTRATIVE REGION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; CONCEPT OF PROBABLE CAUSE, EXPLAINED.— For the purpose of filing a criminal information, probable cause has been defined to constitute such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. Explaining the concept of probable cause, the Court held in *Philippine Deposit Insurance Corp. (PDIC) v. Hon Casimiro, et al.* that: x x x The term [probable cause] does not mean "actual or 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. It is enough that it is believed that the act or omission complained of constitutes the offense charged. 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.

2. POLITICAL LAW; CONSTITUTIONAL LAW; THE OFFICE OF THE OMBUDSMAN; OMBUDSMAN ACT OF 1989; THE COURT DOES NOT INTERFERE IN THE OMBUDSMAN'S EXERCISE OF DISCRETION IN DETERMINING PROBABLE CAUSE, EXCEPT WHERE THERE IS AN ALLEGATION OF GRAVE ABUSE OF DISCRETION; HOWEVER, MERE DISAGREEMENT WITH THE OMBUDSMAN'S FINDINGS IS NOT ENOUGH TO CONSTITUTE GRAVE ABUSE OF DISCRETION, AS PETITIONER MUST CLEARLY SHOW THAT THE OMBUDSMAN EXERCISES HIS/HER DISCRETIONARY POWER IN AN ARBITRARY OR DESPOTIC MANNER BY REASON OF PASSION OR PERSONAL HOSTILITY, IN ARRIVING AT THE CONCLUSION HE/SHE REACHED.— The Constitution and RA 6770 empower the Ombudsman, in the exercise of its investigatory and prosecutory powers, to act on criminal complaints involving public officials and employees. Generally, the Court does not interfere in the Ombudsman's exercise of discretion in determining probable cause. The Ombudsman's investigatory and prosecutorial powers, while plenary in nature, are not beyond the scope of the Court's power of review. Where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's constitutional power and duty to decide whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. However, not every error in the proceedings or erroneous conclusion of law or fact constitutes grave abuse of discretion. In the same way, mere disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion. Petitioner must clearly show that the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in arriving at the conclusion she reached. There is grave abuse of discretion where it is shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation

of law. On this score, where there is an imputation of errors of jurisdiction proceeding from grave abuse of discretion, the special civil action of *certiorari* may be resorted to.

3. ID.; ID.; ID.; ID.; IN FINDING PROBABLE CAUSE, THE OMBUDSMAN DOES NOT HAVE TO INQUIRE AS TO WHETHER THERE WAS SUFFICIENT EVIDENCE TO SECURE A CONVICTION.— After a careful study of the case, the Court finds that petitioner failed to show that the Ombudsman conducted the preliminary investigation in a arbitrary and despotic manner. On the contrary, the Ombudsman properly performed its duty in determining whether petitioner is probably guilty of Section 3(e) of RA 3019. x x x. Contrary to what petitioner would impress upon the Court, the Ombudsman, in finding probable cause, did not have to inquire as to whether there was sufficient evidence to secure a conviction. A reading of the assailed Resolution shows that the Ombudsman was of the well-founded belief that the complained acts and omissions constituted a violation of Section 3(e) of RA 3019.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE DISMISSAL OF A COMPLAINT ON PRELIMINARY INVESTIGATION BY A PROSECUTOR CANNOT BE CONSIDERED A VALID AND FINAL JUDGMENT, AS INVESTIGATION IS NOT AN EXERCISE IN ADJUDICATION SINCE NO RULING IS MADE ON THE RIGHTS AND OBLIGATIONS OF THE PARTIES, BUT MERELY EVIDENTIARY APPRAISAL TO DETERMINE IF IT IS WORTH GOING INTO ACTUAL ADJUDICATION.— [T]he dismissal of OMB-L-C-07-0106-A is not a judgment on the merits. Hence, petitioner cannot invoke finality of resolutions. As the Court held: Jurisprudence has long settled that preliminary investigation does not form part of trial. Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function. It is not an exercise in adjudication: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication. The dismissal of a complaint on preliminary investigation by a prosecutor "cannot be considered a valid and final judgment." As there is no former final judgment or order on the merits

rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been *res judicata* x x x.

5. ID.; ID.; RIGHTS OF ACCUSED; NO DENIAL OF DUE PROCESS, AS PETITIONER'S FILING OF THE COUNTER-AFFIDAVIT WAS AN OPPORTUNITY FOR HIM TO EXPLAIN HIS SIDE OF THE CONTROVERSY.— Another matter raised by petitioner is denial of due process. According to him, he was not given an opportunity to controvert the charge of violation of RA 3019 as what he was directed to file a counter-affidavit to was only the charge of falsification. x x x. Petitioner's allegations do not persuade and are belied by the record. *First*, Dominguez's affidavit specifically charged him and his co-respondents *a quo* with violation of RA 3019. The affidavit expressly cited the documents that petitioner prepared and signed in connection with the procurement of the Mitsubishi van. *Second*, the NBI Case Report categorically recommended, among other things, that petitioner and some of his co-respondents *a quo* be charged with violation of Section 3 of RA 3019. Significantly, the NBI Case Report provided a detailed and lengthy report in support of its conclusion and recommendation. *Third*, nowhere in the Order dated March 17, 2011 of the Ombudsman did it require petitioner and his co-respondents *a quo* to file a counter-affidavit only to the charge of falsification. Also, all the charged offenses were explicitly stated in the first page of the Order. *Fourth*, petitioner filed a counter-affidavit. Therein, he even acknowledged being charged with violation of RA 3019. The filing of the counter-affidavit was an opportunity for him to explain his side of the controversy. *Fifth*, with respect to the Ombudsman's Resolution, petitioner had the chance to question it and seek reconsideration thereof, which he actually did through his Motion for Partial Consideration. Thus, petitioner has no basis at all to claim that he was deprived of an opportunity to be heard.

6. ID.; ID.; ID.; RIGHT TO A SPEEDY DISPOSITION OF CASES; THE RIGHT TO A SPEEDY DISPOSITION OF CASES IS DEEMED VIOLATED ONLY WHEN THE PROCEEDINGS ARE ATTENDED BY VEXATIOUS, CAPRICIOUS, AND OPPRESSIVE DELAYS; PETITIONER'S RIGHT TO A SPEEDY DISPOSITION OF CASES, NOT VIOLATED.— [P]etitioner invokes his right

to a speedy disposition of cases, saying that it took the Ombudsman a long time to resolve the complaint. It bears stressing that the right to a speedy disposition of cases is a flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Due regard must be given to the facts and circumstances surrounding each case. The right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. Petitioner has failed to substantiate his claim, or to even show that there was an unreasonable, arbitrary, and oppressive delay on the part of the Ombudsman in conducting the preliminary investigation. He even admits not following up on his case believing that it was dismissed since OMB-L-C-07-0106-A had already been dismissed.

APPEARANCES OF COUNSEL

Mona Lisa D. Abibico for petitioner.
The Solicitor General for respondents.

D E C I S I O N

INTING, *J.*:

This resolves a Petition for *Certiorari* under Rule 65, with Prayer for Temporary Restraining Order (TRO) and Preliminary Injunction[1] assailing the Office of the Ombudsman's (Ombudsman) finding of probable cause to charge Abdon A. Imingan (petitioner) with violation of Section 3 (e) of Republic Act No. (RA) 3019.[2] Petitioner prays for the annulment of the Resolution[3] dated November 4, 2014 of the Ombudsman in OMB-C-C-11-0107-C.

Complainant Harry C. Dominguez (Dominguez) executed an Affidavit[4] dated February 6, 2007 charging the persons

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[1] *Rollo*, pp. 3-43.

[2] Anti-Graft and Corrupt Practices Act.

[3] *Rollo*, pp. 45-70.

[4] *Id.* at 101-103.

mentioned under paragraph 1 thereof with multiple counts of *Estafa* through Falsification of Public Documents, violations of RA 6713,[5] and RA 3019.

The affidavit reads:

I, HARRY C. DOMI[N]GUEZ, of legal [age], single, Filipino citizen and a resident of Tadian, Mt. Province, after having been duly sworn to in accordance to law, do hereby depose and state the following, to wit:

1. THAT, I am filing a complaint against the herein listed individuals, who acted jointly and confederated with one another, for ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS (multiple counts); Violations of Republic Acts 6713 and 3019:

    i. GOV. MAXIMO B. DALOG, Provincial Governor, Mt. Province;
    ii. RONALD C. KIMAKIM, Proprietor, RONHIL Trading;
    iii. THEODORE B. MARRERO, Provincial Accountant;
    iv. NENITA D. LIZARDO, M.D., Provincial Health Officer;
    v. HELEN MACLI-ING, Provincial Nurse;
    vi. ATTY. BARTOLOME MACLI-ING, Notary Public;
    vii. PAULO P. PAGTEILAN, BAC Chairman;
    viii. LILY ROSE T. KOLLIN, BAC Vice-Chairman;
    ix. FLORENCE GUT-OMEN, BAC Member;
    x. EDWARD LIKIGAN, BAC Member;
    xi. SOLEDAD THERESA F. WANAWAN, BAC Member;
    xii. JEROME M. FALINGAO, BAC-TWG;
    xiii. ABDON A. IMINGAN, BAC Secretariat;
    xiv. ABELARD T. PACHINGEL, Inspector of Vehicle;
    xv. THE[O]DORE L. DALOG, Engineer IV (Inspector of Vehicle); and,
    xvi. CAWED A. GAMMONAC, Provincial Treasurer.

2. THAT, except for RONALD KIMAKIM and ATTY. BARTOLOME MACLI-ING, I am likewise filing an administrative complaint for GRAVE MISCONDUCT and

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

DISHONESTY against the same persons mentioned at Paragraph 1, items (i) to (xvi) of this same Affidavit, who are all government employees;

3. THAT, sometime in the month of February 2006 up to March 2006, the abovementioned persons, acting jointly and confederating with one another, and on various occasions during the span of said period, did then caused the preparations of various documents allegedly pertaining to the purchase of one unit Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509, which was made to appear to have been officially procured by the Provincial Government of Mt. Province represented by GOV. DALOG in the amount of PhP999,000.00 from RONALD KIMAKIM;

4. THAT, however, I learned that the said Mitsubishi L300 Versa van with the same engine and serial numbers mentioned at the preceding paragraph was actually privately purchased in cash by HELEN MACLI-ING from the Motorplaza, Inc., Baguio City, in the amount of Php756,000.00 only;

5. THAT, for this reason, there is no official transaction that transpired between GOV. DALOG and KIMAKIM regarding the acquisition of the said one unit Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509;

x x x x x x x x x

7. THAT, relative to this complaint, I likewise caused the initiation of complaints for Violations of Republic Acts 3019 and 9184, also known as ANTI-GRAFT AND CORRUPT PRACTICES ACT and AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION FOR THE PROCUREMENT ACT[I]VITIES FOR THE GOVERNMENT AND OTHER PURPOSES, respectively, with the Office of the Deputy Ombudsman for Luzon, Quezon City, docketed as OMB Case No. L-C-07-0106-A;[6]

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[6] *Rollo*, pp. 101-102.

The complaint was referred to the National Bureau of Investigation (NBI) for investigation. Thereafter, the NBI Reporting Investigator issued a Case Report[7] dated August 21, 2007.

To provide a backgrounder, portions of the NBI Case Report are hereunder quoted as follows:

> 01. This case stemmed from the LETTER COMPLAINT dated February 5, 2007 (Annex A) of HARRY C. DOMI[N]GUEZ, Bontoc, Mt. Province, requesting the NBI-CAR to investigate the alleged anomalous transaction regarding the purchase of one (1) unit Mitsubishi Van acquired by the Provincial Government of Mountain Province x x x.
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> x x x x x x x x x
>
> Perusal of the DEED OF SALE OF A MOTOR VEHICLE including the issued RECEIPT therefor shows that the vehicle in question was allegedly sold by RONALD KIMAKIM to the Provincial Government of Mt. Province represented by GOV. DALOG on 29 March 2006 in the amount of PhP999,000.00, as evidenced by their respective signatures appearing therein. x x x
>
> On the contrary, scrutiny of the Motorplaza's VSI and DR [Delivery Receipt] revealed that the Mitsubishi van was sold to RONALD KIMAKIM by the Motorplaza, Inc., represented by its Sales Manager ADELON T. ESPIRITU on March 29, 2006, in the amount of PhP756,000.00 only. x x x
>
> *Per se*, the aforementioned DEED OF SALE contradicts with the aforesaid Motorplaza's VSI and DR. The probability of the authenticity of the sale of said Mitsubishi vehicle to GOV. DALOG by KIMAKIM and the sale of the same vehicle to KIMAKIM by the Motorplaza, Inc., both executed on the same day and occurring in two different places, is dubious.
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> x x x x x x x x x
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> 08. In view of KIMAKIM's assertions, substantiated by the declaration of ADELON ESPIRITU, it is safe to conclude that the transaction between KIMAKIM and GOV. DALOG

[7] *Id.* at 104-119.

re the sale of the subject van never really transpired, thus, the narrations contained at said DEED OF SALE OF MOTOR VEHICLE are absolutely false x x x.

09. x x x for reason that the narrations contained in the said DEED OF SALE OF MOTOR VEHICLE are untrue, all the herein listed preceding documents that were issued in support to the same DEED OF SALE OF MOTOR VEHICLE are deemed fabricated and/or falsified, to wit:

a. Undated PURCHASE REQUEST No. 30-06 x x x, *re the purchase of L-300 Versa van*, x x x;

b. BIDS AND AWARDS COMMITTEE (BAC) LETTER x x x, *requesting for approval/and approving the purchase of one (1) unit VERSA VAN*, x x x;

c. INVITATION TO APPLY FOR ELIGIBILITY AND TO BID x x x, *for the procurement of ONE (1) UNIT MITSUBISHI VAN*, x x x;

d. KIMAKIM'S accomplished BID FORM x x x, *quoting therein the price of PhP999,000.00 for 1 unit L300 Mitsubishi Versa Van, Brand New with aircon and markings*;

e. ABSTRACT OF BIDS x x x, *containing the description of (1) UNIT Mitsubishi Van*, x x x;

f. POST-QUALIFICATION EVALUATION REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN*, x x x;

g. POST-QUALIFICATION EVALUATION SUMMARY REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN*, x x x;

h. BID EVALUATION REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN*, x x x;

i. BAC RESOLUTION NO. G-06 x x x DECLARING LOWEST CALCULATED AND RESPONSIVE BID (LCRB) AND RECOMMENDING APPROVAL, *FOR THE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN*, x x x;

j. NOTICE OF AWARD/ACCEPTANCE x x x, *RE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN*, x x x;

k. PURCHASE ORDER x x x, *for (1) unit MITSUBISHI VAN in the amount of Php999,000.00*, x x x;

10. In the same manner, all the subsequent documents issued in support of the same DEED OF SALE OF MOTOR VEHICLE are likewise believed falsified and made up purposely to justify the disbursement of the payment of the said Mitsubishi van in the amount of PhP999,000.00, to wit:

a. RONHIL TRADING Statement of Account x x x, *for the payment of one unit MITSUBISHI VAN in the amount of PhP999,000.00*, signed by a representative of KIMAKIM;

b. ACCEPTANCE AND INSPECTION REPORT x x x, *of 1 unit MITSUBISHI VAN, BRAND NEW*, x x x;

c. INSPECTION REPORT x x x, *on MITSUBISHI L300 VAN, BRAND NEW COLOR WHITE WITH ENGINE NO. 4D56AR6686*, x x x;

d. DISBURSEMENT VOUCHER x x x, *for the payment of ONE UNIT MITSUBISHI VAN in the amount of PhP999,000.00*, signed by GOV. MAXIMO B. DALOG; THEODORE B. MARRERO, Provincial Accountant; and RONALD KIMAKIM;

x x x x x x x x x

11. The Mitsubishi L300 van that was made to appear to have been officially purchased in the amount of PhP999,000.00 by the Mt. Province Provincial Government was actually the same Mitsubishi L300 van that was privately purchased by the Spouses BARTOLOME and HELEN MACLI-ING from the Motorplaza, Inc., Baguio City, in the amount of PhP756,000.00 only;

12. In view that no transaction re the sale of the said van between KIMAKIM and GOV. DALOG transpired and through the concerted efforts of the latter including the abovementioned government employees signatories on the documents itemized at Paragraphs 9 (a to k) and 10 (a to d) of this Report, the

Provincial Government of Mt. Province was defrauded in the entire amount of PhP999,000.00 only.

x x x x x x x x x

17. Perusal of various documents (not certified true copies) attached to the Counter-Affidavit of GOV. DALOG are the following, to wit:

    a. Undated and unnumbered PURCHASE REQUEST x x x, *re the purchase of L-300 Versa van (Brand New) Body Painting-white color, fully air-conditioned, 2.5 Diesel, with Ambulance Equipment and Accessories*, x x x;

    b. BIDS AND AWARDS COMMITTEE (BAC) LETTER x x x, *requesting for approval/and approving the purchase of Mitsubishi Van with Ambulance Equipment and other Accessories*, x x x;

    c. INVITATION TO APPLY FOR ELIGIBILITY AND TO BID x x x, *for the procurement of ONE (1) UNIT MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, x x x;

    x x x x x x x x x

    e. MINUTES OF THE PRE-BID CONFERENCE HELD AT THE BAC OFFICE, PROVINCIAL CAPITOL BONTOC, MT. PROVINCE ON MARCH 3, 2006 x x x, *stating that the same was FOR THE CONSTRUCTION OF BONTOC COMMERCIAL CENTER PHASE 1 HELD AT THE BAC OFFICE, CALLED TO ORDER AT 10:02AM MARCH 3, 2006 AND WAS PRESIDED BY MR. PAULO PAGTEILAN*;

    f. ABSTRACT OF BIDS x x x, *containing the description of (1) UNIT Mitsubishi Van with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, x x x;

    g. MINUTES OF THE REGULAR MEETING AND OPENING OF BIDS x x x, NAME OF CONTRACT *— PROCUREMENT OF ONE (1) UNIT MITSUBISHI L300 with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*;

h. POST-QUALIFICATION EVALUATION REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;

i. POST-QUALIFICATION EVALUATION SUMMARY REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN WITH AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;

j. BID EVALUATION REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN with EQUIPMENT AND OTHER ACCESSORIES*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;

k. BAC RESOLUTION NO. G-06 x x x, *DECLARING LOWEST CALCULATED AND RESPONSIVE BID (LCRB) AND RECOMMENDING APPROVAL, FOR THE PROCUREMENT OF ONE (1) UNIT L300 MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, x x x;

l. NOTICE OF AWARD/ACCEPTANCE x x x, *RE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, x x x;

m. PURCHASE ORDER dated March 17, 2006 x x x, *for (1) unit MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES, in the amount of PhP999,000.00*, signed by GOV. DALOG and RONALD KIMAKIM;

x x x x x x x x x

20. x x x x x x x x x

Items a, b, c, e, f, g, h, i, j, and k of Paragraph 9 of this Report pertain to the purchase of one unit (basic) Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509, that was made to appear to have

been procured by the provincial Government of Mt. Province represented by GOV. DALOG in the amount of PhP999,000.00 from KIMAKIM.

On the other hand, items a, b, c, f, h, i, j, k, l, and m of Paragraph 17, which were used as supporting documents in the Counter-Affidavit of GOV. DALOG, pertain to the purchase of a one unit Mitsubishi L300 Versa Van with the same engine and serial numbers to that of the said van mentioned at the preceding paragraph.

However, it is noteworthy that in all said specified documents under Paragraph 17, the phrase "*with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES,"* were already suffixed to the description "*one unit MITSUBISHI L300 VERSA VAN,"* thus, making it appear that what was purchased was one unit MITSUBISHI L300 VAN with AMBULANCE EQUIPMENT and OTHER ACCESSORIES, when in fact and in truth there is no official transaction that transpired between GOV. DALOG and KIMAKIM regarding the acquisition of the said "one unit MITSUBISHI L300 VERSA VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES."

What was took place was the private transaction between the Spouses MACLI-ING and ESPIRITU of the Motorplaza, Inc., Baguio City, re the purchase of one unit (basic) Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509 in the amount of PhP756,000.00 only.

Apparently, when GOV. DALOG, Et Al., learned about the complaint filed against them by DOMINGUEZ, the Subjects, acting jointly and confederating with one another, did then caused the immediate reconstruction of all said specified documents under Paragraph 17, purposely to justify the disbursement of the amount of PhP999,000.00.

21. Aside from the circumstances already cited at Paragraph 10 of this Report which substantiates the conclusion that the supporting documents re the purchase of the subject Mitsubishi Van were fabricated, this would be further corroborated by the document specified at Item E, Paragraph 17 of this Report, described as "MINUTES OF THE PRE-BID CONFERENCE HELD AT THE BAC OFFICE, PROVINCIAL CAPITOL BONTOC, MT. [PROVINCE] ON MARCH 3, 2006."

> Scrutiny thereof shows that its purpose is FOR THE CONSTRUCTION OF BONTOC COMMERCIAL CENTER PHASE 1 HELD AT THE BAC OFFICE, CALLED TO ORDER AT 10:02AM MARCH 3, 2006 AND WAS PRESIDED BY MR. PAULO PAGTEILAN, hence, not for the purchase of the Mitsubishi L300 Versa Van. Yet, a COMMENT of Dr. NENITA LIZARDO appearing at the bottom of the document that reads, *"I would like to suggest that except for painting, the ambulance equipment and other accessories shall not be installed because it was planned that upon delivery of this vehicle, the same shall be used as service vehicle of the hospital for the meantime,"* presupposes that same is indeed for the purchase of the subject van.
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> In view of the confusing/inconsistent contents in the said document, it is safe to conclude that same was fictitious.[8] (Emphasis and underscoring omitted; italics in the original.)

Atty. Nestor M. Mantaring of the NBI transmitted the NBI Case Report to the Provincial Prosecutor of Mountain Province for preliminary investigation. Subsequently, Mountain Province Provincial Prosecutor Moses C. Aycchok endorsed the complete record of the case to the Ombudsman.[9]

In the Order[10] dated March 17, 2011 of the Ombudsman in OMB-C-C-11-0107-C, respondents *a quo*,[11] including herein petitioner, were directed to file their respective counter-affidavits.

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[8] *Id.* at 104-115.

[9] *Id.* at 46-47.

[10] *Id.* at 98-100.

[11] Respondents in OMB-C-C-11-0107-C are the following: Governor Maximo B. Dalog, Cawed A. Gammonac (Provincial Treasurer), Theodore B. Marrero (Provincial Accountant), Nenita D. Lizardo, M.D. (Provincial Health Officer), Helen Macli-ling (Provincial Nurse), Paulo P. Pagteilan, Lily Rose T. Kollin, Florence R. Gut-omen, Edward B. Likigan, Emilio B. Pinangga, Soledad Theresa F. Wanawan (Chairman and Members, Bids and Awards), Jerome M. Falingao (Member, Technical Working Group), Abdon A. Imingan (BAC Secretariat), Abelard T. Pachingel, Theodore L. Dalog (Members, Technical & Inspection ALL C/O Provincial Government of

In his counter-affidavit,[12] petitioner contended, among others, that at the time of the subject transaction, he was an Executive Assistant at the Office of the Governor of Mountain Province and a member of the BAC Secretariat. He denied the NBI's finding of cover up committed in the bid documents. He alleged that then BAC Chairman, Paolo P. Pagteilan, explained to him that what should be indicated as the "Name of the Project" in the Post-Qualification Evaluation Summary Report and Bid Evaluation Report is "Procurement of Mitsubishi Van with Ambulance Equipment and Accessories," and not just "Procurement of Mitsubishi Van."[13] Thus, changes were correspondingly effected.

Meanwhile, in a separate case docketed as OMB-L-C-07-0106-A, entitled *"Harry C. Dominguez v. Governor Maximo B. Dalog, Paulo P. Pagteilan, Lily Rose T. Kollin, Florence R. Gut-omen, Edward B. Likigan, Emilio B. Pinangga, Soledad Theresa F. Wanawan,"* respondents therein were charged with violations of Section 3 (e) of RA 3019 and RA 9184 for the same transaction as in the present case, *i.e.*, the procurement of the Mitsubishi van. In the Resolution[14] dated March 25, 2009, the Ombudsman dismissed the case. The subsequent motion for reconsideration was denied in the Order[15] dated September 6, 2010. As can be culled from the Ombudsman's Resolution in that case, Dominguez claimed that there were irregularities in the purchase of the Mitsubishi van, thus:

1. The bidding was rigged because the vehicle was not procured through public bidding in violation of Section 10, Rule IV, Implementing Rules and Regulations (IRR for brevity) of R.A. 9184;

Mountain Province Capitol Building, Bontoc, Mountain Province), Atty. Bartolome Macli-ling (Notary Public), and Ronald C. Kimakim (Proprietor, RONHIL Trading). (*Id.* at 98.)

[12] *Id.* at 132-135.

[13] *Id.* at 134.

[14] *Id.* at 79-92.

[15] *Id.* at 93-97.

2. The required posting of the procurement of the vehicle at the G-EPS (Government Electronic Procurement System) was not complied with in violation of Section 8, Rule III of the Implementing Rules and Regulations of R.A. 9184;

3. The vehicle was acquired from an unauthorized dealer;

4. There is no transparency with respect to said procurement because in the Invitation to Apply for Eligibility and to Bid, it was indicated that the funding will come from the trust fund but in the disbursement voucher, it was indicated that the funding came from the general fund; and

5. The purchase price in the amount of Nine Hundred Ninety-Nine Thousand, Nine Hundred Ninety-Nine Pesos Philippine Currency (PhP999,000.00) is excessive based on the price quotation submitted by MotorPlaza, Inc. in the amount of PhP781,000.00 for a Mitsubishi Van with the same specifications.[16] (Citations omitted.)

There were attempts to consolidate OMB-L-C-07-0106-A with OMB-C-C-11-0107-C.[17] However, the attempts were futile by reason of the dismissal of OMB-L-C-07-0106-A.

On November 4, 2014, the Ombudsman rendered the assailed Resolution.[18] It noted that the charges against respondents *a quo* were anchored on the documents alleged to have been modified to hide the irregularities in the procurement of the Mitsubishi van. The Ombudsman picked up on the report of the NBI, and pointed out that, initially, what was reflected in the bid documents was the procurement of a *Mitsubishi van*. However, it was subsequently made to appear in some bid documents that the procurement was for an *ambulance* for the Bontoc General Hospital (BGH).

Specifically as regards the charge for violation of Section 3 (e) of RA 3019, the Ombudsman found that the elements thereof are present to constitute as basis for a finding of probable cause against petitioner and his co-respondents *a quo*.

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[16] *Id.* at 80.

[17] *Id.* at 60.

[18] *Id.* at 45-71.

The Ombudsman disposed of the case in this wise:

WHEREFORE, this Office finds probable cause to prosecute MAXIMO B. DALOG, THEODORE A. MARRERO, NENITA D. LIZARDO, HELEN K. MACLI-ING, PAULO P. PAGTEILAN, LILY ROSE T. KOLLIN, FLORENCE R. GUT-OMEN, EDWARD B. LIKIGAN, SOLEDAD THERESA F. WANAWAN, JEROME M. FALINGAO, ABDON A. IMINGAN, ABELARD T. PACHINGEL and private respondent RONALD C. KIMAKIM, acting in conspiracy with one another, for violation of Section 3(e) of RA 3019, as amended. Accordingly, let the appropriate Information be FILED against them before the Sandiganbayan for one count of violation of Section 3(e) of RA 3019, as amended.

The charges of Estafa through Falsification and Violation of Section 4, Republic Act No. 6713 are DISMISSED for lack of merit.

Furthermore, the charges against public respondents CAWED A. GAMMONAC, THEODORE L. DALOG, EMILIO B. PINANGGA, and private respondent ATTY. BARTOLOME MACLI-ING are DISMISSED for insufficiency of evidence.

SO ORDERED.[19]

Petitioner moved for a partial consideration[20] of the Resolution, but the Ombudsman denied it in an Order[21] dated August 8, 2016.

Hence, this petition for *certiorari* where petitioner essentially argues that the Ombudsman committed grave abuse of discretion in finding probable cause against him for violation of Section 3 (e) of RA 3019.

The Court's Ruling

The petition lacks merit.

The Constitution and RA 6770[22] empower the Ombudsman, in the exercise of its investigatory and prosecutory powers, to

[19] *Id.* at 69.

[20] *Id.* at 145-166.

[21] *Id.* at 73-78.

[22] The Ombudsman Act of 1989.

act on criminal complaints involving public officials and employees.[23] Generally, the Court does not interfere in the Ombudsman's exercise of discretion in determining probable cause.[24]

For the purpose of filing a criminal information, probable cause has been defined to constitute such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.[25]

Explaining the concept of probable cause, the Court held in *Philippine Deposit Insurance Corp. (PDIC) v. Hon. Casimiro, et al.*,[26] that:

> x x x The term [probable cause] does not mean "actual or 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. It is enough that it is believed that the act or omission complained of constitutes the offense charged.
>
> 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

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[23] *Casing v. Hon. Ombudsman, et al.*, 687 Phil. 468, 475 (2012), citing *PCGG v. Hon. Desierto*, 445 Phil. 154 (2003) and *Quiambao v. Hon. Desierto*, 481 Phil. 852 (2004).

[24] *Cam v. Casimiro, et al.*, 762 Phil. 72, 88 (2015).

[25] *Philippine Deposit Insurance Corp. (PDIC) v. Hon. Casimiro, et al.*, 768 Phil. 429, 437 (2015), citing *Fenequito, et al. v. Vergara, Jr.*, 691 Phil. 335, 345 (2012).

[26] 768 Phil. 429 (2015).

require an inquiry as to whether there is sufficient evidence to secure a conviction.[27] (Emphasis and underscoring omitted.)

The Ombudsman's investigatory and prosecutorial powers, while plenary in nature,[28] are not beyond the scope of the Court's power of review.[29] Where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's constitutional power and duty to decide whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[30]

However, not every error in the proceedings or erroneous conclusion of law or fact constitutes grave abuse of discretion.[31] In the same way, mere disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion.[32] Petitioner must clearly show that the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in arriving at the conclusion she reached.[33] There is grave abuse of discretion where it is shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[34] The abuse

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[27] *Id.* at 437-438, citing *Fenequito, et al. v. Vergara, Jr.*, 691 Phil. 335, 345-346 (2012).

[28] *Public Attorney's Office v. Office of the Ombudsman*, G.R. No. 197613, November 22, 2017, 846 SCRA 90, 100, citing *Soriano v. Marcelo*, 597 Phil. 308, 316 (2009).

[29] *Id.*, citing *Angeles v. Gutierrez*, 685 Phil. 183, 193 (2012).

[30] *Casing v. Hon. Ombudsman, et al., supra* note 23 at 476, citing Section 1, Article VIII, 1987 CONSTITUTION.

[31] *Gatchalian v. Office of the Ombudsman*, G.R. No. 229228, August 1, 2018, citing *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. Nos. 159139 & 174777, June 6, 2017, 826 SCRA 112, 132.

[32] *Reyes v. The Office of the Ombudsman, et al.*, 810 Phil. 106, 115 (2017).

[33] *Gatchalian v. Office of the Ombudsman, supra* at 132.

[34] *Id.*

of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[35] On this score, where there is an imputation of errors of jurisdiction proceeding from grave abuse of discretion, the special civil action of *certiorari* may be resorted to.[36]

Guided by the foregoing, the Court shall now discuss the issue at hand.

In his imputation of grave abuse of discretion on the part of the Ombudsman, petitioner denies that there were alterations in the bid documents for the purchase of the Mitsubishi van to hide the alleged irregularities. He maintains that the changes made in the bid documents were done in order to reflect that what was actually purchased and delivered to the provincial government was an ambulance unit with equipment and accessories as originally intended, and not just one Mitsubishi van. Petitioner further submits that there was no change in the purpose or use of the purchased vehicle; thus, no injury was caused to the government. Neither was there any unwarranted benefit granted by him and his co-respondents *a quo* to any private party. The Ombudsman has no basis to conclude that Ronald Kimakim, the owner of Ronhil Trading, was the sole bidder.

After a careful study of the case, the Court finds that petitioner failed to show that the Ombudsman conducted the preliminary investigation in an arbitrary and despotic manner. On the contrary, the Ombudsman properly performed its duty in determining whether petitioner is probably guilty of Section 3 (e) of RA 3019.

Section 3 (e) of RA 3019 provides:

Sec. 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

[35] *Id.*

[36] *Public Attorney's Office v. Office of the Ombudsman*, *supra* note 28.

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Contrary to what petitioner would impress upon the Court, the Ombudsman, in finding probable cause, did not have to inquire as to whether there was sufficient evidence to secure a conviction. A reading of the assailed Resolution shows that the Ombudsman was of the well-founded belief that the complained acts and omissions constituted a violation of Section 3 (e) of RA 3019. The Ombudsman categorically found as follows:

Contrary to Pagteilan, Kollin, Gut-omen, Likigan and Wanawan's claim, Kimakim was the *sole bidder* for the procurement of the Mitsubishi van. Without showing its basis, the Provincial Government declared Kimakim as the winner. This was done despite the presence of irregularities in the procurement process, *i.e.*, modification of the procurement documents upon discovery that the actual intent of the procurement was for a service vehicle and not for an ambulance. Such violation of the Procurement Law should have alerted public respondents before the procurement was finalized. By allowing the procurement process to continue despite the manifest irregularities in the procurement, public respondents caused undue injury to the government in the amount of ₱87,700.91 and gave Kimakim unwarranted/undue benefit, to the detriment of public service.[37] (Emphasis and citations omitted; underscoring in the original.)

As established below and admitted by petitioner, the latter's participation in the subject transaction was in the preparation of the Post-Qualification Evaluation Report, Post-Qualification Evaluation Summary Report and Bid Evaluation Report, which the NBI reported to have been fabricated or falsified in order

[37] *Rollo*, pp. 65-66.

to hide the anomalies in the transaction between Ronald C. Kimakim and Gov. Maximo B. Dalog regarding the procurement of the Mitsubishi van. In finding probable cause against petitioner, the Ombudsman held:

> Also, inasmuch as not one from the respondents lifted a finger to stop the procurement, despite the glaring irregularities, clearly indicate the *conspiratorial design* of respondents to *favor* Kimakim through the circumvention of RA 9184, deception of the government and complete disregard of the principles of accountability, responsibility and transparency.
>
> Further, by allowing the deviation or change in the actual use of the Mitsubishi van and their failure to *outrightly* reflect the word 'ambulance equipment and accessories' in the majority of the procurement documents, clearly establishes the *badge of conspiracy* as without the indispensable participation of each of respondents, the whole process would have not been completed. Although it appears that their acts were independent, it were, *in reality*, concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[38] (Emphasis and citations omitted; underscoring in the original.)

Petitioner also makes much of the dismissal of OMB-L-C-07-0106-A. He contends that since the case has already been dismissed, the charge for violation of Section 3 (e) of RA 3019 cannot be revived in OMB-C-C-11-0107-C. Petitioner goes as far as invoking the principle of finality on resolutions and even alleging forum shopping.

The contention lacks merit primarily because petitioner was not even a party in OMB-L-C-07-0106-A. At any rate, the Court observes that the justification for the dismissal of the charge for violation of RA 3019 in OMB-L-C-07-0106-A was not because the investigating officer did not strongly and honestly believe that respondents therein were not guilty of the crime charged. Instead, it was, because, as exactly worded in the Resolution:[39]

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[38] *Id.* at 66.

[39] *Id.* at 79-92.

> x x x [T]he complainant charged the respondents of violation of the anti-graft law without even specifying the acts which should constitute any of the corrupt practices defined in Section 3 of R.A. 3019. The indiscriminate accusation that respondents violated the law without any reference to any corrupt acts does not merit any consideration, adding to it the fact that it is not, in the least, corroborated by any evidence. Hence, the charge must fail.[40]

But more importantly, the dismissal of OMB-L-C-07-0106-A is not a judgment on the merits. Hence, petitioner cannot invoke finality of resolutions. As the Court held:

> Jurisprudence has long settled that preliminary investigation does not form part of trial. Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function. It is not an exercise in adjudication: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication.
>
> The dismissal of a complaint on preliminary investigation by a prosecutor "cannot be considered a valid and final judgment." As there is no former final judgment or order on the merits rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been *res judicata* x x x.[41]

Another matter raised by petitioner is denial of due process. According to him, he was not given an opportunity to controvert the charge of violation of RA 3019 as what he was directed to file a counter-affidavit to was only the charge of falsification. Petitioner further gives the impression that the allegations below against him, such as those contained in the NBI Report, focused on the charge of falsification and not on Section 3 (e) of RA 3019. Thus, in stating his defenses below, he also did not focus on the charge for violation of Section 3 (e) of RA 3019. He was then surprised to find out that the Ombudsman found

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[40] *Id.* at 89.

[41] *Pavlow v. Mendenilla*, 809 Phil. 24, 49 (2017). Citations omitted.

probable cause to indict him for violation of Section 3 (e) of RA 3019.

Petitioner's allegations do not persuade and are belied by the record. *First*, Dominguez's affidavit specifically charged him and his co-respondents *a quo* with violation of RA 3019. The affidavit expressly cited the documents that petitioner prepared and signed in connection with the procurement of the Mitsubishi van. *Second*, the NBI Case Report categorically recommended, among other things, that petitioner and some of his co-respondents *a quo* be charged with violation of Section 3 of RA 3019. Significantly, the NBI Case Report provided a detailed and lengthy report in support of its conclusion and recommendation. *Third*, nowhere in the Order dated March 17, 2011 of the Ombudsman did it require petitioner and his co-respondents *a quo* to file a counter-affidavit only to the charge of falsification. Also, all the charged offenses were explicitly stated in the first page of the Order. *Fourth*, petitioner filed a counter-affidavit. Therein, he even acknowledged being charged with violation of RA 3019. The filing of the counter-affidavit was an opportunity for him to explain his side of the controversy. *Fifth*, with respect to the Ombudsman's Resolution, petitioner had the chance to question it and seek reconsideration thereof, which he actually did through his Motion for Partial Consideration. Thus, petitioner has no basis at all to claim that he was deprived of an opportunity to be heard.

Lastly, petitioner invokes his right to a speedy disposition of cases, saying that it took the Ombudsman a long time to resolve the complaint.

It bears stressing that the right to a speedy disposition of cases is a flexible concept.[42] A mere mathematical reckoning of the time involved is not sufficient.[43] Due regard must be given to the facts and circumstances surrounding each case.[44] The

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[42] *The Ombudsman v. Jurado*, 583 Phil. 132, 145 (2008).

[43] *Id.* at 138.

[44] *Id.* at 145.

right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays.[45] Petitioner has failed to substantiate his claim, or to even show that there was an unreasonable, arbitrary, and oppressive delay on the part of the Ombudsman in conducting the preliminary investigation. He even admits not following up on his case believing that it was dismissed since OMB-L-C-07-0106-A had already been dismissed.

In the case of *Tilendo v. Ombudsman*,[46] the Court held:

> Even assuming there was delay in the termination of the preliminary investigation, Tilendo is deemed to have slept on his right to a speedy disposition of cases. From 22 October 1999, when he submitted to the NBI his counter-affidavit, after asking for several extensions of time, Tilendo did nothing until December 2002. It seems that Tilendo was insensitive to the implications and contingencies of the projected criminal prosecution posed against him. He did not take any step whatsoever to accelerate the disposition of the matter. Tilendo's inaction gives the impression that he did not object to the supervening delay, and hence it was impliedly with his acquiescence. He did not make any overt act like, for instance, filing a motion for early resolution. He asserted his right to a speedy disposition of cases only when the Deputy Ombudsman-Mindanao required him to file his counter-affidavit to the NBI complaint.
>
> Tilendo's contention of violation of his right to speedy disposition of cases must fail. There was no unreasonable and unjustifiable delay which attended the resolution of the complaints against him in the preliminary investigation phase.[47]

For the foregoing reasons, the Court finds the present petition to be without basis.

To emphasize the basic concept that must be borne in mind throughout this Decision, the Court quotes the following:

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[45] *Id.*

[46] 559 Phil. 739 (2007).

[47] *Id.* at 751.

x x x [S]o long as *substantial evidence* supports the Ombudsman's ruling, his decision should stand. In a criminal proceeding before the Ombudsman, the Ombudsman merely determines whether probable cause exists x x x. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty; it is merely based on opinion and reasonable belief. x x x[48]

WHEREFORE, the Petition for *Certiorari* is **DENIED.** The Resolution dated November 4, 2014 of the Ombudsman in OMB-C-C-11-0107-C is **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 235660. March 4, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUISA DAGUNO[*] *y* CODOG,** *accused-appellant.*

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[48] *Casing v. Hon. Ombudsman, et al., supra* note 23 at 477. Citations omitted.

[*] Referred to as Daguino in some parts of the *rollo* and CA *rollo*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; IN CRIMES WHERE THE DATE OF THE COMMISSION IS NOT A MATERIAL ELEMENT IT IS NOT NECESSARY TO ALLEGE SUCH DATE WITH ABSOLUTE SPECIFICITY OR CERTAINTY IN THE INFORMATION.— The mere fact that the date alleged in the Information is different from the one eventually established during the trial will not invalidate the Information. It is well-settled that in crimes where the date of commission is not a material element, as in this case, it is not necessary to allege such date with absolute specificity or certainty in the information. The Rules of Court merely requires, for the sake of informing an accused, that the date of commission be approximated. Since the date of commission of the offense is not required to be alleged with such precision and accuracy, the allegation in an Information of a date of commission different from the one eventually established during the trial is not fatal to prosecution. Instead, the erroneous allegation in the information is just deemed supplanted by the evidence presented during the trial or may even be corrected by a formal amendment of the information. x x x In the instant case, the date alleged in the Information is August 5, 2011, while the prosecution's evidence established that the offense was committed on July 10 and 24, 2011. The disparity in the date is not so great as to be considered a fatal error on the part of the prosecution, especially since the date of the commission is not an element of the crime charged. Moreover, July 10 and July 24, 2011, the dates established during the trial, not being so far removed from August 5, 2011, are still reasonably encompassed by the phrase "on or about August 5, 2011." At any rate, the erroneous allegation in the Information was supplanted by the evidence presented by the prosecution, particularly the testimony of AAA that on July 10 and July 24, 2011, accused-appellant recruited, transported, delivered her, and had her engaged in sexual intercourse with an unknown person in exchange for money.

2. ID.; ID.; ID.; ID.; EXCEPTION.— The only instance where the variance in the date of commission of the offense as alleged in the information and as established in evidence becomes fatal is when the discrepancy is so great that it induces the perception

that the information and the evidence are no longer pertaining to one and the same offense.

3. **ID.; ID.; ID.; AN INFORMATION IS VALID AS LONG AS IT DISTINCTLY STATES THE STATUTORY DESIGNATION OF THE OFFENSE AND THE ACTS OR OMISSIONS CONSTITUTIVE THEREOF; IT IS NOT NECESSARY TO FOLLOW THE LANGUAGE OF THE STATUTE IN THE INFORMATION.—** Accused-appellant also laments that the word "provide" as stated in RA 9208 is not alleged in the Information. She contends that this deprived her of her right to be informed of the nature and cause of the accusation against her. The contention lacks merit. Although the word "provide" is not alleged in the Information, the word "deliver," which means "the giving or yielding possession or control of something to another," a word synonymous to "provide" was used in the Information. The rule is that an Information is valid as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof. It is not necessary to follow the language of the statute in the information.

4. **CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. 9208); ELEMENTS.—** The elements of Trafficking in Persons are as follows: (1) The act of recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders; (2) The means used which include threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another; and (3) The purpose of trafficking is exploitation which includes exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

5. **ID.; ID.; WHEN QUALIFIED.—** As correctly ruled by the RTC and affirmed by the CA, the existence of the elements of Qualified Trafficking in Persons was sufficiently established by the prosecution beyond reasonable doubt, to wit: (1) that AAA was a minor when the offense against her was committed; (2) that accused-appellant introduced AAA to different customers on

several occasions to engage in sexual intercourse; and (3) that accused-appellant received money in exchange for the sexual exploitation of AAA. The offense is Qualified Trafficking in Persons because AAA was a minor. The means used to commit the offense becomes immaterial. At any rate, it may not be denied that accused-appellant took advantage of the vulnerability of AAA who was a minor.

6. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; THE DEFENSE OF SIMPLE DENIAL WITHOUT CORROBORATING IT WITH SUPPORTING EVIDENCE IS WEAK, THE SAME BEING EASY TO FABRICATE JUST LIKE THE DEFENSE OF ALIBI.— Also worthy of note is that the positive testimony of AAA prevails over the negative and self-serving statements of accused-appellant. Accused-appellant offers her defense of denial without even attempting to corroborate it with supporting evidence. The defense of simple denial is weak, the same being easy to fabricate just like the defense of alibi.

APPEARANCES OF COUNSEL

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

D E C I S I O N

INTING, *J.*:

The child is one of the most important assets of the nation. Ergo, every effort is exerted by the State to promote his welfare and enhance his opportunities for a useful and happy life.[1] *Unfortunately, the child is also one of the most vulnerable victims of human trafficking. All those involved in the trafficking of persons — especially minors — must be punished. That the date alleged in the Information is different from the one eventually established during trial is immaterial. It will not*

[1] Article 1 of Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code."

save them from punishment when proof beyond reasonable doubt exists.

The Case

On appeal is the Decision[2] dated August 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08609 which affirmed with modification the Judgment[3] dated July 25, 2016 of Branch 9, Regional Trial Court (RTC), Manila in Criminal Case No. 11-285580 finding Luisa Daguno *y* Codog @ Jacky (accused-appellant) guilty beyond reasonable doubt of the offense of Qualified Trafficking in Persons, defined and penalized under Section 4 (a) in relation to Section 6 (a) of Republic Act No. (RA) 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003."

The Facts

Accused-appellant was charged with the offense of Qualified Trafficking in Persons in the following Information:

"That on or about August 05, 2011, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and knowingly recruit, transport, transfer and deliver one [AAA],[4] a minor, 15 years

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[2] *Rollo*, pp. 2-12; penned by Associate Justice Ricardo R. Rosario with Associate Justices Ramon A. Cruz and Pablito A. Perez, concurring.

[3] CA *rollo*, pp. 42-48; penned by Presiding Judge Jacqueline S. Martin-Balictar.

[4] Pursuant to Section 7, Republic Act No. (RA) 9208, *viz.*:

SECTION 7. *Confidentiality*. — At any stage of the investigation, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the trafficked person and the accused. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. *The name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information shall not be disclosed to the public*.

x x x x x x x x x (Italics Supplied)

old, to an unknown person whose true name and real identity and present whereabouts are still unknown, for purposes of prostitution and sexual exploitation.

CONTRARY TO LAW."[5]

When arraigned on March 12, 2012, accused-appellant pleaded not guilty to the offense charged.

Trial on the merits ensued.[6]

The prosecution alleged that around 11:00 p.m. of July 10, 2011, AAA, a 15-year-old girl who ran away from home was with her friends XXX and YYY in Sampaloc, Manila. Her friends informed her that accused-appellant, who they called "Nanay Jacky" was going to offer them to some men in España, Manila for a fee. When accused-appellant arrived, she asked AAA to go with them. She brought the three girls to España, Manila where they met a man who introduced himself as "Pressure." After talking to the man, accused-appellant led the group to a nearby hotel and informed AAA that the man chose her.[7] The man brought AAA to one of the hotel rooms, while accused-appellant waited at the lobby. AAA could not do anything as she was nervous and scared that she might be put in an embarrassing situation if she tried to escape. Inside the room, the man took off his clothes and asked AAA to do the same. The man and AAA had sexual intercourse. On their way back to Sampaloc, Manila, accused-appellant gave AAA ₱800.00.

On July 24, 2011, around 2:00 p.m., accused-appellant again met with AAA and XXX at Isetann Mall, in Recto, Manila. Accused-appellant talked to a man in the mall. After which, accused-appellant and the man brought the girls to Anthony Lodge along Recto Street. The man booked two separate rooms for AAA and XXX. The man had sexual intercourse with AAA in one of its rooms, while accused-appellant waited at the lobby

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

[6] *Id.*

[7] *Rollo*, p. 3.

of the lodge. Thereafter, AAA put on her clothes, while the man proceeded to the other room where XXX was billeted. Accused-appellant gave AAA ₱700.00, saying she deducted ₱100.00 as her fee for negotiating with the customer.[8]

On August 5, 2011, accused-appellant again chanced upon AAA and XXX at Isetann Mall in Recto, Manila. Accused-appellant told the girls that she will pimp them to a customer, but the girls refused. When accused-appellant insisted and AAA saw that the man was already about to pay, AAA called up her mother and asked for help. Around 4:00 p.m., AAA's mother arrived at the mall together with some *barangay* officials who arrested accused-appellant.[9] The physical examination on AAA at the Philippine General Hospital showed the following findings:

"IMPRESSIONS: No evident injury at the time of examination but medical evaluation cannot exclude sexual abuse."[10]

In defense, accused-appellant denied the accusations against her. Accused-appellant asserted that she was at Isetann Mall in Recto, Manila in the afternoon of August 5, 2011 because she was looking for her grandson. Her grandson's classmate informed her earlier that afternoon that her grandson was in the mall. She became worried that he might be taken advantage by some homosexuals who frequent the place. She was at the fourth floor of the mall at around 5:00 p.m. when several men arrested her.[11]

In the Judgment[12] dated July 25, 2016, the RTC convicted accused-appellant of the offense of Qualified Trafficking in Persons[13] and meted out the penalty of life imprisonment, a

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[8] *Id.* at 4.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 5.

[12] CA *rollo*, pp. 42-48.

[13] Defined and penalized under Section 4 (a) in relation to Section 6 (a) of R.A. No. 9208.

fine of ₱2,000,000.00, and to pay moral damages in the amount of ₱75,000.00, and exemplary damages in the amount of ₱30,000.00.

On appeal, the CA in its Decision[14] dated August 29, 2017, affirmed the RTC Judgment with modification as to the penalty. The CA increased the awards of moral and exemplary damages to ₱500,000.00 and ₱100,000.00, respectively, pursuant to the case of *People v. Hirang*.[15] The dispositive portion of the Decision reads on this wise:

> *WHEREFORE*, the appealed 25 July 2016 Judgment of Branch 9 of the Regional Trial Court of Manila, convicting accused-appellant LUISA DAGUNO y CODOG of Qualified Trafficking in Persons, and sentencing her to *life imprisonment* without eligibility for parole, and to pay a fine of Two Million Pesos (₱2,000,000.00) is AFFIRMED with MODIFICATION that the awards of moral and exemplary damages are increased to Five Hundred Thousand Pesos (₱500,000.00) and One Hundred Thousand Pesos (₱100,000.00), respectively, with interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.
>
> *SO ORDERED*.[16]

Undaunted, accused-appellant appealed to the Court.[17]

On January 31, 2018, the Court issued a Resolution[18] requiring the parties to submit their respective Supplemental Briefs. However, both the People, through the Office of the Solicitor General,[19] and accused-appellant,[20] manifested that they would no longer file Supplemental Briefs to expedite the resolution of this case and to avoid repetition of arguments.

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[14] *Rollo*, pp. 2-12.

[15] 803 Phil. 277 (2017).

[16] *Rollo*, p. 12.

[17] CA *rollo*, pp. 102-103.

[18] *Rollo*, pp. 18-19.

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

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

Accused-appellant argues that the prosecution failed to prove her guilt beyond reasonable doubt and asserts that: (1) while the Information alleged that she recruited, transported, transferred and delivered AAA to an unknown person for purposes of prostitution on August 5, 2011, the evidence adduced by the prosecution during trial failed to establish that she committed the acts on said date;[21] and (2) that the information failed to allege that she "provided" AAA to an unknown person for purposes of prostitution and sexual exploitation.[22] She averred that she could not be convicted for such act without violating her right to be informed of the nature and cause of the accusations against her.

Ruling of the Court

The appeal lacks merit.

The mere fact that the date alleged in the Information is different from the one eventually established during the trial will not invalidate the Information. It is well-settled that in crimes where the date of commission is not a material element, as in this case, it is not necessary to allege such date with absolute specificity or certainty in the information.[23] The Rules of Court merely requires, for the sake of informing an accused, that the date of commission be approximated.[24] Since the date

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[21] CA *rollo*, pp. 33, 36.

[22] *Id.* at 36.

[23] *People v. Delfin*, 738 Phil. 811, 817 (2014).

[24] Sections 6 and 11, Rule 110, Rules of Court, *viz.*:

SEC. 6. *Sufficiency of complaint or information.* — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

x x x x x x x x x

SEC. 11. *Date of commission of the offense.* — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

of commission of the offense is not required to be alleged with such precision and accuracy, the allegation in an Information of a date of commission different from the one eventually established during the trial is not fatal to prosecution.[25] Instead, the erroneous allegation in the information is just deemed supplanted by the evidence presented during the trial or may even be corrected by a formal amendment of the information.[26]

The only instance where the variance in the date of commission of the offense as alleged in the information and as established in evidence becomes fatal is when the discrepancy is so great that it induces the perception that the information and the evidence are no longer pertaining to one and the same offense.[27]

In the instant case, the date alleged in the Information is August 5, 2011, while the prosecution's evidence established that the offense was committed on July 10 and 24, 2011. The disparity in the date is not so great as to be considered a fatal error on the part of the prosecution, especially since the date of the commission is not an element of the crime charged. Moreover, July 10 and July 24, 2011, the dates established during the trial, not being so far removed from August 5, 2011, are still reasonably encompassed by the phrase "on or about August 5, 2011." At any rate, the erroneous allegation in the Information was supplanted by the evidence presented by the prosecution, particularly the testimony of AAA that on July 10 and July 24, 2011, accused-appellant recruited, transported, delivered her, and had her engaged in sexual intercourse with an unknown person in exchange for money. Further, accused-appellant did not object to the presentation of such evidence during trial. There is likewise no showing that she was caught unaware by the introduction of the evidence or that she was deprived of the right to be informed of the nature and cause of the accusations against her.

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[25] *Rocaberte v. People*, G.R. No. 72994, January 23, 1991, 193 SCRA 152, 156.

[26] *People v. Delfin*, *supra* note 23.

[27] *Id.*

Accused-appellant also laments that the word "provide" as stated in RA 9208 is not alleged in the Information. She contends that this deprived her of her right to be informed of the nature and cause of the accusation against her.

The contention lacks merit.

Although the word "provide" is not alleged in the Information, the word "deliver," which means "the giving or yielding possession or control of something to another,"[28] a word synonymous to "provide" was used in the Information.

The rule is that an Information is valid as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof.[29] It is not necessary to follow the language of the statute in the information.[30]

In this case, accused-appellant was charged with and convicted of Qualified Trafficking in Persons under Section 4 (a) in relation to Section 6 (a) of RA 9208, *viz.*:

Section 4. *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

> (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

x x x x x x x x x

Section 6. *Qualified Trafficking in Persons*. — The following are considered as qualified trafficking:

> (a) When the trafficked person is a child;

x x x x x x x x x

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[28] *Black's Law Dictionary*, 8th ed., p. 461.

[29] *People v. Alba*, 365 Phil. 365, 382 (1999), citing *People v. Dimapilis*, 360 Phil. 466, 478 (1998) and *Sta. Rita v. CA*, 317 Phil. 578, 585 (1995).

[30] *Flores v. Hon. Layosa*, 479 Phil. 1020, 1036 (2004).

The law defines the offense of Trafficking in Persons as "the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[31] It further states that "[t]he recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph."[32] Furthermore, when the trafficked person is a child the crime of Trafficking in Persons is qualified.[33]

The elements of Trafficking in Persons are as follows: (1) The act of recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders; (2) The means used which include threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another; and (3) The purpose of trafficking is exploitation which includes exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.[34]

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[31] Section 3 (a), RA 9208.

[32] *Id.*

[33] Section 6 (a), RA 9208.

[34] *People v. Casio*, 749 Phil. 458, 472-473 (2014), citing Section 3 (a), RA 9208.

As correctly ruled by the RTC and affirmed by the CA, the existence of the elements of Qualified Trafficking in Persons was sufficiently established by the prosecution beyond reasonable doubt, to wit: (1) that AAA was a minor when the offense against her was committed; (2) that accused-appellant introduced AAA to different customers on several occasions to engage in sexual intercourse; and (3) that accused-appellant received money in exchange for the sexual exploitation of AAA.

The offense is Qualified Trafficking in Persons because AAA was a minor. The means used to commit the offense becomes immaterial. At any rate, it may not be denied that accused-appellant took advantage of the vulnerability of AAA who was a minor.

Moreover, the Court finds no merit in accused-appellant's plea for acquittal on the ground that the acts she allegedly committed on August 5, 2011 merely amounted to an attempt to commit the offense as it was aborted by her subsequent arrest; and that such attempt to commit the offense was not punishable under RA 9208 and became so punishable only upon the amendment introduced by RA 10364[35] on February 6, 2013.

As discussed, the allegations in the Information filed against accused-appellant clearly refer to the consummated acts of trafficking in persons she committed on July 10 and July 24, 2011. However, as correctly held by the CA, accused-appellant cannot be convicted of the two counts of the offense proved, as the Information charges only one offense.

Also worthy of note is that the positive testimony of AAA prevails over the negative and self-serving statements of accused-appellant. Accused-appellant offers her defense of denial without even attempting to corroborate it with supporting evidence. The defense of simple denial is weak, the same being easy to fabricate just like the defense of alibi.[36]

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[35] Expanded Anti-Trafficking in Persons Act of 2012.

[36] See *People v. Berja*, 331 Phil. 514, 528 (1996).

Anent the proper penalty to be imposed on accused-appellant, Section 10 (c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00, but not more than ₱5,000,000.00. Thus, the courts *a quo* correctly sentenced accused-appellant to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00.

Finally, the courts *a quo* correctly ordered accused-appellant to pay AAA the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, with interest at the rate of 6% *per annum* from finality of judgment until full payment in line with prevailing jurisprudence.[37]

In light of the foregoing, the Court finds no reason to deviate from the factual findings of the RTC, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. As such, accused-appellant's conviction for Qualified Trafficking in Persons must be upheld.

WHEREFORE, the appeal is **DISMISSED.** The Decision dated August 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08609 which affirmed with modification the Judgment dated July 25, 2016 of Branch 9, Regional Trial Court, Manila in Criminal Case No. 11-285580 is hereby **AFFIRMED** *in toto*.

SO ORDERED.

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

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[37] See *People v. Hirang*, 803 Phil. 277 (2017).

SECOND DIVISION

[G.R. No. 236173. March 4, 2020]

HEIRS OF NICANOR GARCIA, represented by SPOUSES JOSEFINA GARCIA-DOBLADA and JOSE V. DOBLADA, *petitioners, vs.* **SPOUSES DOMINADOR J. BURGOS and PRIMITIVA I. BURGOS, SPOUSES FILIP GERARD V. BURGOS and MARITES A. BURGOS, and ESTER GABRIEL DOMINGUEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THREE MODES OF APPEAL UNDER RULE 41 OF THE RULES OF COURT; QUESTION OF LAW, DISTINGUISHED FROM QUESTION OF FACT.— In *Heirs of Cabigas v. Limbaco*, the Court made a distinction among the three modes of appeal under Rule 41. The Court explained: The first mode of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law. The second mode of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate jurisdiction, and resolves questions of fact or mixed questions of fact and law. The third mode of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law. As to whether the issues involve question of law or question of fact, the Court added: There is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts.

2. ID.; ID.; ID.; ID.; QUESTIONS OF AUTHENTICITY OF DOCUMENTS ARE QUESTIONS OF FACT; ORDINARY APPEAL BY FILING OF A NOTICE OF APPEAL UNDER SECTION 2 (A), RULE 41 OF THE RULES OF COURT, PROPER MODE OF APPEAL IN CASE AT BAR.— Petitioners also alleged that Dominador was guilty of fraud, falsification of document, and misrepresentation when he subdivided the land and acquired titles over the subdivided lots. It is a settled rule that questions of authenticity of documents are questions of fact. When the resolution of issues invites a review of the evidence presented, the questions posed before the courts are questions of fact. Hence, the resolution of the merits of the case involves both questions of fact and law. Petitioners availed themselves of a wrong mode of appeal in filing the petition directly to the Court instead of filing a Notice of Appeal under Section 2(a), Rule 41 of the Rules.

3. ID.; ID.; ACTION FOR RECONVEYANCE; TWO CRUCIAL FACTS THAT MUST BE ALLEGED IN THE COMPLAINT.— An action for reconveyance is a remedy available to the rightful owner of land which has been wrongly or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. In an action for reconveyance, there are two crucial facts that must be alleged in the complaint: (1) that the plaintiff was the owner of the land; and (2) that the defendant had illegally dispossessed him of the same. The complainant has the burden of proving ownership over the registered sought to be reconveyed.

4. ID.; ID.; DISMISSAL OF ACTIONS; FAILURE TO STATE A CAUSE OF ACTION, DIFFERENTIATED FROM LACK OF CAUSE OF ACTION; CASE AT BAR.— The Court has held that "[f]ailure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action." The Court explained that failure to state a cause of action refers to the insufficiency of the allegations in the pleading, while lack of cause of action refers to the insufficiency of the factual basis for the action. A dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings through a motion to dismiss under Rule 16 of the Rules. On the other hand, a dismissal for lack of cause of action may be raised

at any time after the questions of fact have been resolved on the basis of stipulations, admissions, or evidence presented by the plaintiff. In determining the existence of a cause of action, the court may only consider the allegations in the complaint. The RTC's dismissal of the case is for failure to state a cause of action rather than for lack of cause of action. This is clear from the RTC's statement that in resolving the issue, it "re-examined the allegations in the Complaint and its annexes." Unfortunately, the terms are sometimes used interchangeably by the courts and the parties without regard to their distinction. The ground "lack of cause of action" has been frequently confused with the ground "failure to state a cause of action." Nevertheless, despite the RTC's improper use of the term, it actually dismissed the complaint for failure to state a cause of action. The RTC, in resolving the issue, likewise reiterated that Garcia was only a substitute tenant and not an heir of Francia. As such, the RTC ruled that the designation of Garcia as Francia's tenant could not be the basis for an action for reconveyance.

APPEARANCES OF COUNSEL

Gonzaga & Loy Law Offices for petitioners.

H.E. Arceo Law Office for respondents Sps. Dominador & Primitiva Burgos, *et al*.

Zenalfie M. Cuenco for respondent Ester Gabriel Dominguez.

D E C I S I O N

INTING, *J*.:

Before the Court is a Petition for Review on *Certiorari*[1] filed by the heirs of Nicanor Garcia[2] (Garcia), represented by Spouses Josefina Garcia-Doblada and Jose V. Doblada (collectively, petitioners) against Spouses Dominador J. Burgos (Dominador) and Primitiva I. Burgos (Spouses Dominador and Primitiva),

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[1] *Rollo*, at 9-71, under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Benilda G. Galvez, Dahlia Carmencita C. Garcia, and Wilma G. Cabrera, *id.* at 102.

the Spouses Filip Gerard V. Burgos (Filip) and Marites A. Burgos (Spouses Filip and Marites), and Ester Gabriel Dominguez (Dominguez) (collectively, respondents) assailing the Orders dated June 7, 2017[3] and November 23, 2017[4] of Branch 7, Regional Trial Court (RTC), Malolos, Bulacan in Civil Case No. 325-M-2016. The RTC dismissed the Complaint for Reconveyance of Ownership, Possession and Property, Breach of Agreement/Undertaking, Cancellation of Titles, Nullity of Deeds of Sale, and Damages[5] filed by petitioners on the grounds of lack of cause of action, lack of plaintiffs' personality to sue, and prescription.

The Facts

In the complaint, petitioners alleged the following:

In June 1980, landowner Fermina Francia (Francia), with the conformity of the previous tenant Juan De Armas, designated Garcia as the legal transferee or legitimate tenant (*kasama*) to possess, own, and cultivate a parcel of land, with an area of 8,115 square meters (sq. m.), situated in *Brgy*. Daungan, Guiguinto, Bulacan. Dominador was one of Garcia's agricultural workers. Garcia commenced actual possession and cultivation of the land from 1980 until his death on June 23, 2010. Garcia shouldered all the expenses in farming the land. In turn, Dominador would give the harvest from the land to Garcia and his wife Priscila.

On November 24, 2008, Garcia discovered that about one-third of the land, or 2,705 sq. m., was unlawfully assigned to Dominador. The land assigned to Dominador was further subdivided into six small lots with their respective issued titles, as follows:

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[3] *Rollo*, pp. 77-33; penned by Presiding Judge Isidra A. Argañosa-Maniego.

[4] *Id.* at 84-85.

[5] *Id.* at 93-101.

(1) Lot 815-B, with an area of 486 sq. m., under Transfer Certificate of Title (TCT) No. T-197871 in the name of Dominguez;

(2) Lot 815-C, with an area of 486 sq. m., under TCT No. T-126116 in the name of Dominador;

(3) Lot No. 815-D, with an area of 485 sq. m., under TCT No. T-288493 in the name of Filip;

(4) Lot No. 815-E, with an area of 485 sq. m., TCT No. T-126118 in the name of Filip;

(5) Lot No. 815-F, with an area of 589 sq. m., TCT No. T-126119 in the name of Dominador; and

(6) Lot No. 815-G, with an area of 174 sq. m., under TCT No. T-126120 in the name of Dominador.[6]

On the date of his discovery of the subdivision of the land, Garcia executed a letter-authority in favor of his nephew, Basilio C. Ignacio and Jose V. Doblada to administer and fix the land. Garcia likewise filed a complaint against Dominador for illegal titling, selling, and reconveyance before the *barangay* chairman of *Brgy*. Daungan, Guiguinto, Bulacan. Dominador promised to reconvey, at his expense, to Garcia the four lots he has not yet sold to another person.

Francia died on November 1, 2000, eight years prior to Garcia's discovery of the subdivision of the land.

Petitioners further alleged that while they were on vacation in the Philippines,[7] they learned about the agreement between Garcia and Dominador regarding the return of the four lots. They sought the help of the *barangay* captain of Daungan for the return of the lots, but Dominador failed to comply with his promise to Garcia. The subdivision and sale of the lots deprived

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[6] *Id.* at 73.

[7] The documents attached to the Special Power of Attorney in favor of Josefina Garcia-Doblada and Jose Doblada are the heirs' driver's licenses issued in California.

them of the use and fruits of the land. They sent Dominador a demand letter, dated February 25, 2016, for reconveyance of the lots. When Dominador still failed to reconvey the lots, petitioners filed the complaint docketed as Civil Case No. 325-M-2016 against respondents.

Finally, petitioners alleged that Dominador committed fraud, falsification of document, and misrepresentation when he acquired the titles to the six parcels of land.

In their Answer to the Complaint as well as their Supplemental Answer with Special and Affirmative Defenses and Counterclaims, the Spouses Dominador and Primitiva alleged that the case filed by petitioners is an agrarian dispute over which the RTC has no jurisdiction; that petitioners have no cause of actions against them; and that the complaint was filed without a certificate to file action from the *barangay*. They further alleged that Dominador acquired the land, with an area of 2,705 sq. m., through a Deed of Absolute Sale, dated February 8, 1999, executed by Francia in Dominador's favor.

The Orders of the RTC

In the Order dated January 20, 2017, the RTC ruled out tenancy relationship between Garcia and Dominador. The RTC held that Garcia was not the owner of the land, but only a substitute tenant of Francia. Dominador, on the other hand, was Garcia's agricultural worker. Since there was no tenancy relationship between Dominador and Garcia, the case is not an agrarian dispute.

The RTC further ruled that the parties reside in different *barangays* and municipalities. As such, a *barangay* certification is not necessary for the filing of the complaint. As regards the lack of cause of action, the RTC ruled that the issue can be properly threshed out in a full-blown trial. The dispositive portion of the RTC's Order reads:

In view of the above premises, this court hereby finds the first and third affirmative defenses of defendants Dominador and Primitiva Burgos which allegedly constitute as grounds for a motion to dismiss as lacking in merit. Thus, the same are hereby ordered DENIED.

As to the second affirmative defense of lack of cause of action, to reiterate, this must be threshed out in a full blown [sic] trial.

Accordingly, the pre-trial conference setting on March 9, 2017 at 8:30 in the morning is still maintained.

SO ORDERED.[8]

The Spouses Dominador and Primitiva and the Spouses Filip and Marites filed a Motion for Reconsideration of the Order dated January 20, 2017 on the ground that petitioners have no cause of action against them. They alleged that since Garcia was not the owner of the land, he had nothing to transfer or transmit to his heirs. They also insisted that even if the parties reside in different *barangays*, the certification should be issued by the *barangay* where the land is located. They maintained that the case should be referred to the Department of Agrarian Reform (DAR) because it is an agrarian dispute.

Meanwhile, Dominguez filed her own Answer and Supplemental Answer to the Complaint alleging that Garcia was not the owner of the land, and that the action had already prescribed.

In an Order dated June 7, 2017,[9] the RTC dismissed the case for lack of cause of action, lack of personality on the part of petitioners to sue, and prescription. The RTC ruled that Garcia was only a tenant and not an heir of Francia. As such, petitioners have no personality to file an action for reconveyance because their predecessor-in-interest was not the owner of the land they sought to be reconveyed. The RTC also ruled that since the

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[8] *Rollo*, p. 75.

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

titles to the lots were registered in 1999, the heirs of Francia, not the heirs of Garcia, only had ten years or until 2009 within which to file the action for reconveyance. The RTC further ruled that the action had already prescribed.

The dispositive portion of the Order dated June 7, 2017 reads:

> In view of the above premises, this court hereby GRANTS the Motion for Reconsideration of defendants spouses Dominador and Primitiva Burgos and UPHOLDS the affirmative defenses of lack of cause of action and prescription of defendant Ester Gabriel Dominguez.
>
> Accordingly, this case is hereby ordered DISMISSED for lack of cause of action, lack of plaintiff's personality to sue and prescription.
>
> SO ORDERED.[10]

Petitioners filed a Motion for Reconsideration and/or Clarification (Re: Order dated June 7, 2017) *Ex Abundante Cautela*. In the assailed Order dated November 23, 2017, the RTC denied the motion. The RTC ruled that the grounds raised by petitioners in their motion for reconsideration were already considered and discussed in its Order dated June 7, 2017.

The dispositive portion of the Order dated November 23, 2017 reads:

> In view of the above premises, this court hereby DENIES the instant Motion for Reconsideration of this court's Order dated June 7, 2017.
>
> SO ORDERED.[11]

Petitioners initially filed a Notice of Appeal. Before the expiration of the 15-day period within which to file the Notice of Appeal, petitioners withdrew the appeal and filed a Motion for Extension to File Petition for Review before the Court on the ground that only questions of law are involved in their petition.

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[10] *Id.* at 82.

[11] *Id.* at 85.

The Spouses Dominador and Primitiva and the Spouses Filip and Marites filed their Comment alleging that petitioners raised both factual and legal issues before the Court and, as such, the Court should deny the petition. Dominguez likewise filed her own Comment questioning the mode of appeal used by petitioners and asserting that the RTC did not err in dismissing the complaint.

The Issues

The issues in this case are as follows:

(1) Whether petitioners availed of the proper mode of appeal in filing the petition before the Supreme Court; and

(2) Whether the RTC correctly dismissed the complaint.

The Ruling of the Court

Petitioners Availed Themselves of a Wrong Mode of Appeal

Section 2, Rule 41 of the Rules of Court (Rules) provides:

> Section 2. *Modes of appeal* -
>
> (a) *Ordinary appeal*. - The appeal to the Court of Appeals in the cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law of these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
>
> (b) *Petition for review*. - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.
>
> (c) *Appeal by certiorari*. - In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

Petitioners insist that only questions of law are involved in the case. Hence, Section 2(c), Rule 41, in relation with Rule 45 of the Rules should apply in the case.

The Court does not agree.

In *Heirs of Cabigas v. Limbaco,*[12] the Court made a distinction among the three modes of appeal under Rule 41. The Court explained:

> The first mode of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law. The second mode of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate jurisdiction, and resolves questions of fact or mixed questions of fact and law. The third mode of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law.[13]

As to whether the issues involve question of law or question of fact, the Court added:

> There is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts.[14]

Petitioners raised the following arguments before the Court:

> The *Kasunduan Ukol sa Salinan ng Pamumuwisan sa Lupang Palayan,* (Complainant's Annex "H") albeit[] unnotarized[,] is an exception to the rule;

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[12] 670 Phil. 274 (2011).

[13] *Id.* at 285.

[14] *Id.*

The execution of an Agreement/Undertaking (Annex "P", Complaint) between Dominador Burgos and Nicanor Garcia amounts to a partial performance of a contract or undertaking;

The possession of the two (2) original Owner's Duplicate Copy of Titles Nos. T-126119 and T-126120 constitutes constructive possession or resulting trust;[15]

Contrary to the claim of the defendants that the plaintiffs have no personality to sue, the latter being direct descendants of Nicanor Garcia, rights are transmissible upon the death of the decedent;[16]

Action for reconveyance which is equivalent to an action for quieting of title is the proper action filed at the lower court;

The Court *a quo* committed another misrepresentation of the law by ruling that the action for reconveyance has prescribed;[17] and

The trial court made one more misapplication of the law when it ruled *a quo* that this trial court is not the proper court to resolve breach of agreement at the Barangay.[18]

The arguments do not merely call for the interpretation of the law, but also the appreciation of the factual matters raised by the parties. The arguments require the Court to look into the contracts, interpret their contents, and determine their nature.

In addition, petitioners alleged that Garcia had been in actual cultivation and possession of the land from 1980, when he became Francia's legitimate tenant, until his death on June 23, 2010. Respondents disputed this allegation, pointing out that Garcia died in California, United States of America (USA). In fact, the death certificate[19] submitted by petitioners indicated that Garcia had been in the USA for ten years prior to his death. Clearly, whether Garcia was in actual possession and cultivation of the land until his death is a question of fact. Further, petitioners

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[15] *Rollo*, pp. 58-59.

[16] *Id.* at 62.

[17] *Id.* at 63.

[18] *Id.* at 66.

[19] *Id.* at 109, Annex B to the petition.

are not only questioning the authenticity of the sale between Francia and Dominador arguing that it was not a valid deed of sale. Petitioners also alleged that Dominador was guilty of fraud, falsification of document, and misrepresentation when he subdivided the land and acquired titles over the subdivided lots. It is a settled rule that questions of authenticity of documents are questions of fact.[20] When the resolution of issues invites a review of the evidence presented, the questions posed before the courts are questions of fact.[21]

Hence, the resolution of the merits of the case involves both questions of fact and law. Petitioners availed themselves of a wrong mode of appeal in filing the petition directly to the Court instead of filing a Notice of Appeal under Section 2(a), Rule 41 of the Rules.

RTC Correctly Dismissed the Complaint

The RTC dismissed the complaint for lack of cause of action, lack of personality to sue, and prescription.

The Court sustains the RTC.

Petitioners' complaint is for Reconveyance of Ownership, Possession and Property, Breach of Agreement/Undertaking, Cancellation of Titles, Nullity of Deeds of Sale, and Damages. An action for reconveyance is a remedy available to the rightful owner of land which has been wrongly or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him.[22] In an action for reconveyance, there are two crucial facts that must be alleged in the complaint: (1) that the plaintiff was the owner of the land; and (2) that the defendant had illegally dispossessed him of the same.[23] The complainant has the burden of proving ownership over the registered land sought to be reconveyed.[24]

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[20] See *Millena v. Court of Appeals*, 381 Phil. 132 (2000).

[21] *Heirs of Villanueva v. Heirs of Syquia Mendoza*, 810 Phil. 172 (2017).

[22] *Toledo v. Court of Appeals*, 765 Phil. 649 (2015).

[23] *Spouses Yabut v. Alcantara*, 806 Phil. 745 (2017).

[24] *Id.*

In this case, petitioners claim for reconveyance is based on Garcia's designation as a tenant or *kasama* of Francia, the owner of the land. As correctly pointed out by the RTC, Garcia was not the owner of the land sought to be reconveyed. Garcia, if he were alive, has no personality to file the action for reconveyance against respondents. As Garcia's successors-in-interest, petitioners merely stepped into the shoes of Garcia. Hence, they also have no personality to file for an action for reconveyance. Only Francia, or her heirs, are entitled to file an action for reconveyance against respondents.

The Court has held that "[f]ailure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action."[25] The Court explained that failure to state a cause of action refers to the insufficiency of the allegations in the pleading, while lack of cause of action refers to the insufficiency of the factual basis for the action.[26] A dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings through a motion to dismiss under Rule 16 of the Rules.[27] On the other hand, a dismissal for lack of cause of action may be raised at any time after the questions of fact have been resolved on the basis of stipulations, admissions, or evidence presented by the plaintiff.[28] In determining the existence of a cause of action, the court may only consider the allegations in the complaint.[29]

The RTC's dismissal of the case is for failure to state a cause of action rather than for lack of cause of action. This is clear from the RTC's statement that in resolving the issue, it "re-examined the allegations in the Complaint and its annexes."[30] Unfortunately, the terms are sometimes used interchangeably

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[25] *Zuñiga-Santos v. Santos-Gran*, 745 Phil. 171, 177 (2014).

[26] *Id.* at 177.

[27] *Id.* at 177-178.

[28] *Id.* at 178.

[29] *Aquino, et al. v. Quiazon, et al.*, 755 Phil. 793 (2015).

[30] *Rollo*, p. 79.

by the courts and the parties without regard to their distinction. The ground "lack of cause of action" has been frequently confused with the ground "failure to state a cause of action."[31] Nevertheless, despite the RTC's improper use of the term, it actually dismissed the complaint for failure to state a cause of action. The RTC, in resolving the issue, likewise reiterated that Garcia was only a substitute tenant and not an heir of Francia. As such, the RTC ruled that the designation of Garcia as Francia's tenant could not be the basis for an action for reconveyance.

All told, the Court finds no cogent reason to reverse the RTC in dismissing the complaint.

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 237102. March 4, 2020]

CRC 1447, INC., *petitioner*, *vs.* **ROSALINDA CALBATEA, EDUARDO CALBATEA, RICARDO DULA, RICARDO DULA, JR., GUIDO BALUYOT, FRANCISCO LIWANAG, ARIEL CORDOVA, JOVI MANALANSAN, ROMEO ORTEGA, REYNALDO ALFONSO, DOMINADOR CALING, REMEGIO GODINES, EFREN LAGTU, RODELIO QUINTO, JONATHAN RAMOS, and any and/or all persons claiming rights under them,** *respondents*.

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[31] *Aquino, et al. v. Quiazon, et al., supra,* note 29 at 807.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; EXECUTIVE ORDER NO. 129-A (E.O. 129-A); THE DARAB WAS CREATED TO ASSUME THE POWERS AND FUNCTIONS OF THE DAR WITH RESPECT TO THE ADJUDICATION OF AGRARIAN REFORM CASES AND MATTERS RELATING TO THE IMPLEMENTATION OF THE CARP AND OTHER AGRARIAN LAWS.—** Under Executive Order (E.O.) No. 129-A, the DARAB was created, which was designated to assume the powers and functions of the DAR with respect to the adjudication of agrarian reform cases, and matters relating to the implementation of the CARP and other agrarian laws. Corollary, under Section 1, Rule II of the 2009 DARAB Rules of Procedure, the DARAB's jurisdiction is not limited to agrarian disputes where tenancy or leasehold agreement between the parties exists. Specifically, Section 1(a) of said Rule provides that its primary and exclusive original and appellate jurisdiction includes, among others, **cases involving "[t]he rights and obligations of persons engaged in the management, cultivation, and use of all agricultural lands covered by R.A. No. 6657, otherwise known as the [CARL], as amended, and other related agrarian laws."**

2. **ID.; REPUBLIC ACT NO. 6657 (R.A. 6657); ALL DOUBTS WITH REGARD TO THE JURISDICTION ON AGRARIAN REFORM MATTERS SHOULD BE RESOLVED IN FAVOR OF THE DAR SINCE THE LAW HAS GRANTED IT SPECIAL AND ORIGINAL AUTHORITY TO HEAR AND ADJUDICATE AGRARIAN MATTERS.—** DAR Administrative Order No. 03-11 also finds relevance in this case, wherein it was declared that the DAR shall have exclusive jurisdiction on all cases that are agrarian in nature pursuant to the landmark case of *Department of Agrarian Reform v. Cuenca*, wherein the Court ruled that "[a]ll doubts, [with regard to jurisdiction on agrarian reform matters], should be resolved in favor of the DAR since the law has granted it special and original authority to hear and adjudicate agrarian matters." Said Administrative Order also cited the OCA Circular No. 62-2010, which directs all courts and judges concerned to "refer all cases before it alleged to involve an agrarian dispute to the DAR."

APPEARANCES OF COUNSEL

MC Ramiro & Associates for petitioner.
Arnel M. Mallari for respondents.

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, seeking to reverse and set aside the Decision[2] dated June 16, 2017 and the Resolution[3] dated January 31, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 105421, which affirmed the Order[4] dated January 19, 2015 of the Regional Trial Court (RTC) of Dinalupihan, Bataan, Branch 5 in Civil Case No. DH-1341-14.

The Facts

Subject of this Petition is a portion of an estate originally owned by Liberty Hizon *Vda. De* Luna (Hizon) and Eufemia Rivera (Rivera). Sometime in 1993, said estate was the subject of a Notice of Coverage pursuant to the Comprehensive Agrarian Reform Program (CARP) under Republic Act (R.A.) No. 6657 or the Comprehensive Agrarian Reform Law of 1988. Hence, an application for conversion of said property from agricultural to industrial was filed, which was granted per Decision of the CA in CA-G.R. SP No. 37386 dated February 9, 1999. Upon finality of said CA Decision, the Department of Agrarian Reform (DAR) issued an order of conversion as directed by the CA, subject to the condition, among others, that the development

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[1] *Rollo*, pp. 8-24.

[2] Penned by Justice Henri Jean Paul B. Inting (now a Member of the Court), with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, concurring; *id.* at 25-33.

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

[4] Penned by Acting Presiding Judge Amelita Cruz-Corpuz, *id.* at 57-62.

of the area shall be completed within five years from the issuance of said order.[5]

In 2004, Rivera filed a petition before the DAR, which sought for an extension to comply with the condition of developing the property.[6]

In the meantime, the subject property was purchased by CRC 1447, Inc. (petitioner) sometime in 2006, and thereafter registered under its name as evidenced by Transfer Certificate of Title (TCT) No. T-260935 of the Registry of Deeds of Bataan.[7]

On October 24, 2007, the DAR issued an Order denying Rivera's petition for extension and instead, directing the issuance of a Notice of Coverage over the entire estate which includes the subject property. Thus, petitioner received a Notice of Coverage[8] dated December 11, 2008.

Petitioner then filed a petition to lift said Notice of Coverage before the DAR. While this was pending, petitioner sent demand letters to respondents for them to vacate the subject property. Unfortunately for petitioner, the petition was denied by the DAR in an Order[9] dated February 8, 2013. Petitioner's motion for reconsideration of said Order was likewise denied in an Order[10] dated September 10, 2013.

On February 26, 2014, petitioner filed a Complaint[11] for Recovery of Possession before the RTC against herein respondents, who claimed to be actual occupants and potential agrarian reform beneficiaries of the subject landholding.

In their Answer,[12] respondents sought the dismissal of said petition on the ground of lack of jurisdiction, or referral of the

[5] *Id.* at 11.

[6] *Id.* at 12.

[7] *Id.* at 11-12.

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

[9] Records, pp. 93-99.

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

[11] *Id.* at 2-4.

[12] *Rollo*, pp. 46-49.

same to the DAR for determination and certification that the issue involves an agrarian dispute or matter pursuant to the Supreme Court Office of the Court Administrator (OCA) Circular No. 62-2010,[13] as the subject matter of the case involves an agrarian dispute. Respondents posited that since they are actual occupants and potential agrarian reform beneficiaries and the subject property is an agricultural land placed under CARP coverage by virtue of the DAR Notice of Coverage, and considering also the denial of petitioner's petition to lift said Notice of Coverage, the issue as to who has the right to possess and/or use the subject property is within the competence of the DARAB.

In its Reply,[14] petitioner argued, among others, that the case does not involve an agrarian dispute and that the Notice of Coverage over the subject property was patently illegal. Hence, petitioner insisted on the court's jurisdiction over the subject matter of the case.

The RTC Ruling

Considering that the subject property is the subject of a DAR Notice of Coverage, and that petitioner alleged in its Reply the issue on the validity of the Notice of Coverage over the subject property, the RTC held that the case involves an agrarian dispute. According to the RTC, "the determination of whether or not the Notice of Coverage was illegally issued remains within the exclusive and primary jurisdiction of the DAR and still falls within the definition of 'agrarian dispute.'" As such, the

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[13] IMPLEMENTATION OF SECTIONS 7 AND 50-A OF R.A. NO. 6657, ALSO KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS RESPECTIVELY AMENDED BY SECTIONS 5 AND 119 OF R.A. NO. 9700 (AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR), April 28, 2010.

[14] Records, pp. 54-56.

RTC ruled for the dismissal of the case for lack of jurisdiction. It disposed:

> WHEREFORE, in view of the foregoing, this case is hereby ordered DISMISSED for lack of jurisdiction.
>
> Consequently, the Clerk of Court of the Office of the Clerk of Court is hereby ordered to refund the excess deposit in the Sheriff's Trust Fund to its payor upon submission of pertinent documents.
>
> SO ORDERED.[15]

Aggrieved, petitioner filed a motion for reconsideration, which was denied by the RTC in its Order dated June 11, 2015:

> WHEREFORE, premises considered, the Motion for Reconsideration filed by [petitioner] is hereby DENIED for lack of merit. The Order of this Court dated January 19, 2015 dismissing the instant case still stands.
>
> SO ORDERED.[16]

The CA Ruling

The CA sustained the RTC's conclusion that the case involves an agrarian dispute. The CA ruled that since the case is "an offshoot of the Notice of Coverage issued by the DAR," and "considering that the property in question became the subject of conversion and was reverted to being an agricultural land by the DAR," the case falls squarely under the matters relating to the implementation of the CARP. Citing OCA Circular No. 62-2010, the CA upheld the dismissal of the case for want of jurisdiction. It disposed, thus:

> WHEREFORE, the appeal is Denied.
>
> The January 19, 2015 Order of the Regional Trial Court of Dinalupihan, Bataan, Branch 5 in Civil Case No. DH-1341-14 is hereby AFFIRMED for the reason that it is the Department of Agrarian Reform (DAR) which has primary jurisdiction to adjudicate the controversy.

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[15] *Rollo*, p. 62.

[16] *Id.* at 64.

SO ORDERED.[17]

Undaunted, petitioner now seeks refuge before this Court, maintaining its position that the RTC, not the DAR, has jurisdiction over the case for recovery of possession. Petitioner argues that the issuance of the Notice of Coverage is merely a preliminary step for the State's acquisition of the land for agrarian reform purposes and it does not automatically vest title or transfer the ownership thereof to the government. In fine, petitioner contends that a Notice of Coverage does not *ipso facto* render the land subject thereof a land reform area. Petitioner also maintains that while respondents may have been actual occupants, which may make them potential CARP beneficiaries, this does not give rise to tenancy relationship for the DAR, through its Adjudication Board (DARAB), to acquire jurisdiction over the case.

The Issue

Ultimately, the only issue for our resolution is whether the courts *a quo* correctly dismissed the case for recovery of possession on the ground of lack of jurisdiction.

The Court's Ruling

It is a basic rule that jurisdiction over the nature and subject matter of an action is conferred by law and determined by the allegations in the complaint.[18] Further, jurisdiction should be determined by considering not only the status or the relationship of the parties, but also the nature of the issues or questions that is the subject of the controversy.[19] Specifically in this case, if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the

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[17] *Id.* at 32.

[18] *Union Bank of the Philippines v. The Hon. Regional Agrarian Reform Office*, 806 Phil. 545, 561 (2017).

[19] *Department of Agrarian Reform v. Robles*, 775 Phil. 133, 146 (2015), citing *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*, 512 Phil. 389, 401 (2005).

DARAB, such dispute must be addressed and resolved by the DARAB.[20]

The jurisdiction of the DAR is laid down in Section 50 of R.A. No. 6657, as amended by R.A. No. 9700,[21] *viz.*:

SEC. 18. Section 50 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

"SEC. 50. *Quasi-Judicial Powers of the DAR.* — The DAR is hereby vested with primary jurisdiction to determine and adjudicate **agrarian reform matters** and shall have exclusive original jurisdiction over **all matters involving the implementation of agrarian reform**, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the DENR."

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SEC. 19. Section 50 of Republic Act No. 6657, as amended, is hereby further amended by adding Section 50-A to read as follows:

"SEC. 50-A. *Exclusive Jurisdiction on Agrarian Dispute*. — **No court or prosecutor's office shall take cognizance of cases pertaining to the implementation of the CARP** except those provided under Section 57 of Republic Act No. 6657, as amended. If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR which shall determine and certify within fifteen (15) days from referral whether an agrarian dispute exists: Provided, That from the determination of the DAR, an aggrieved party shall have judicial recourse. In cases referred by the municipal trial court and the prosecutor's office, the appeal shall be with the proper regional trial court, and in cases referred by the regional trial court, the appeal shall be to the Court of Appeals." (Emphases supplied)

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[20] *Department of Agrarian Reform v. Robles, id.*

[21] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR, approved on August 7, 2009.

Under Executive Order (E.O.) No. 129-A,[22] the DARAB was created, which was designated to assume the powers and functions of the DAR with respect to the adjudication of agrarian reform cases, and matters relating to the implementation of the CARP and other agrarian laws.[23] Corollary, under Section 1, Rule II of the 2009 DARAB Rules of Procedure, the DARAB's jurisdiction is not limited to agrarian disputes where tenancy or leasehold agreement between the parties exists. Specifically, Section 1 (a) of said Rule provides that its primary and exclusive original and appellate jurisdiction includes, among others, **cases involving "[t]he rights and obligations of persons engaged in the management, cultivation, and use of all agricultural lands covered by R.A. No. 6657, otherwise known as the [CARL], as amended, and other related agrarian laws."**

DAR Administrative Order No. 03-11[24] also finds relevance in this case, wherein it was declared that the DAR shall have exclusive jurisdiction on all cases that are agrarian in nature pursuant to the landmark case of *Department of Agrarian Reform v. Cuenca*,[25] wherein the Court ruled that "[a]ll doubts, [with regard to jurisdiction on agrarian reform matters], should be resolved in favor of the DAR since the law has granted it special and original authority to hear and adjudicate agrarian matters." Said Administrative Order also cited the OCA Circular No. 62-2010, which directs all courts and judges concerned to "refer all cases before it alleged to involve an agrarian dispute to the DAR."

In this case, the averments in the Complaint seemingly make out a case for recovery of property, which is clearly within the

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[22] MODIFYING ORDER NO. 129 REORGANIZING AND STRENGTHENING THE DEPARTMENT OF AGRARIAN REFORM AND FOR OTHER PURPOSES, approved on July 26, 1987.

[23] *Chailese Development Company, Inc. v. Dizon*, G.R. No. 206788, February 14, 2018, 855 SCRA 377, 388.

[24] REVISED RULES AND REGULATIONS IMPLEMENTING SECTION 19 OF R.A. NO. 9700 (JURISDICTION ON AND REFERRAL OF CASES THAT ARE AGRARIAN IN NATURE), effective July 23, 2011.

[25] 482 Phil. 208, 211 (2004).

jurisdiction of the regular courts. Said Complaint, however, failed to mention that the subject property is an agricultural land, placed under the coverage of the CARP as stated in the Notice of Coverage. The Court has previously explained that "[a] notice of coverage is a document that aims to inform the landowner that his land has been determined by the DAR, on the basis of the latter's preliminary identification, to be under the coverage of the [CARP]."[26] Further, the fact that respondents are the actual occupants and potential agrarian reform beneficiaries of the subject agricultural landholding cannot be disregarded. Moreover, the denial of petitioner's petition to lift the Notice of Coverage before the DAR is likewise revealing. Notably, the Order[27] of the DAR in said petition gave weight to the reports and recommendations of the Municipal Agrarian Reform Officer of Hermosa, Bataan and the Legal Division of DAR Bataan Provincial Office, to which the Provincial Agrarian Reform Officer concurred with, which were all one in concluding that the Notice of Coverage should be upheld.[28] Considering all these circumstances, it cannot, therefore, be denied that the subject property is within the land reform area. As such, the issue on the possession or use thereof is well-within the jurisdiction and competency of the DARAB.

Petitioner's narrow and restrictive understanding of the concept of agrarian matters within the jurisdiction of the DARAB cannot be sustained. To reiterate, the DARAB's jurisdiction is not limited to agrarian disputes where tenancy and leasehold agreement issues between the parties are raised. Also, there is nothing under Section 1 (a), Rule II of the 2009 DARAB Rules of Procedure which limits the jurisdiction of the DARAB only to agricultural lands under the administration and disposition of the DAR and the Land Bank of the Philippines.[29] As above-

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[26] *Robustum Agricultural Corporation v. Department of Agrarian Reform*, G.R. No. 221484, November 19, 2018.

[27] Records, pp. 93-99.

[28] *Id.* at 96.

[29] *Id.*

stated, all cases involving agrarian matters, which include issues on the management, cultivation, or use of **all agricultural lands covered by the CARL**, are within the jurisdiction of the DARAB. In *Sarne v. Maquiling*,[30] the Court explained that under Section 4[31] of R.A. No. 6657, agricultural lands under the coverage of the CARP include all private lands devoted to or suitable for agriculture.

A notice of coverage, therefore, is not necessary in order for the DARAB to have jurisdiction over a case that involves "[t]he rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, or use of an agricultural land covered by R.A. No. 6657."[32]

Furthermore, while it is true that the issuance of the Notice of Coverage is merely a preliminary step in land acquisition for agrarian reform purposes and issuance of the same does not vest title upon the State, it does not take the fact that the DAR has already determined through its preliminary identification

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[30] 431 Phil. 675 (2002).

[31] Sec. 4. *Scope*. — The Comprehensive Agrarian Reform Law of 1989 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

More specifically the following lands are covered by the Comprehensive Agrarian Reform Program:

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.
(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;
(c) All other lands owned by the Government devoted to or suitable for agriculture; and
(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

[32] See *Department of Agrarian Reform v. Robles*, *supra* note 19, at 149.

that the land subject thereof is under the coverage of the CARP. In all, it is inaccurate to argue that the case simply involves an ordinary recovery of possession controversy. The subject of petitioner's Complaint undoubtedly involves the use of an agricultural land, which is the subject of the implementation of the CARP. Verily, the RTC and the CA correctly found that the case falls squarely within the jurisdictional ambit of the DARAB.[33]

In these lights, the Court finds the RTC's dismissal of the petition *a quo*, as affirmed by the CA, in order.

WHEREFORE, premises considered, the instant Petition is **DENIED**. Accordingly, the Decision dated June 16, 2017 and the Resolution dated January 31, 2018 of the Court of Appeals in CA-G.R. C.V. No. 105421, which affirmed the Order dated January 19, 2015 of the Regional Trial Court of Dinalupihan, Bataan, Branch 5 in Civil Case No. DH-1341-14 is **AFFIRMED**.

SO ORDERED.

Caguioa (Acting Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

Peralta, C.J. (Chairperson), on official business.

FIRST DIVISION

[G.R. No. 241518. March 4, 2020]

ROLANDO GEMENEZ *y* PARAME, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

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[33] See *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.*, 538 Phil. 899, 908 (2006).

SYLLABUS

1. CRIMINAL LAW; ATTEMPTED HOMICIDE; WAYS TO DETERMINE THE EXISTENCE OF INTENT TO KILL, ENUMERATED; WHERE IT WAS ESTABLISHED THAT A SHOTGUN WAS USED AND THAT IT WAS FIRED TWICE, THE COURT CONCLUDES THAT THE ATTACK WAS MADE WITH INTENT TO KILL.— With regard to the element of intent to kill, the Court rules that the prosecution was able to establish that the attack was done with intent to kill. In *De Guzman, Jr. v. People*, the Court pointed out that there are several ways by which courts may determine the existence of intent to kill, namely: "(1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused [as well as] the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim." As will be discussed further later on, it is true that the prosecution failed to illustrate the ***full extent*** of the injuries sustained by Jerry. However, the prosecution was still able to establish that there was intent to kill by 1) the means used by the malefactor which, in this case, was a shotgun; and 2) the testimony of the victim himself, which was corroborated by the Medico-Legal Certificate presented in this case. Jerry claimed to have been shot twice, and in one of those two shots, the bullet hit his thumb before penetrating his body because he was trying to parry the gun. The Medico-Legal Certificate, in turn, indicates that he sustained three gunshot wounds, *i.e.*, on his "left chest with pulmonary contusion; on his "left arm"; and on his "right thumb." Given the following evidence — the weapon used, that it was fired **twice**, along with the location of the injuries — the Court concludes that the attack was indeed made with intent to kill.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDELINES IN THE ASSESSMENT OF CREDIBILITY OF WITNESSES FOR CASES ON APPEAL, REITERATED; THE COURT FINDS NO SUBSTANTIAL REASON TO REVERSE THE TRIAL COURT'S FINDINGS AS REGARDS THE CREDIBILITY OF THE PROSECUTION'S WITNESSES.— In *People v. Sanchez*, the

Court laid down the following guidelines in the assessment of credibility of witnesses for cases on appeal: **First,** the Court gives the highest respect to the RTC' s evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. **Second,** absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded. **And third,** the rule is even more stringently applied if the CA concurred with the RTC. Applying the foregoing to the case at bar, the Court sees no substantial reason to justify the reversal of the RTC's finding as regards the credibility of the prosecution's witnesses, especially that such finding had been upheld by the CA. Thus, the Court is of the view that it was indeed Gemenez who attacked Jerry, and that the said attack was made with intent to kill.

3. **CRIMINAL LAW; ATTEMPTED HOMICIDE; WHERE THE ELEMENT OF FRUSTRATED HOMICIDE–THAT THE VICTIM SUSTAINED FATAL WOUNDS BUT DID NOT DIE DUE TO TIMELY MEDICAL ASSISTANCE–WAS NOT ESTABLISHED, ACCUSED'S CONVICTION MUST BE MODIFIED TO ATTEMPTED HOMICIDE.—** While the Medico-Legal Certificate — which shows the extent of Jerry's injuries — was correctly admitted into evidence as it was authenticated by Dr. Angelo Leano (Dr. Leano), the same was not sufficient to establish that Jerry would have died from the injuries he sustained if not for the timely medical assistance. x x x Because Dr. Encila did not testify, there is nothing in the records therefore that explains the full extent of Jerry's injuries. x x x What is apparent from the records therefore is only that Jerry sustained gunshot wounds in the left arm, left chest, and right thumb. The full extent of Jerry's injuries — particularly, that they would have caused his death without timely medical assistance — was thus not clearly established. That there were pictures of Jerry on the hospital bed showing that tubes were attached to him does not conclusively establish that the injuries were so serious that he would have died without timely medical assistance. Verily, the RTC and the CA were merely inferring, and this was error. At this juncture, the Court deems it fit to

emphasize that the prosecution has the burden of proving beyond reasonable doubt **each element** of the crime as its case will rise or fall on the strength of its own evidence. Any doubt shall be resolved in favor of the accused. As there is doubt as to the existence of the second element of Frustrated Homicide — that the victim sustained fatal or mortal wounds but did not die because of timely medical assistance — Gemenez's conviction must thus be modified to Attempted Homicide.

4. ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY, ADJUSTED AND MODIFIED ACCORDINGLY.— Considering the foregoing modification of Gemenez's conviction, it necessarily follows that the penalty to be imposed on him should likewise be adjusted. Article 249 of the Revised Penal Code imposes the penalty of *reclusion temporal* upon those who commit Homicide. Article 51 of the Revised Penal Code, in turn, provides that the penalty lower by two degrees is to be imposed when the felony committed is in the attempted stage. Thus, Gemenez should suffer the penalty of *prision correccional*. Applying, however, the Indeterminate Sentence Law, *prision correccional* should only constitute the maximum of the penalty to be imposed by the Court. Considering all the foregoing, the Court thus imposes on Gemenez the indeterminate penalty of four (4) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. Finally, in view of the Court's ruling in *People v. Jugueta*, the damages awarded in the questioned Decision are hereby modified to ₱20,000.00 each representing civil indemnity and moral damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] filed by the petitioner Rolando Gemenez *y* Parame (Gemenez)

[1] *Rollo*, pp. 11-32.

assailing the Decision[2] dated March 28, 2018 and Resolution[3] dated August 15, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40018, which affirmed the Judgment[4] dated March 22, 2017 of Branch 31, Regional Trial Court of San Pedro, Laguna (RTC) in Criminal Case No. 12-8587-SPL, finding Gemenez guilty beyond reasonable doubt of the crime of Frustrated Homicide.

The Facts

An Information was filed against Gemenez for the attack on Jerry Bechachino (Jerry), the accusatory portion of which reads:

> That on or about December 29, 2011, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of treachery and abuse of superior strength and with deliberate intent to take life, did then and there willfully, unlawfully and feloniously shoot twice one JERRY BECHACHINO *y* REYES using a shotgun while he was just walking along the street of Sout[h]ville 3A Subdivision, Barangay San Antonio, San Pedro, Laguna, not knowing of the impending danger against his life and while he was unarmed, as a consequence, he suffered gunshot wounds on his left chest, left arm and right thumb, accused, having performed all the acts of execution which would have produced the crime of MURDER but nevertheless did not produce it by reason of causes independent of his will, that is, the able and timely medical assistance given to the said Jerry Bechachino y Reyes.
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> CONTRARY TO LAW.[5]

Upon arraignment, Gemenez pleaded not guilty to the crime charged. Pre-trial and trial on the merits then ensued.[6]

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[2] *Id.* at 36-49. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rodil V. Zalameda (now a member of this Court) and Renato C. Francisco, concurring.

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

[4] *Id.* at 71-81. Penned by Judge Sonia T. Yu-Casano.

[5] *Id.* at 71.

[6] *Id.*

The facts established during the trial, as summarized by the RTC, are as follows:

Jerry Bechachino y Reyes testified that he is a resident of Lot 12, Block 29, Southville 3A, Barangay San Antonio, San Pedro, Laguna. He knew the accused because at the time of the incident complained of, he was a volunteer barangay tanod of Barangay San Antonio. They were also previous neighbors in Barangay Nueva, San Pedro, Laguna. At about 1:30 in the early morning of December 29, 2011, he was on his way home from work as a welder when he met his friend Axiel inside Southville 3A. Axiel also resided in Southville. They were walking along Block 29, Lot 15 of the same Southville 3A when they noticed that accused and his companion were following them. He clearly saw their faces because the main road where they were walking was well-lighted with street lights. After a while, accused and his companion blocked their path. While standing in front of him at a distance of two meters, accused pointed his shotgun at him. Afraid that the gun might fire off, he tried to parry the gun but accused fired it twice hitting his right thumb, left chest and left arm. Accused'[s] companion also took out a gun but he did not fire it. He was dragged towards a tricycle while Axiel scurried away out of fear. He tried to run but lost consciousness. He was in comatose condition for a week and regained consciousness at the intensive care unit of the Philippine General Hospital. He identified photographs of himself in a hospital bed with several tubes attached to his naked body. As a consequence of his injuries, he incurred hospital expenses of ₱100,000.00 and as proof, presented receipts.

On cross-examination, he testified that he was walking home when he accidently met along his way Axiel and Reneson as they were also living in the same subdivision. However, Reneson had to go on a different way so it was only him and Axiel who were left together when they were accosted by accused Rolando Gemenez and his companion. This time he averred that accused was with two (2) companions whose identities he did not know. He narrated that when he was shot by the accused, the latter's two (2) companions dragged them and tried to board them on a tricycle. He asked them "Sir, ano po ang kasalanan [namin], bakit niyo po kami ginaganito?" But they did not reply. He called the men "Sir" as they were wearing the uniform of Barangay San Antonio. He recalled that after his discharge from the hospital, he stayed in their house in Manila to recuperate and filed this case only after more than a month. He was familiar with the

accused because he was a barangay tanod and he saw him roam the subdivision. Accused also used to be a neighbor in Barangay Nueva for years. To his recollection, he and the accused have no quarrel in the past. He was not doing anything wrong when accused shot him but he noticed that accused was drunk when he accosted them. He did not know if accused left Southville after the incident. Accused did not try to talk to him during his recovery. He was threatened by the other members of the barangay and out of fear, Axiel, his companion that night did not want to testify and had gone into hiding.

Dr. Angelo Leaño an orthopedic surgeon at the Philippine General Hospital was next presented. He testified that the complainant Jerry Bechachino was referred to him for his injury on the thumb. When he saw the patient, he was already in the operating suite for operation of his gunshot wounds at the left side of the chest and back and at the right thumb and was hooked up to a respirator. He confirmed that the patient sustained several injuries but his participation was only for the treatment of the thumb. The rest of the injuries were treated by the trauma service of the general surgery with Dr. Vienna Encila as one of the attending surgeons as shown by the Medico Legal Certificate, a Clinical Abstract, an Anatomical Diagram and an Operating and Anaesthesia Record which he presented and identified.

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Last presented to the witness stand was Reneson Madridano y Ison. Before his presentation, he repeatedly refused to appear in court to testify warranting a show cause order from the court for unduly delaying the trial. Since he also failed to submit his explanation to the show cause order of the court, upon motion of the public prosecutor, the court cited him in contempt of court for defying the lawful order of this court and ordered his arrest. Upon his arrest, he testified that he and Jerry Bechachino are friends and he knew that accused Rolando Gemenez y Parame is a barangay tanod in their place in Barangay San Antonio. He denied the contents of the affidavit he executed which pointed to the accused as the one who shot Jerry Bechachino. While he admitted that he had executed an oath before Fiscal Frisco Marfil as to its truthfulness and veracity, he insisted that he was merely coached in its execution.[7]

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[7] *Id.* at 71-74.

On the other hand, the evidence for the defense, as summarized by the RTC, is as follows:

Accused Rolando Gemenez y Parame denied the allegations against him. He testified that on December 29, 2011, he was on duty as barangay tanod of Barangay San Antonio, San Pedro, Laguna from 9:00 in the evening until 12:00 midnight. While on duty, the barangay authorities did not receive any report of trouble/commotion. The following morning, while he was at a tricycle terminal to take a ride to Julie's Bakeshop where he was a chief baker, the driver of the tricycle he boarded told him that a person was shot early that morning. He did not bother to find out the name of the victim nor the place of the incident. Later on, his fellow tanods also told him of the shooting incident. He also did not bother himself with the details. He knew one Reneson Madridano, the witness presented by the prosecution, because he was the friend of the brother of the complainant Jerry Bechachino. He did not know why he was implicated by the complainant. When he first heard that Jerry Bechachino pointed to him as the assailant, he went to the barangay hall and entered it on the blotter but he cannot really recall what was entered on the blotter. He did not have a copy of the excerpt of the blotter but committed to secure a copy from the barangay which he never did. He further denied knowing Jerry Bechachino and averred that he met him for the first time during the preliminary investigation at the fiscal's office.

On the clarificatory questionings by the court on his whereabouts at the time of the incident complained of, he stated that he was at his residence sleeping.

Xerence Roche testified that she knew the parties to this case. Accused Rolando Gemenez and her husband were barangay volunteers while she and the mother of complainant Jerry Bechachino were the leaders of the block where they lived. She heard that Jerry was shot but denied that it was the accused who shot him. She pointed to a man 6 feet in height, wearing a bonnet and carrying a shotgun as the person who actually shot Jerry. She narrated that at around 1:30 in the early morning of December 29, 2011, she was fetching her husband at the corner street near their house. Her husband was at that time drinking liquor and playing a card game (tong-its) with his friends Mario Anaya and Rolando Legaspi. While she was with them, they heard a sound coming from a far distance. Thinking that it was just a tire exploding, they did not do anything. After a while, they heard another sound but this time she was sure it was gunfire because it

came just around five meters away from them. They also heard shouts "Dalhin sa hospital." They were about to stand up when a man 6 feet in height, wearing a bonnet and holding a shotgun coming from the direction of the gunfire appeared and poked his shotgun at them. He also uttered words, "Hmmp, hmmp." After Mario Anaya told the man: "Wala kaming alam diyan, naglalaro lang kami," the man proceeded on his way. She testified that it could have been impossible for accused to shoot Jerry because he was not at the place of the incident when it happened. But she admitted that she did not know where he was at that precise time. She further testified that while she did not witness the armed masked man shoot Jerry, she was sure it was him who did it because he came from the direction of the gunfire. Finally, she testified that she did not know why the armed man pointed his shotgun at them but despite this, they did not report the incident to the authorities. Neither was the incident involving the masked man entered into the barangay blotter.

Leonardo Pullarca, a regular barangay tanod testified that he was a barangay tanod of Barangay San Antonio from 1995-2013. In 2009, accused joined them as volunteer tanod but accused stopped reporting for duty after the incident. Because of the long period of time that accused was a volunteer tanod they became friends. On December 28, 2011, he was on duty in the barangay outpost of Southville 3A from 6:00 in the evening until 6:00 in the morning of the following day or on December 29, 2011. Accused, on the other hand, was on duty from 9:00 o'clock in the evening until midnight of December 29, 2011. At about 1:00 o'clock in the early morning of December 29, 2011, a teenager came running to the outpost where he and his driver whose name he cannot remember were posted. The teenager was shouting: "May binaril, may binaril." For safety reasons, he and his driver, ordered the teenager to enter the outpost and they closed its door. Afterwards, a big masked man who was carrying a shotgun passed by their outpost and exited the gate of Southville 3A. When the armed man was already out of the subdivision, several teenagers arrived asking to borrow a service vehicle to bring the person who was shot to the hospital. Two weeks after, the accused was charged with this offense. He denied that it was the accused who shot Jerry x x x because accused was already in his residence when the shooting incident happened. He insisted that it was the big man carrying a gun x x x who shot Jerry. He, however, admitted that he was only guessing that the accused was already at home at the time of the incident but he did not really see him in his house. He also admitted that he did

not bother to get the names of the teenagers who reported that somebody was shot and who borrowed a service vehicle x x x. He narrated that in accordance with his duties and responsibilities, he entered the incident involving the armed men in the barangay blotter but failed to present proof of such entry.[8]

After the defense rested its case, the case was then submitted for decision.

Ruling of the RTC

After trial on the merits, in its Judgment[9] dated March 22, 2017 the RTC convicted Gemenez of the crime of Frustrated Homicide. The dispositive portion of the said Judgment reads:

> WHEREFORE, accused Rolando Parame Gemenez is hereby found GUILTY beyond reasonable doubt of Frustrated Homicide and he is hereby sentenced to suffer the penalty of six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum. He is further ordered to pay the complainant Jerry Bechachino the amount of ₱25,000.00 as temperate damages and ₱25,000.00 as moral damages with interest of 6% per annum computed from the finality of this judgment until fully paid.
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> SO ORDERED.[10]

The RTC ruled that the fact that Jerry was shot and sustained injuries was sufficiently proved by the evidence. Specifically, it held that "the pictures of the complainant on the hospital bed attached to numerous tubes further supports the theory that the injury could have been fatal if not for timely medical intervention."[11]

As to the identity of Jerry's assailant, the RTC held that it was also established beyond reasonable doubt that it was Gemenez. According to the RTC, Gemenez's mere denial and

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[8] *Id.* at 74-76.

[9] *Supra* note 4.

[10] *Rollo,* p. 81.

[11] *Id.* at 76.

alibi could not be given more credence over the positive identification of the victim himself. Apart from the testimonies of the other witnesses — who even had motive to help Gemenez as they had close relations with him — the defense presented no other evidence to establish his alibi and denial. Notably, the defense undertook to present evidence, such as records of *barangay* blotters, to bolster the credibility of their version but they eventually failed to present any such documents. Most importantly, the RTC noted that Gemenez was unable to provide for a reason why Jerry would falsely accuse him of the crime.

As to the crime committed, the RTC ruled that it was only Homicide and not Murder because neither of the qualifying circumstances of treachery or abuse of superior strength was sufficiently proven by the prosecution. The RTC held that treachery could not be appreciated because it was unclear from the evidence that Gemenez specifically sought the mode of attack to facilitate the perpetration of the crime without risk to himself. Similarly, abuse of superior strength could not be appreciated as well because there was no clear proof of Gemenez's physical superiority over Jerry, or that the former took advantage of any such superiority to consummate the offense. Thus, the trial court convicted him only for Frustrated Homicide.

Aggrieved, Gemenez appealed to the CA.

Ruling of the CA

In the assailed Decision[12] dated March 28, 2018, the CA affirmed the RTC's finding that Gemenez was the perpetrator of the crime. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is **DENIED**. The March 22, 2017 *Judgment* rendered by the Regional Trial Court, Branch 31, San Pedro City, Laguna in Criminal Case No. 12-8587-SPL is hereby **AFFIRMED**. The moral damages awarded to private complainant, Jerry Bechachino, is however **MODIFIED** in that the amount is increased to **Php30,000.00**.

[12] *Supra* note 2.

SO ORDERED.[13]

The CA affirmed the RTC's finding that the pictures presented as evidence sufficiently established that Jerry would have died from the injuries he sustained if not for the timely medical assistance given him. The CA similarly did not believe the alibi and denial interposed by Gemenez because he was not able to prove that it was physically impossible for him to be at the vicinity of the place where the crime was committed. Furthermore, the CA also found that Jerry did not have ill motive in pointing to Gemenez as the one who shot him. Finally, the CA ruled that slight variation in the testimony of witnesses, like Jerry's testimony in this case, does not affect the credibility of such testimony, and is in fact even indicative of the truth because it shows that the witness was not coached and his testimony was not fabricated.

Gemenez sought reconsideration of the above Decision, but the same was denied by the CA in a Resolution[14] dated August 15, 2018.

Hence, the instant case.

Issues

For resolution of the Court are the following issues submitted by Gemenez:

(1) Whether the CA erred in upholding the credibility of the prosecution witnesses, while disregarding the consistent and corroborated testimonies of the defense witnesses;

(2) Whether the CA erred in affirming the findings of the RTC which were plainly based on speculation and conjectures;

(3) Whether the CA erred in affirming his conviction despite the prosecution's failure to prove the elements of

[13] *Rollo*, p. 48.

[14] *Supra* note 3.

frustrated homicide with evidence beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious. The evidence of the prosecution established only the elements of Attempted Homicide, instead of Frustrated Homicide.

First and Second Issues: The CA did not err in affirming the RTC's factual findings

In questioning his conviction, Gemenez claims that the prosecution was not able to establish that the attack on Jerry was made with intent to kill. He argues that the nature of the wounds sustained by Jerry were not sufficiently established by the prosecution, and consequently, there was no proof of intent to kill.

In addition, Gemenez claims that the CA erred in convicting him on the basis of Jerry's testimony when such was highly incredible. He points out that, in contrast, the testimonies of the witnesses of the defense corroborate each other on the material points.

The arguments fail to persuade.

With regard to the element of intent to kill, the Court rules that the prosecution was able to establish that the attack was done with intent to kill. In *De Guzman, Jr. v. People*,[15] the Court pointed out that there are several ways by which courts may determine the existence of intent to kill, namely: "(1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused [as well as] the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim."[16]

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[15] 748 Phil. 452 (2014).

[16] *Id.* at 459.

As will be discussed further later on, it is true that the prosecution failed to illustrate the ***full extent*** of the injuries sustained by Jerry. However, the prosecution was still able to establish that there was intent to kill by 1) the means used by the malefactor which, in this case, was a shotgun; and 2) the testimony of the victim himself, which was corroborated by the Medico-Legal Certificate[17] presented in this case. Jerry claimed to have been shot twice, and in one of those two shots, the bullet hit his thumb before penetrating his body because he was trying the parry the gun. The Medico-Legal Certificate, in turn, indicates that he sustained three gunshot wounds, *i.e.*, on his "left chest with pulmonary contusion; on his "left arm"; and on his "right thumb."[18]

Given the following evidence — the weapon used, that it was fired **twice**, along with the location of the injuries — the Court concludes that the attack was indeed made with intent to kill.

As regards Gemenez's contention that the testimonies of the defense witnesses deserve more weight as compared with Jerry's testimony, the Court quotes with approval the following disquisition by the RTC:

> As to who fired the near fatal shots, the court is convinced that it was the accused. It should be noted that the only defense put up by the accused is denial and alibi claiming that he was not at the scene of the crime when the incident of shooting took place. He stated that he was then in his house sleeping after coming from his night duty as a volunteer barangay tanod. However, for alibi to prosper, the accused must satisfactorily prove that he was somewhere else when the crime was committed and that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In this case, the accused failed to show by convincing evidence that it was physically impossible for him to have been at the crime scene during its commission considering that his residence was only a short 500 meters more or less away from the place where the incident happened. Likewise, as

[17] *Rollo*, p. 112.

[18] *Id.*

repeatedly held, positive identification by the prosecution witnesses of the accused as the perpetrator of the crime is entitled to [greater] weight than his alibi and denial. [These] guidelines [find] more compelling application when the lone witness is the victim himself whose direct and positive identification of his assailant is almost always regarded with indubitable credibility, owing to the natural tendency of the victim to seek justice for himself, and thus strive to remember the face of his assailant and to recall the manner in which the latter committed the crime.

In this case, the accused had been known to the victim even before the commission of the crime. They have been former neighbors in Barangay Nueva and present neighbors in Southville 3A at the time of the crime. Accused was also a barangay tanod volunteer whom the victim would see roving the streets of their neighborhood. Aside from the accused [being] already known or familiar to the victim, the latter also had a clear view of his attacker. Thus, he noticed the accused following him and his companion as they were walking on the road. He had a better view of him when accused blocked his path and pointed his shotgun about two meters from him. Accused and the victim were so close to each other that the latter even managed to parry the gun with his hand, only to have his thumb blown up when the gun fired. Finally, the victim had not been shown to have been motivated by malice or ill-will in implicating the accused. When there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.

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As for the inconsistent testimony of the victim as to the number of companions accused had at that time, the court finds it too trivial to affect the credibility of the victim's testimony.

The story of defense witnesses Xerence Roche and Leonardo Pullarca about a big and gun-wielding man with bonnet who passed them and even poked a gun at Roche and company is incredible and unworthy of the slightest belief. Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. Here, the scenario portrayed by Roche and Pullarca defies the imagination, logic and common experience of mankind. They want this court to believe that a criminal,

after firing at a victim would casually and with impunity roam the vicinity in that get-up even passing a barangay outpost and stopping by a group of persons and pointing a gun at them. Bad as their effort to paint a criminal different from the accused-comrade, their reaction to the alleged gun man that they claim is worse. Accused'[s] witnesses, a barangay tanod and a wife of a barangay tanod who was allegedly present when the masked man poked his shotgun at them, never attempted to give chase or report the presence of this most likely assailant. By their account, they did nothing but look at this big man as he passed by nonchalantly. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance. Such is the testimonies of the defense witnesses.

But what the defense has is not only an incredible story. Its witnesses are also not worthy of belief as they have a clear and manifest interest to absolve the accused who is their friend and fellow barangay tanod. Thus, their naturally biased testimony in support of their comrade's denial of culpability deserves scant consideration in light of the positive identification and categorical declaration made by the victim himself against the accused. Jurisprudence holds that when the denial of the accused is tended to be established only by himself, his relatives, or friends, such denial should be accorded the strictest scrutiny as it is necessarily suspect and cannot prevail over the testimonies of the more credible testimony for the prosecution. So it must be here.[19]

In *People v. Sanchez*,[20] the Court laid down the following guidelines in the assessment of credibility of witnesses for cases on appeal:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing

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

[20] 681 Phil. 631 (2012).

court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC.[21]

Applying the foregoing to the case at bar, the Court sees no substantial reason to justify the reversal of the RTC's finding as regards the credibility of the prosecution's witnesses, especially that such finding had been upheld by the CA. Thus, the Court is of the view that it was indeed Gemenez who attacked Jerry, and that the said attack was made with intent to kill.

Third Issue: The CA erred in affirming Gemenez's conviction for Frustrated Homicide, instead of merely Attempted Homicide.

While the prosecution's failure to establish the full extent of Jerry's injuries did not affect the Court's finding that the attack was made with intent to kill, it does have an impact on the ***stage*** of the execution of the crime.

The RTC and the CA convicted Gemenez of Frustrated Homicide because of their finding that Jerry would have died from the injuries he sustained if not for the timely medical assistance extended to him. Both courts anchored this finding only on the pictures of Jerry on the hospital bed showing that there were numerous tubes attached to him.[22]

The RTC and the CA erred in their conclusions.

While the Medico-Legal Certificate — which shows the extent of Jerry's injuries — was correctly admitted into evidence as it was authenticated by Dr. Angelo Leano (Dr. Leano), the same was not sufficient to establish that Jerry would have died from the injuries he sustained if not for the timely medical assistance.

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[21] *Id.* at 635-636.

[22] RTC Decision, p. 6; *rollo*, p. 76. CA Decision, p. 11; *rollo*, p. 46.

According to the prosecution, two doctors attended to Jerry, namely Dr. Leano and Dr. Vienna Encila (Dr. Encila). Dr. Encila was the surgeon who attended to the gunshot wounds in the chest and arm that Jerry sustained, while Dr. Leano worked on the injury to Jerry's thumb only. So while Dr. Leano was qualified to authenticate the Medico-Legal Certificate as he actually attended to Jerry, his personal knowledge, and consequently his testimony was, however, limited only to the extent of the injuries to Jerry's thumb. Dr. Leano himself testified:

Q: I have here the Medico-Legal Certificate marked as **Exhibit "C"** and your name appears on this medico-legal certificate. So, what was your participation with respect to this patient?

A: The patient was referred to me, sir. The patient was brought to the operating suite since he has gun shot wounds at the left side of the chest as well as over the left side of the back and to the right thumb. **My services was called due to the injury on the right thumb to assess the patient's right hand**.

Q: Is that the usual procedure?

A: For emergency cases, the referral to orthopedics will either be at the emergency room or in the operating room, depending on how emergency the case is, sir.

Q: What treatment did you apply to the patient?

A: For this patient, since we realized that the tip of the thumb and the nail were already missing and the finger was too short for a nail to properly grow. We closed the thumb and destroyed the part of the nail where it would start to grow, preventing any growth of the nail, sir.

COURT: You mentioned that the patient sustained several injuries. But your participation was only for the treatment of the thumb?

A: Yes, Your Honor.

Q: And the other injuries were treated by . . .

A: **The rest of the injuries by the trauma service of the general surgery, Your Honor**.

PROS. DE LEON: Who treated the other injuries?

A: **The other injuries were treated according to the chart**

> **by Dr. Vienna Encila, one of the attending surgeons**.[23] (Emphasis and underscoring supplied)

Because Dr. Encila did not testify, there is nothing in the records therefore that explains the full extent of Jerry's injuries. The Medico-Legal Certificate only states that:

> In the opinion of the doctor who attended to the patient, under normal conditions without subsequent complications and/or deeper involvement that may be present but not clinically apparent at the time of examination, the said physical injury/injuries will require medical attendance for a period of A and B — more than thirty (30) days.[24]

What is apparent from the records therefore is only that Jerry sustained gunshot wounds in the left arm, left chest, and right thumb. The full extent of Jerry's injuries — particularly, that they would have caused his death without timely medical assistance — was thus not clearly established. That there were pictures of Jerry on the hospital bed showing that tubes were attached to him does not conclusively establish that the injuries were so serious that he would have died without timely medical assistance. Verily, the RTC and the CA were merely inferring, and this was error.

At this juncture, the Court deems it fit to emphasize that the prosecution has the burden of proving beyond reasonable doubt **each element** of the crime as its case will rise or fall on the strength of its own evidence.[25] Any doubt shall be resolved in favor of the accused.[26]

As there is doubt as to the existence of the second element of Frustrated Homicide[27] — that the victim sustained fatal or

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[23] TSN dated March 11, 2014, pp. 3-4; *rollo*, pp. 115-116.

[24] *Rollo*, p. 112.

[25] *Moster v. People*, 569 Phil. 616, 628 (2008).

[26] *Id.*

[27] The elements of the crime of Frustrated Homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in

mortal wounds but did not die because of timely medical assistance — Gemenez's conviction must thus be modified to Attempted Homicide.

Imposable Penalty on the Accused-Appellant

Considering the foregoing modification of Gemenez's conviction, it necessarily follows that the penalty to be imposed on him should likewise be adjusted. Article 249 of the Revised Penal Code imposes the penalty of *reclusion temporal* upon those who commit Homicide. Article 51 of the Revised Penal Code, in turn, provides that the penalty lower by two degrees is to be imposed when the felony committed is in the attempted stage. Thus, Gemenez should suffer the penalty of *prision correccional*.

Applying, however, the Indeterminate Sentence Law, *prision correccional* should only constitute the maximum of the penalty to be imposed by the Court. Considering all the foregoing, the Court thus imposes on Gemenez the indeterminate penalty of four (4) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

Finally, in view of the Court's ruling in *People v. Jugueta*,[28] the damages awarded in the questioned Decision are hereby modified to ₱20,000.00 each representing civil indemnity and moral damages.

WHEREFORE, premises considered, the Court hereby **ADOPTS** the findings of fact and conclusions of law in the Decision dated March 28, 2018 and Resolution dated August 15, 2018 of the Court of Appeals in CA-G.R. CR No. 40018, which are consistent with this Decision. The Court of Appeals Decision finding petitioner Rolando Gemenez *y* Parame guilty beyond reasonable doubt is **AFFIRMED** with **MODIFICATION**.

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his assault; (2) the victim sustained fatal or mortal wound but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder under Article 248 of the *Revised Penal Code*, as amended, is present. (*De Guzman, Jr. v. People, supra* note 15 at 458.)

[28] 783 Phil. 806 (2016).

Rolando Gemenez *y* Parame is hereby declared **GUILTY** of **Attempted Homicide**, and is **ORDERED** to suffer the indeterminate penalty of four (4) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

He is likewise ordered to pay the victim Jerry Bechachino, **TWENTY THOUSAND PESOS** (₱20,000.00) as civil indemnity, and **TWENTY THOUSAND PESOS** (₱20,000.00) as moral damages.

All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 244288. March 4, 2020]

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

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS THAT MUST BE ESTABLISHED TO SUSTAIN A CONVICTION, PRESENT.— [I]n order to sustain a conviction of qualified rape, the following elements must be present: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim being under eighteen (18) years of age at the time of

the rape; and that (5) the offender is a parent (whether legitimate, illegitimate, or adopted) of the victim. The foregoing elements are all present in the instant case.

2. ID.; ID.; ID.; MINORITY OF THE VICTIMS, PROVEN; MORAL ASCENDANCY OF THE ACCUSED-APPELLANT OVER THE MINOR VICTIMS, ALSO ESTABLISHED.— As to minority, AAA's certificate of live birth discloses that she was eight years old when she was first raped by accused-appellant, the last reported sexual abuse having occurred when she was 11 years of age. Whereas, BBB's Certificate of Live Birth reveals that she was raped by accused-appellant when she was only seven years old, the last incident of rape having been committed when she was about 10 years of age. Furthermore, both private complainants claimed to having been afraid of accused-appellant who was their biological father, with AAA testifying that the latter had threatened to kill her once. On this score, it bears stressing that even without the use of force or intimidation or failure to prove the presence thereof, the moral ascendancy that exists with accused-appellant being the private complainants' father is sufficient. In cases of incestuous rape of a minor, it has been established that moral ascendancy of the ascendant substitutes force or intimidation.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY OF THE PROSECUTION WITNESSES AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED WEIGHT AND CREDENCE.— [T]he evaluation of the credibility of witnesses and their reliability is an issue best raised before the trial court; which possesses the unique opportunity to examine the witnesses first-hand and observe their demeanor, conduct, and attitude throughout their testimony. The factual findings of the trial court, its appreciation of the testimonies of the witnesses, and the conclusions reached on the basis of such findings, when affirmed by the appellate court, are generally binding and conclusive upon this Court. Applying the foregoing here, the ruling of the RTC concerning the credibility of the prosecution witnesses, as affirmed by the CA, must be given weight and credence by this Court. In light of the unwavering testimonies of the witnesses for the prosecution, particularly the private complainants themselves, We see no cogent reason to disturb such findings of credibility and reliability

of testimony and hold that the prosecution indeed established all the elements of qualified rape.

4. ID.; ID.; ID.; VICTIM'S FAILURE TO RESIST OR ASK FOR HELP, SUFFICIENTLY EXPLAINED; SUCH BEHAVIOR DO NOT AFFECT THEIR CREDIBILITY.— Accused-appellant even goes so far as to question the failure of the private complainants to shout or ask for help when they were supposedly raped by him. However, such failure was sufficiently explained by both AAA and BBB during their testimonies. AAA was afraid of accused-appellant, even more so when he threatened to kill her. While she left their home to live with her aunt, she did not report the sexual abuse in fear of what the accused-appellant will do to her siblings who were still living with him. In the case of BBB, she categorically testified that she was likewise afraid of the accused-appellant and, given her tender age at the time, she was unaware of what the latter was doing to her. Notwithstanding the testimonies of the private complainants, the Court holds that their respective behavior, during the occurrence or subsequent to the commission of the rape, do not affect their credibility.

5. CRIMINAL LAW; QUALIFIED RAPE; THE PENALTY OF *RECLUSION PERPETUA* FOR EACH COUNT OF RAPE WITHOUT ELIGIBILITY FOR PAROLE, IMPOSED; CIVIL LIABILITY.— As to the penalty, the RTC correctly imposed the penalty of *reclusion perpetua* for each count of rape, without eligibility for parole, in lieu of the death penalty, the same being consistent with A.M. No. 15-08-02-SC and RA No. 9346. As to the monetary award for each count of rape, it was likewise proper for the CA to modify the civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each, pursuant the guidelines set in *People v. Jugueta*, with interest at six percent (6%) *per annum* on all the amounts awarded reckoned from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

The Case

On appeal before this Court is the Decision[1] rendered by the Court of Appeals (CA) on September 27, 2018 in CA-G.R. CR HC NO. 09601, which affirmed the June 28, 2017 Judgment[2] of the Regional Trial Court (RTC) of [redacted], Catanduanes, Branch 43, in Criminal Case Nos. 4746 to 4751 and 4752 to 4763, finding accused-appellant XXX guilty beyond reasonable doubt of six counts of Rape against AAA,[3] and 12 counts of Rape qualified by minority and relationship against BBB,[4] both of whom are his biological daughters.

The Antecedent Facts

On November 26, 2002, 18 separate informations were filed against herein accused-appellant charging him with 18 counts of Rape, committed against his own daughters, AAA and BBB, to wit:

Criminal Case No. 4746[5]

That one evening in May, 2004, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of force, threat

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[1] Penned by Associate Justice Stephen C. Cruz with Associate Justices Zenaida T. Galapate-Laguilles and Rafael Antonio M. Santos, concurring; *rollo*, pp. 3-25.

[2] Penned by Judge Lelu P. Contreras; CA *rollo*, pp. 72-92.

[3] The names and personal circumstances of the private complainants and their immediate family are withheld per Republic Act (RA) No. 7610 or the Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act (1992), RA No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004, and Office of the Court Administrator Amended Administrative Circular No. 83-2015.

[4] *Id.*

[5] Records, Criminal Case No. 4746, p. 1.

and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice and of the general public.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only eight (8) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4747[6]

That on the evening of June 2, 2004, at x[redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of force, threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice and of the general public.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only nine (9) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4748[7]

That on the evening of November 30, 2004, at x[redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of force, threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice and of the general public.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only nine (9) years of age at the time of the incident.

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[6] Records, Criminal Case No. 4747, p. 1.

[7] Records, Criminal Case No. 4748, p. 1.

CONTRARY TO LAW.

Criminal Case No. 4749[8]

That on the evening in December 16, 2004, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of force, threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice and of the general public.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only nine (9) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4750[9]

That on the evening in December 16, 2005, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of force, threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice and of the general public.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only ten (10) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4751[10]

That one evening sometime in Nov. 2006, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of force,

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[8] Records, Criminal Case No. 4749, p. 1.

[9] Records, Criminal Case No. 4750, p. 1.

[10] Records, Criminal Case No. 4751, p. 1.

threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice and of the general public.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only ten (10) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4752[11]

That on the evening in July 24, 2008, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the above named accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only eight (8) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4753[12]

That on the evening of August 2, 2008, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the above named accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

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[11] Records, Criminal Case No. 4752, p. 1.

[12] Records, Criminal Case No. 4753, p. 1.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only eight (8) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4754[13]

That on the evening in November 14, 2008, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only eight (8) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4755[14]

That on the evening of December 24, 2008, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only eight (8) years of age at the time of the incident.

CONTRARY TO LAW.

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[13] Records, Criminal Case No. 4754, p. 1.

[14] Records, Criminal Case No. 4755, p. 1.

Criminal Case No. 4756[15]

That on the evening in December 31, 2008, at x[redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only eight (8) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4757[16]

That on the evening of January 17, 2009, at x[redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only eight (8) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4758[17]

That on the evening of December 24, 2009, at x[redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral

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[15] Records, Criminal Case No. 4756, p. 1.

[16] Records, Criminal Case No. 4757, p. 1.

[17] Records, Criminal Case No. 4758, p. 1.

ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only nine (9) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4759[18]

That on the evening of December 31, 2009, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only nine (9) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4760[19]

That on the evening of December 24, 2010, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

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[18] Records, Criminal Case No. 4759, p. 1.

[19] Records, Criminal Case No. 4760, p. 1.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only ten (10) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4761[20]

That on the evening of December 31, 2010, at x[redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only ten (10) years of age at the time of the incident.

CONTRARY TO LAW.

Criminal Case No. 4762[21]

That on the evening of January 1, 2011, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only ten (10) years of age at the time of the incident.

CONTRARY TO LAW.

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[20] Records, Criminal Case No. 4761, p. 1.

[21] Records, Criminal Case No. 4762, p. 1.

Criminal Case No. 4763[22]

That one evening in November, 2011, at [redacted], Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, exercising moral ascendancy over the minor victim being the latter's father, did then and there by means of force, threat and intimidation, with lewd design, have carnal knowledge of BBB, a child under twelve years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim and human being, to her damage and prejudice.

That the crime was aggravated by the relationship of the accused to the victim, the latter being his daughter, and the minority of the victim, she being only eleven (11) years of age at the time of the incident.

CONTRARY TO LAW.

Arraigned upon these informations, accused-appellant entered a negative plea to all of them. A preliminary conference having been conducted, trial on the merits thereafter ensued.[23]

The version of the prosecution

In these 18 cases, the prosecution presented the testimonies of the following: the private complainants (1) AAA and (2) BBB; (3) PO2 Maricel Masagca (PO2 Masagca); (3) PO3 Catherine Surban (PO3 Surban); (4) Dr. Gibson Gabitan (Dr. Gabitan); and (5) Punong Barangay Lino Suarez (PB Suarez).[24]

Accused-appellant and his wife had four children during their marriage: AAA, who was born on June 2, 1995; BBB, who was born on November 12, 2000; a third daughter; and a son.[25]

Owing to accused-appellant's extreme cruelty, his wife left the family to work in Manila when AAA was about seven years old. During her testimony, AAA recalled an incident when

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[22] Records, Criminal Case No. 4763, p. 1.

[23] CA *rollo*, p. 79.

[24] *Rollo*, p. 12.

[25] *Id.*

accused-appellant, who was having a drinking spree, had dragged her mother because of jealousy. When her mother returned from Manila because of the death of their grandfather, she wanted to take them (the children) into her custody, but accused-appellant caught up with her near the river and forced her to eat sand. After her mother had left the family, AAA's horrifying and harrowing ordeal in the hands of accused-appellant began, as the latter turned to her to satisfy his sexual needs. Accused-appellant even justified his bestial acts against AAA by saying, "*Kung dai ko binyaan ni mama mo, dai ko man ini gigibohon*" (Had your mother not left me, I would not be doing this).[26]

During the investigation conducted by PO2 Masagca, AAA could not recall the exact dates and times when she was raped by accused-appellant because she was always crying. Notwithstanding, PO2 Masagca exerted efforts to help AAA recall some of the dates. Thus, AAA's *Sinumpaang Salaysay* indicated only the period from May 2004 to November 2006 while the entry in the police blotter shows only the years 2004 until 2006. However, during the clarificatory hearing conducted by the investigating prosecutor on November 25, 2012, AAA was able to recall some of the incidents that transpired on or around an important occasion or event.[27]

For instance, AAA recalled that on the evening of May 2004, there was a typhoon and she (AAA) was lying down in supine position when accused-appellant undressed her, pulled down his own shorts and inserted his penis into her vagina while on top of her. On June 2, 2004, AAA's birthday, accused-appellant, after a drinking spree held AAA's hands, undressed her and repeated what he did before. On the evening of November 30, 2004, the Fiesta of San Andres, accused-appellant was drunk again. He burned their clothes under the bed and uttered, "I will kill you." He violated AAA again and told AAA, "*Kung dai ko binyaan ni mama mo, dai ko man ini gigibohon*" (Had your mother not left me, I would not be doing this). On the

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[26] *Id.*

[27] *Rollo*, pp. 12-13.

evening of December 16, 2004, *Simbang Gabi*, a drunk accused-appellant again assaulted AAA. He violated AAA on the evening of the following year, December 16, 2005, during a *Simbang Gabi*. Sometime in the evening of November 2006, accused-appellant yet again violated AAA.[28]

Stock must be taken of the fact that all these sexual abuses were committed against AAA inside the house of her paternal grandmother at [redacted] while she was with her siblings, who were asleep. On one occasion, while being raped, she was threatened by accused-appellant that he would kill all of them if she made any noise.[29] AAA did not disclose her violations to her grandmother because she believed that the latter always tended to side with her son. She would only cry every time accused-appellant abused her and would get angry with the latter because of the excruciating pain she felt, not knowing why she became the object of her father's lecherous propensities. Although she did not bleed, AAA knew that accused-appellant's penis was inserted into her vagina, because her *puson* (hypogastric area) was painful and she noticed something sticky.[30]

During the occurrence of a typhoon in November 2006, AAA was invited by her aunt, [redacted] (Auntie [redacted]),to sleep in their house and she accepted the invitation as she did not want what accused-appellant had been doing to her. Since then, she refused to go home. While unwilling to go home, AAA did not tell her Auntie [redacted] the real reason for her leaving as she was afraid that accused-appellant might do something to her siblings, who were still staying with him. It was only when BBB confided to their Auntie [redacted] that she had also been raped by accused-appellant that AAA revealed what happened to her.[31]

During the investigation conducted by PO3 Surban, BBB also could not recall the exact dates when she was repeatedly abused by accused-appellant. Thus, both BBB's *Sinumpaang*

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[28] *Id.* p. 13; CA *rollo*, p. 81.

[29] "*Dai magpaparibok ta gagadanon ko kamo*"; *rollo*, p. 14.

[30] *Id.*

[31] *Id.*

Salaysay and the entry in the police blotter indicated only the year 2008 to November 2011. During the clarificatory hearing conducted by the investigating prosecutor on November 23, 2012, BBB was able to recall the incidents of sexual abuse which transpired at or near important occasions or events.[32]

Particularly, BBB recalled that at about 7:00 in the evening of July 24, 2008, she (BBB), the accused-appellant, and her siblings went swimming in Barangay Bon-ot, San Andres to celebrate the birthday of their neighbor. Accused-appellant, who was drunk, made BBB face him, placed her left leg over his leg, and kissed her mouth. He also unzipped his pants, pulled down her shorts and underwear, and inserted his penis into her vagina. On August 2, 2008, at 8:00 pm, accused-appellant held BBB's breast while holding his penis. He then inserted his penis inside her vagina. Accused-appellant had sexual intercourse with BBB again on November 14, 2008 at about 7:00 or 8:00 in the evening, two days after BBB celebrated her birthday. The same sexual abuse was committed against BBB on December 24, 2008 at about 10:00 or 11:00 pm. At that time, accused-appellant had a drinking spree at their neighbor's place while waiting for *Noche Buena*. At about 9:00 or 10:00 pm on December 31, 2008, before New Year's Day, accused-appellant made BBB face him as the latter was pretending to be asleep. He then unzipped his zipper, removed BBB's shorts and underwear and inserted his penis into her vagina. He raped her again on the evening of January 17, 2009, a couple of days before the barangay fiesta. Accused-appellant once again violated BBB on Christmas Eve of 2009 and on New Year's Eve of 2009 and 2010. Another abuse was committed on the evening of January 1, 2011. After BBB had celebrated her birthday on November 12, 2011 and when accused-appellant's girlfriend was already staying at their house, BBB's was once again raped by accused-appellant.[33]

When accused-appellant raped BBB for the first time, she kept silent because she was afraid. At that time, she had no

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[32] *Id.*

[33] *Rollo,* pp. 15-16; CA *rollo,* pp. 83-84.

knowledge of what accused-appellant was doing to her and she cried thereafter. BBB recalled of a time she resisted accused-appellant by turning her back towards him, but he would turn her body to face him and would not notice that she had woken up. Whenever she was sexually abused, she would just cry and question why accused-appellant would do such things to her every time he was drunk. According to BBB, the incidents in 2008 and 2009 were committed while she and accused-appellant were living in the house of their grandmother. In 2009, they transferred to a small house. She could not remember seeing blood stains in her private parts when she was first sexually abused as she was not yet aware of what was happening and simply felt pain when she urinated.[34]

In 2012, when she was already fed up with accused-appellant's repeated assaults, BBB told Auntie [redacted] about what had happened. Despite being informed of what was done to AAA and BBB, Auntie [redacted] did not yet take any action except to send BBB to [redacted] to stay with their mother's sister. Accused-appellant then filed a case against Auntie [redacted] for sending BBB away, which caused the parties to meet at the barangay hall. Thereat, accused-appellant asked Auntie [redacted] why BBB was allowed to go to [redacted] prompting AAA to respond that it was better to spare her because she [AAA] thought that what the former did was only done to her. AAA did not even mention that accused-appellant had sexually abused them then, but it was he who said that he did not rape them.[35]

PB Suarez confirmed the complaint against Auntie [redacted] and testified that a mediation conference was conducted on June 17, 2012 where the latter, accused-appellant, AAA and BBB were inside the session hall of the barangay. Thereat, AAA cursed at accused-appellant and wanted him to go to jail. When asked by PB Suarez about the reaction of her sister, BBB told him that what should not be done to them by their father was committed by accused-appellant. When PB Suarez asked if she

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[34] CA *rollo*, pp. 84-85.

[35] *Id.* at 85-86.

was raped, BBB answered in the affirmative. PB Suarez then called a policeman, relayed the information and accompanied the private complainants and Auntie [redacted] to the police station to report the incidents. Thereafter, AAA and BBB were brought to the J.M. Alberto Memorial Hospital for examination.[36]

Dr. Gabitan examined both AAA and BBB on June 17, 2012. His findings on both of them indicated "grossly normal-looking external genitalia; no lacerations, no hematoma, hymen not present." Dr. Gabitan explained that he was not able to see any lacerations on the genitals of AAA and BBB, considering they were children "whose development is rapid growth and the replacement of the tissues appeared." He also confirmed that there is a possibility of an insertion without any bleeding depending on the hymen, as there are those that are very elastic and fibrous and during any time of insertion, they may not sustain any bleeding at all.[37]

The version of the defense

Denying the accusations against him, accused-appellant claimed that in the years 2003 and 2004, he worked in Muntinlupa City as a mason for AVIDA, a construction company. In 2005, he returned to Catanduanes and worked in a Day Care Center in the Municipality of Gigmoto for seven straight months during which time he stayed in the barracks. After they were pulled out of the said project, he worked in Bon-ot, San Andres building cottages on the beach. He claimed that in between this project, he went home to [redacted] and stayed there with his other daughter and son, while AAA was residing with her Auntie [redacted] and BBB stayed with his cousin, [redacted]. He worked from 6:00am to 5:00pm and claimed that he only saw AAA and BBB in school. Accused-appellant had no idea or reason why AAA and BBB that charged him with rape.[38]

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[36] *Id.* at 86.

[37] *Id.* at 86-87.

[38] *Id.* at 87.

Accused-appellant did not adduce a shred of evidence that he worked as a mason or construction worker. Although he claimed that he was issued an Identification Card (or ID), he did not present it in court. He claimed that whenever AAA and BBB met him, they would kiss his hand; that he had a good relationship with his children, especially because he sent them money and showed them love and care. Thus, he was surprised when AAA and BBB accused him of rape that was raised before the *Punong Barangay*.[39]

The Ruling of the RTC

After due proceedings, the RTC found accused-appellant guilty beyond reasonable doubt of six counts of Rape against AAA and 12 counts of rape against BBB, both of which are qualified by minority and relationship. The RTC gave credence to the testimonies of the private complainants as child victims and was convinced that accused-appellant had repeatedly raped them as alleged in the informations.

Regarding them as weak defenses, the RTC rejected accused-appellant's denial and alibi. In its Judgment[40] of June 28, 2017, the RTC disposed of the cases in this wise:

> **WHEREFORE,** this Court finds XXX GUILTY beyond reasonable doubt of six (6) counts of **RAPE** committed against AAA and twelve (12) counts of **RAPE** committed against BBB and is, hereby, sentenced to suffer the penalty of *reclusion perpetua* on eighteen (18) counts, without eligibility for parole and to pay each of the victims, AAA and BBB, the amounts of SEVENTY-FIVE THOUSAND PESOS (₱75,000.00), as civil indemnity, SEVENTY-FIVE THOUSAND PESOS (₱75,000.00), as moral damages and SEVENTY-FIVE THOUSAND PESOS (₱75,000.00), as exemplary damages, for each count, which shall be subject to legal interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.
>
> **SO ORDERED.**[41]

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[39] *Id.* at 88.

[40] *Supra* note 2.

[41] *Id.* at 91-92.

On appeal, accused-appellant maintained that the prosecution failed to prove that he even had carnal knowledge of AAA and BBB.[42] He challenged the credibility of the private complainants and asserted that it was impossible for him to have raped them, given the testimonies of the two that they were raped in the same room where all of his other children were sleeping. Accused-appellant argued that a slight movement in the said room would surely have awaken his other children.[43] He added that the medical findings do not support the theory that the private complainants had been raped because these medical findings failed to determine whether AAA and BBB had previous sexual intercourse.[44]

The Ruling of the CA

Upholding the credibility of the private complainants and the reliability of their straightforward testimonies, the CA held that questions pertaining to the same should have been addressed before the trial court. The CA also found that the testimony of Dr. Gabitan refuted accused-appellant's claim as the former testified that it is possible for a laceration to be replaced by other tissues if the examination was conducted more than a year after the sexual abuse was committed.[45] Furthermore, the CA held that the testimony of the victim, and not the findings of the medico-legal officer, is the most important element to prove that the crime of rape has been committed. The CA likewise added that accused-appellant failed to establish any ill motive that could have compelled AAA and BBB to falsely accuse him of committing such crime.

In the end, the CA merely modified the RTC's judgement only with respect to the award of civil indemnity and damages, the decretal portion of the assailed Decision dated September 27, 2018 reads:

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[42] *Id.* at 66.

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

[44] *Id.* at 66.

[45] *Rollo,* pp. 21-22.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED.** The Judgment dated June 28, 2017 of the Regional Trial Court (RTC), Branch 43 of Virac, Catanduanes, is **AFFIRMED with MODIFICATION** that the award of civil indemnity, moral damages and exemplary damages are increased to Php100,000, respectively, for each count of Qualified Rape. In addition, thereto, an interest is imposed on all damages awarded at the rate of six (6%) percent *per annum* from date of finality of judgment until its fully paid.

SO ORDERED.[46]

Hence, this instant appeal. In its manifestation dated June 27, 2019, the plaintiff-appellee People of the Philippines expressed that it will no longer be filing any supplemental briefs in view of the arguments presented in its appellee's brief.[47] Accused-appellant manifested the same with respect to his appellant's brief in his manifestation dated July 17, 2019.[48]

The Issues

Before this Court, the accused-appellant once again raise the following issues:

I. WHETHER OR NOT THE CA GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF 18 COUNTS OF QUALIFIED RAPE DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE ELEMENTS THEREOF

II. WHETHER OR NOT THE CA GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF 18 COUNTS OF QUALIFIED RAPE DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM

III. WHETHER OR NOT THE CA GRAVELY ERRED IN FAILING TO GIVE CREDENCE TO THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL IN LIGHT OF THE WEAKNESS OF THE PROSECUTION'S CASE

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[46] *Id.* at 24.

[47] *Id.* at 34-36.

[48] *Id.* at 41-43.

Accused-appellant maintains that the prosecution failed to prove that he had raped AAA and BBB. He argues that the medical examinations conducted on the private complainants both indicated normal looking external genitalias with no hematomas and lacerations, and were insufficient to prove that AAA and BBB had been raped or had previous sexual intercourse. He reiterates that it would have been impossible for him to have raped the private complainants in the same room where all of his other children were sleeping as any slight movement will certainly awaken them. He likewise points out that after the alleged abuse, AAA did nothing and BBB did not treat him any differently. They neither attempted to shout nor asked for help despite having several opportunities to do so.

The Court's Ruling

The conviction of accused-appellant stands.

The elements of the crime charged

The crime of rape is punishable under Article 266-A of the Revised Penal Code (RPC), to wit:

> Article 266-A. Rape: *When and How Committed.* - Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> x x x x x x x x x

The felony is further qualified by relationship under Article 266-B of the RPC, which states:

ART. 266-B. *Penalty*.- Rape under paragraph l of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Accordingly, in order to sustain a conviction of qualified rape, the following elements must be present: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim being under eighteen (18) years of age at the time of the rape; and that (5) the offender is a parent (whether legitimate, illegitimate, or adopted) of the victim.[49]

The foregoing elements are all present in the instant case.

AAA and BBB categorically testified as to how the accused-appellant had carnal knowledge of them on numerous occasions between the years 2004 and 2011: six times in the case of AAA and 12 times in the case of BBB. AAA narrated how, during the onset of a typhoon in May 2004, accused-appellant undressed her while she was lying down, pulled down his shorts, and inserted his penis into her vagina while on top of her. Her testimony remained consistent as she narrated how accused-appellant repeated the said actions on five more occasions. Meanwhile BBB candidly testified that on the evening of July 24, 2008, accused-appellant made her face him, placed her left leg over his, and kissed her mouth. He then unzipped his pants, pulled down BBB's shorts and underwear, and inserted her penis into her vagina. Like her sister, BBB's testimony remained straightforward as she testified to having suffered the horrific acts of her father 11 more times thereafter.

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[49] *People v. Luzon*, G.R. No. 223681, August 20, 2018 citing *People v. Colentava*, 753 Phil. 361, 372- 373 (2015).

As to minority, AAA's certificate of live birth[50] discloses that she was eight years old when she was first raped by accused-appellant, the last reported sexual abuse having occurred when she was 11 years of age. Whereas, BBB's Certificate of Live Birth[51] reveals that she was raped by accused-appellant when she was only seven years old, the last incident of rape having been committed when she was about 10 years of age.

Furthermore, both private complainants claimed to having been afraid of accused-appellant who was their biological father, with AAA testifying that the latter had threatened to kill her once. On this score, it bears stressing that even without the use of force or intimidation or failure to prove the presence thereof, the moral ascendancy that exists with accused-appellant being the private complainants' father is sufficient. In cases of incestuous rape of a minor, it has been established that moral ascendancy of the ascendant substitutes force or intimidation.[52]

The credibility of the witnesses

Accused-appellant hopes to discredit the testimonies of AAA and BBB by claiming that it would have been impossible for him to commit the heinous acts while within the same room as the rest of his children. He likewise claims that neither AAA nor BBB attempted to shout or asked for help despite having plenty of opportunities to do so.

We are not convinced.

Conviction in rape cases frequently rests on the basis of the testimony of the victim, as long as the claims asserted are credible, natural, convincing, and consistent with human nature and the normal course of things.[53] Verily, the credibility of the victim is of the utmost consideration in the resolution of such cases.[54]

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[50] Records, Criminal Case No. 4746, p. 10.

[51] Records, Criminal Case No. 4757, p. 10.

[52] *People v. Bugna*, G.R. No. 218255, April 11, 2018, 861 SCRA 152.

[53] *People v. Ayade*, 624 Phil. 237, 243 (2010).

[54] *People v. Ocdol*, 741 Phil. 701, 714 (2014).

In this regard and as previously discussed by the CA, the evaluation of the credibility of witnesses and their reliability is an issue best raised before the trial court; which possesses the unique opportunity to examine the witnesses first-hand and observe their demeanor, conduct, and attitude throughout their testimony.[55] The factual findings of the trial court, its appreciation of the testimonies of the witnesses, and the conclusions reached on the basis of such findings, when affirmed by the appellate court, are generally binding and conclusive upon this Court.[56]

Applying the foregoing here, the ruling of the RTC concerning the credibility of the prosecution witnesses, as affirmed by the CA, must be given weight and credence by this Court. In light of the unwavering testimonies of the witnesses for the prosecution, particularly the private complainants themselves, We see no cogent reason to disturb such findings of credibility and reliability of testimony and hold that the prosecution indeed established all the elements of qualified rape.

Failure to resist or ask for help sufficiently explained

Accused-appellant even goes so far as to question the failure of the private complainants to shout or ask for help when they were supposedly raped by him. However, such failure was sufficiently explained by both AAA and BBB during their testimonies. AAA was afraid of accused-appellant, even more so when he threatened to kill her. While she left their home to live with her aunt, she did not report the sexual abuse in fear of what the accused-appellant will do to her siblings who were still living with him. In the case of BBB, she categorically testified that she was likewise afraid of the accused-appellant and, given her tender age at the time, she was unaware of what the latter was doing to her.

Notwithstanding the testimonies of the private complainants, the Court holds that their respective behavior, during the

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[55] *People v. Nuyok*, 759 Phil. 437, 452 (2015).

[56] *People v. Udtohan*, 815 Phil. 449, 463 (2017) citing *People v. Buclao*, 736 Phil. 325 (2014).

occurrence or subsequent to the commission of the rape, do not affect their credibility. In *People v. Palanay*,[57] We explained thusly:

> Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. However, any of these conducts does not impair the credibility of a rape victim. (citations omitted)[58]

A medical report is merely corroborative in character

Anent accused-appellant's argument that the medical examination failed to prove that AAA and BBB were raped in light of the lack of lacerations in their respective genitalias, the same is untenable. As the CA already discussed, Dr. Gabitan clearly testified that, given the length of time that has elapsed from the occurrence of the sexual abuse and the medical examination conducted on the private complainants, it is possible for lacerations to be replaced by new tissues.

At any case, it is well established that a medical report is not material for the purpose of proving the commission of rape and is merely corroborative in character.[59]

The penalty imposed

As to the penalty, the RTC correctly imposed the penalty of *reclusion perpetua* for each count of rape, without eligibility for parole, in lieu of the death penalty, the same being consistent with A.M. No. 15-08-02-SC[60] and RA No. 9346.[61] As to the

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[57] 805 Phil. 116 (2017).

[58] *Id.* at 126-127.

[59] *People v. Prodenciado*, 749 Phil. 746, 763 (2014).

[60] In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":

monetary award for each count of rape, it was likewise proper for the CA to modify the civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each, pursuant the guidelines set in *People v. Jugueta*,[62] with interest at six percent (6%) *per annum* on all the amounts awarded reckoned from the finality of this Decision until fully paid.

WHEREFORE, premises considered, the appeal is hereby **DENIED** for lack of merit. The Decision dated September 27, 2018 promulgated by the Court of Appeals in CA-G.R. CR HC NO. 09601 is **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe,[*] *S.A.J. (Chairperson), Hernando, Inting,* and *Delos Santos, JJ., concur.*

THIRD DIVISION

[A.C. No. 10254. March 9, 2020]

ADELA H. VIOLAGO, *complainant, vs.* **ATTY. BONIFACIO F. ARANJUEZ, JR.,** *respondent.*

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x x x x x x x x x

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "*without eligibility for parole" shall be used* to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[61] An Act Prohibiting the Imposition of Death Penalty in the Philippines (2006).

[62] 783 Phil. 806, 832 (2016).

[*] Acting Chief Justice per Special Order No. 2775, dated March 1, 2020.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DUTY TO CLIENT; EXPLAINED; A LAWYER'S DUTY TO PROTECT HIS CLIENT'S INTEREST TO THE BEST OF HIS ABILITIES AND WITH UTMOST DILIGENCE REMAINS REGARDLESS OF WHETHER THE CASE IS HIGH PAYING OR *PRO BONO*.— The Code of Professional Responsibility mandates that a lawyer shall serve his client with competence and diligence. He shall not neglect a legal matter entrusted to him; his negligence in connection therewith shall render him liable. A lawyer is bound to protect his client's interests to the best of his ability and with utmost diligence. He should serve his client in a conscientious, diligent, and efficient manner; and provide the quality of service at least equal to that which he, himself, would expect from a competent lawyer in a similar situation. By consenting to be his client's counsel, a lawyer impliedly represents that he will exercise ordinary diligence or that reasonable degree of care and skill demanded by his profession, and his client may reasonably expect him to perform his obligations diligently. The professional relationship remains the same regardless of the reasons for the acceptance by counsel and regardless of whether the case is highly paying or *pro bono*.

2. ID.; ID.; ID.; FOR ADMINISTRATIVE LIABILITY TO ATTACH, THE NEGLIGENCE OF THE LAWYER IN HANDLING THE CASE SHOULD BE GROSS AND INEXCUSABLE.— For administrative liability under Canon 18 to attach, the negligent act of the attorney should be gross and inexcusable as to lead to a result that was highly prejudicial to the client's interest. Accordingly, the Court has imposed administrative sanctions on a grossly negligent attorney for unreasonable failure to file a required pleading, or for unreasonable failure to file an appeal, especially when the failure occurred after the attorney moved for several extensions to file the pleading and offered several excuses for his nonfeasance. The Court has found the attendance of inexcusable negligence when an attorney resorts to a wrong remedy, or belatedly files an appeal, or inordinately delays the filing of a complaint, or fails to attend scheduled court hearings.

3. ID.; ID.; ID.; THE COURT FINDS THAT RESPONDENT'S NEGLIGENT ACT IN HANDLING THE CASE IS NOT SO

GROSS OR INEXCUSABLE AS WOULD WARRANT THE PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW; REPRIMAND, IMPOSED.— In this case, the Court of Appeals in the Ejectment Case dismissed the Petition for Review due to several material defects. However, in its *Resolution* dated November 14, 2013, which likewise denied the *Omnibus Motion* filed by respondent, the appeal was denied based on its substantive aspect. Clearly, respondent attempted and exerted earnest efforts to remedy the technical albeit fatal defects of the Petition for Review filed in the Ejectment Case. Moreover, the other defects cited by the Court of Appeals in dismissing the Petition for Review were mere typographical or clerical errors, which although avoidable, do not constitute gross or inexcusable negligence. Finally, as admitted by complainant herself, respondent had indeed exerted diligent efforts in handling the Ejectment Case, going so far as expressing her appreciation for his efforts considering the length of the proceedings involved therein. Likewise, admittedly, it was through respondent's efforts that complainant was not evicted from her property and that the Ejectment Case against her was settled amicably[.] x x x Given the foregoing facts, to the mind of this Court, the negligent act attributed to respondent in handling the Ejectment Case is not so gross or inexcusable as would warrant the penalty of suspension from the practice of law. Nevertheless, this Court finds it necessary to remind respondent to exercise the necessary diligence and competence in managing cases entrusted to them whether the represented party is a high-paying client or an indigent litigant. x x x Accordingly, considering the circumstances attendant here, the Court accepts and adopts the findings of Commissioner Aguilera and the IBP Board of Governors, with a modification of the penalty recommended from a suspension of six (6) months to reprimand.

APPEARANCES OF COUNSEL

Bongco & Frez for respondent.

R E S O L U T I O N

GAERLAN, *J.*:

The instant administrative case arose from a sworn *Complaint-Letter* dated November 20, 2013[1] *(Complaint-Letter)* filed on November 26, 2013 by Adela Hernandez Violago (complainant) against Atty. Bonifacio F. Aranjuez, Jr. (respondent) before the Supreme Court-Office of the Bar Confidant (OBC) for alleged negligence in handling an ejectment suit filed against E. Quiogue Extension Neighborhood Association, which complainant was previously a member of.

This Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for the conduct of investigation, report and recommendation, which was docketed as CBD Case No. 15-4627.[2]

Version of Complainant

Complainant is a member of the E. Quiogue Extension Neighborhood Association (Neighborhood Association) and one of the defendants in an ejectment case entitled *Estate of Francisco De Borja represented by Elisea S. De Borja vs. Norberto Borja, et al.*, docketed as Civil Case No. 1352-10[3] (Ejectment Case). Respondent represented the Neighborhood Association in the Ejectment Case.[4]

As alleged by complainant, as of the time of the filing of the administrative case, the Neighborhood Association had already lost before the Municipal Trial Court and the Regional Trial Court. Thereafter, respondent filed a petition for review before the Court of Appeals on behalf of the Neighborhood Association.[5] Complainant claims that she was not made aware

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

[2] *Id.* at 63.

[3] *Id.* at 126-132.

[4] *Id.* at 131.

[5] *Id.* at 8.

of the status of their petition for review before the Court of Appeals and that it was only after she and other members of the Neighborhood Association inquired on October 16, 2013 that they discovered that it was already dismissed by the Court of Appeals on July 25, 2013 due to several fatal defects.[6]

In dismissing the Petition for Review filed in the Ejectment Case, the Court of Appeals in its *Resolution*[7] promulgated on July 25, 2013, cited the following five (5) material defects:

> As filed, the present petition is infirmed with deficiencies, to wit:
>
> 1. Petitioners failed to attach pleadings and other material portions of the record as would support the allegations of the petition such as complaint, answer, position papers of the parties and appeal memorandum;
>
> 2. The Verification and Certification on Non-Forum Shopping executed and signed by petitioners Belle Cruz Delgado, Yolanda Reyes, Fely Candichoy Pineda, Adela Hernandez, Virgilio Palero, Mariline Amarillo and Teodoro Apolis, Jr. failed to comply with the Rules on Notarial Practice (as amended by A.M. No. 02-8-13, SC, February 19, 2009) as the same does not contain a duly accomplished jurat for failure of the affiants to present before the Notary Public at least one (1) current identification document issued by an official agency bearing their respective photographs and signatures showing competent evidence of their identities. It also appears that Verification and Certification on Non-Forum Shopping for Norberto Borja, Dominador Menguito, Jr., Ananias Vergara, and Edina Gatpayat were executed and signed by other individuals in their behalf without proof of authority submitted to this Court for them to execute and sign for and in behalf of said individuals;
>
> 3. In the caption of the petition, Domingo Ignacio appeared as petitioner but in the verification and certification on non-forum shopping, his name appeared as Doming Ignacio;

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[6] *Id.* at 1; a copy of the *Resolution* promulgated by the Court of Appeals on July 25, 2013 dismissing the Petition for Review is attached as Annex "A" of the *Complaint-Affidavit*, *id.* at 7-10.

[7] *Id.*

4. Petitioners' counsel failed to indicate in the petition the date of his MCLE Compliance IV and the date of its issuance in violation of Bar Matter No. 1922, dated June 3, 2008;

5. Petitioner, Cresencio Palero stated in the Affidavit of Service the copies of the petition were [personally] served upon the Regional Trial Court and Metropolitan Trial Cou[r]t, however, the petition indicated that copies of the same were sent by them through LBC.[8]

As a result, complainant sought the advice of various lawyers regarding the matter, who informed her that respondent's mistakes were supposedly "**BASIC**" for which reason the Court of Appeals dismissed their Petition for Review.[9]

Due to respondent's supposed negligence, complainant and another member of the Neighborhood Association submitted a *Resignation Letter*[10] dated November 06, 2013 informing the officers of the Neighborhood Association that they will be resigning from the said Association and expressed their intention to engage the services of another counsel and requested that respondent file a formal Motion to Withdraw as counsel for complainant in the Ejectment Case.[11] However, as alleged by complainant, respondent failed to act on their request or even reply to their *Letter*.

Thus, on November 20, 2013, complainant was constrained to file the instant administrative case against respondent praying that the latter formally withdraw as counsel of record for complainant in the Ejectment Case.[12]

Version of Respondent

At the onset, respondent claims that he handled the case on behalf of the Neighborhood Association *pro bono* upon the request and plea of then-Mayor of the Municipality of Pateros,

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

[9] *Id.* at 1.

[10] *Id.*

[11] *Id.*

[12] *Id.*

Joey Medina considering that the members of the Neighborhood Association belong to the urban poor.[13] Moreover, respondent claims that ever since he started representing the Neighborhood Association, he had been coordinating and communicating with its officers and has not personally met with complainant.[14]

The only instance that respondent met with complainant was when the latter chanced upon him at the Municipal Hall of Pateros and complainant personally requested that respondent formally withdraw as their counsel in the Ejectment Case.[15] Respondent denied that he refused to withdraw as counsel for complainant and that he in fact filed a formal withdrawal which was noted by the Supreme Court.[16]

Moreover, respondent vehemently denies that he was negligent in handling the Ejectment Case on behalf of the Neighborhood Association, including complainant. Respondent claims that he tried his best to represent their interests and has filed several pleadings and handled the case from the trial court up to the Supreme Court.[17] Respondent claims that although he was not able to have the adverse rulings in the lower courts reversed, nevertheless, it was through respondent's efforts before the trial court that complainant was not evicted from the property and which culminated into an amicable settlement with the complainant in the Ejectment Case.[18] The efforts of respondent were recognized by complainant herself.[19]

Anent the infirmities that the Court of Appeals cited as basis for dismissing the Petition for Review in the Ejectment Case, respondent filed an *Omnibus Motion (Motion for*

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[13] *Id.* at 40.

[14] *Id.*

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

[16] *Id.* at 24.

[17] *Id.* at 41.

[18] *Id.* at 103.

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

Reconsideration and Motion to Admit Additional Documentary Evidence) dated August 27, 2013 *(Omnibus Motion)*. In his *Omnibus Motion*, respondent attempted to remedy the deficiencies cited by the Court of Appeals and explained that some of the infirmities were merely typographical or clerical errors.[20]

Nevertheless, the Court of Appeals resolved to deny the *Omnibus Motion*.[21] Thus, respondent filed a Petition for Review on *Certiorari* before this Court to question the ruling of the Court of Appeals in the Ejectment Case.[22] For this reason, respondent denies that he was negligent in handling the case on behalf of complainant considering that he exerted efforts even going so far up the Supreme Court.[23]

Report and Recommendation

In his *Report and Recommendation*[24] dated May 3, 2017, Commissioner Erwin L. Aguilera (Commissioner Aguilera) recommended that respondent be suspended from the practice of law for a period of three (3) years.[25]

According to Commissioner Aguilera, respondent's failure to comply with the basic rules in the filing of pleadings, which resulted in the dismissal of the Petition for Review in the Ejectment Case is a manifestation of respondent's negligence.[26] Commissioner Aguilera reasoned that a lawyer is primarily responsible for filing the vital pleading that would have at least satisfied his clients with a result far different from an outright dismissal, and that respondent's omission is a culpable act of negligence for which he must be held liable.[27]

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[20] *Id.* at 30-38.

[21] *Id.* at 24.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 93-100.

[25] *Id.* at 100.

[26] *Id.* at 99.

[27] *Id.* at 99-100.

In a *Resolution*[28] dated February 22, 2018, the IBP Board of Governors resolved to adopt the findings of Commissioner Aguilera, to wit:

> *RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner,* ***with modification****, by lowering the recommended of [sic] penalty of* ***Suspension from the practice of law for*** *three (3) years to* ***six (6) months****.*[29]

Issues

Whether or not respondent should be administratively disciplined for negligence in handling the Ejectment Case on behalf of complainant.

Discussion

This Court resolves to adopt the findings of the IBP, with modification as to the recommended penalty.

Respondent is sought to be held administratively liable for supposed negligence in handling the Ejectment Case for complainant. In particular, complainant cites the dismissal of the fatally defective Petition for Review filed by respondent, as basis to hold him administratively liable.

In denying the Petition for Review, the Court of Appeals in its *Resolution* promulgated on July 25, 2013, cited the several material defects in the said pleading to dismiss the same.[30]

Notably, respondent attempted to remedy the foregoing defects by submitting an *Omnibus Motion*,[31] and attaching therein the necessary pleadings and material portions of the record, a duly accomplished Verification and Certification on Non-Forum Shopping, and a copy of respondent's MCLE Certification of compliance. Moreover, respondent reasoned that the other cited material defects were merely typographical or clerical errors.[32]

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[28] *Id.* at 92.

[29] *Id.*

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

[31] *Id.* at 30-38.

[32] *Id.* at 32.

Accordingly, respondent sought for the reconsideration of the *Resolution* of the Court of Appeals; however, the same was denied based on, among others, substantive grounds.[33]

The Court is not here to review the propriety of the dismissal of the Petition for Review, but merely to exercise its constitutionally mandated duty to discipline lawyers[34] and to determine if the material defects which attended its filing constitute gross and inexcusable negligence which would warrant the imposition of administrative penalty upon respondent.

The Code of Professional Responsibility mandates that a lawyer shall serve his client with competence and diligence. He shall not neglect a legal matter entrusted to him; his negligence in connection therewith shall render him liable.[35]

A lawyer is bound to protect his client's interests to the best of his ability and with utmost diligence.[36] He should serve his client in a conscientious, diligent, and efficient manner; and provide the quality of service at least equal to that which he, himself, would expect from a competent lawyer in a similar situation.[37] By consenting to be his client's counsel, a lawyer impliedly represents that he will exercise ordinary diligence or that reasonable degree of care and skill demanded by his profession, and his client may reasonably expect him to perform his obligations diligently.[38]

The professional relationship remains the same regardless of the reasons for the acceptance by counsel and regardless of whether the case is highly paying or *pro bono*.[39]

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[33] *Id.* at 24.

[34] See CONSTITUTION (1987), Article VIII, Section 11.

[35] Canon 18, Rule 18.03 of the Code of Professional Responsibility provides:

"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 there with shall render him liable."

[36] *Nonato v. Fudolin, Jr.*, 760 Phil. 52, 58-59 (2015).

[37] *Id.*

[38] *Villaflores v. Atty. Limos*, 503 Phil. 453, 461-462 (2007).

[39] *Ramirez v. Buhayang-Margallo*, 752 Phil. 473, 475 (2015).

For administrative liability under Canon 18 to attach, the negligent act of the attorney should be gross and inexcusable as to lead to a result that was highly prejudicial to the client's interest. Accordingly, the Court has imposed administrative sanctions on a grossly negligent attorney for unreasonable failure to file a required pleading, or for unreasonable failure to file an appeal, especially when the failure occurred after the attorney moved for several extensions to file the pleading and offered several excuses for his nonfeasance. The Court has found the attendance of inexcusable negligence when an attorney resorts to a wrong remedy, or belatedly files an appeal, or inordinately delays the filing of a complaint, or fails to attend scheduled court hearings.[40]

In the case of *Seares v. Atty. Gonzales-Alzate*,[41] respondent Atty. Saniata Liwliwa V. Gonzales-Alzate was charged with professional negligence for the submission of a fatally defective petition in an election protest, by reason of a "cut-and-paste" certificate of non-forum shopping. This Court ruled that the complaint against Atty. Gonzales-Alzate was unfounded and devoid of substance considering that the true cause of the dismissal of the petition was not merely based on the defective petition.[42]

In this case, the Court of Appeals in the Ejectment Case dismissed the Petition for Review due to several material defects. However, in its *Resolution* dated November 14, 2013, which

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[40] *Seares, Jr. v. Atty. Gonzales-Alzate*, 698 Phil. 596, 602-603 (2012), citing *Heirs of Ballesteros, Sr. v. Atty. Apiag*, 508 Phil. 113 (2005); *Abiero v. Atty. Juanino*, 492 Phil. 149 (2005); *Sps. Galen v. Atty. Paguirigan*, 428 Phil. 590 (2002); *Sps. Adecer v. Atty. Akut*, 522 Phil. 542 (2006); *Spouses Garcia v. Atty. Bala*, 512 Phil. 486 (2005); *Cheng v. Atty. Agravante*, 469 Phil. 869 (2004); *Schulz v. Atty. Flores*, 462 Phil. 601 (2003); *Santeco v. Atty. Avance*, 659 Phil. 48 (2003).

[41] *Supra*.

[42] *Id.* at 602.

likewise denied the *Omnibus Motion* filed by respondent, the appeal was denied based on its substantive aspect. Clearly, respondent attempted and exerted earnest efforts to remedy the technical albeit fatal defects of the Petition for Review filed in the Ejectment Case.[43]

Moreover, the other defects cited by the Court of Appeals in dismissing the Petition for Review were mere typographical or clerical errors, which although avoidable, do not constitute gross or inexcusable negligence.

Finally, as admitted by complainant herself, respondent had indeed exerted diligent efforts in handling the Ejectment Case, going so far as expressing her appreciation for his efforts considering the length of the proceedings involved therein. Likewise, admittedly, it was through respondent's efforts that complainant was not evicted from her property and that the Ejectment Case against her was settled amicably:[44]

> Sa tagal po ng kasong Ejectment, *Heirs of Francisco de Borja vs. Norberto Borja, Et Al.*, na APPRECIATE naman po namin ang respondent's effort para ilaban ang kaso, maaaring may kulang lang pero *NO BODY is PERFECT* naman. ***APOLOGY IS ACCEPTED***.
>
> Totoo rin po na may misunderstanding po kami ng E. Quiogue Extn. Neighborhood Association pero wala pong kinalaman ang respondent sa nasabing issue. Since, ang kaso po naming Ejectment ay ayos na rin naman, nakipag kasundo na po kami sa Administratrix ng Heirs of Francisco de Borja na si Mrs. Elisea de Borja, nag pirmahan na rin kami ng Memorandum of Agreement (MOA) at nakabayad na rin ng initial Down Payment. Hindi na po ako interesado na ituloy ang kaso laban sa respondent. Ang importante po ngayon ay maraming-aral ang aking natutunan sa mga kasong ito.[45]

Given the foregoing facts, to the mind of this Court, the negligent act attributed to respondent in handling the Ejectment

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[43] *Rollo*, p. 24.

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

[45] *Id.* at 60.

Case is not so gross or inexcusable as would warrant the penalty of suspension from the practice of law.

Nevertheless, this Court finds it necessary to remind respondent to exercise the necessary diligence and competence in managing cases entrusted to them whether the represented party is a high-paying client or an indigent litigant. The relationship between an attorney and his/her client is one imbued with utmost trust and confidence. In this light, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs.[46]

Accordingly, considering the circumstances attendant here, the Court accepts and adopts the findings of Commissioner Aguilera and the IBP Board of Governors, with a modification of the penalty recommended from a suspension of six (6) months to reprimand.

WHEREFORE, the Court deems it sufficient for now to merely **ADMONISH** respondent Atty. Bonifacio F. Aranjuez, Jr., **WITH STERN WARNING** that a repetition of the same or any similar offense shall be dealt with more severely by the Court.

SO ORDERED.

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

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[46] *Ramirez v. Buhayang-Margallo, supra* note 39 at 480-481.

THIRD DIVISION

[G.R. No. 199423. March 9, 2020]

SPS. NORBERTO DE GUZMAN and FELICITAS C. DE GUZMAN, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES and THE TOLL REGULATORY BOARD,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS; THE TEST TO DETERMINE THE EXISTENCE OF FORUM SHOPPING IS WHETHER THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT, OR WHETHER A FINAL JUDGMENT IN ONE CASE AMOUNTS TO *RES JUDICATA* IN THE OTHER.— Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.

2. ID.; ID.; ID.; ID.; IDENTITY OF RIGHTS ASSERTED AND RELIEFS PRAYED FOR; NOT PRESENT IN THE

EXPROPRIATION CASE AND THE RECOVERY OF POSSESSION CASE; CASE AT BAR.— There is no identity of rights asserted and reliefs prayed for in the expropriation case and the recovery of possession case. x x x In the expropriation case filed by respondents, the subject matter is the 90 sq.m. property (Lot 1047-C-2-D-1). The expropriation of the lot is necessary for the construction and/or rehabilitation of toll facilities along NLEX. x x x [I]n instituting the expropriation case, respondents are certain that there is a need to take the 90 sq.m. private property for the public purpose of implementing the construction, rehabilitation and expansion of the NLEX Project. Petitioners intervened therein claiming that they are new owners of the property and that they are so situated as to be adversely affected by the disposition of the property. On the other hand, the recovery of possession case filed by petitioners concerns another subject matter — the 185 sq.m. lot (Lot 1047-C-2-D-2) — adjoining the 90 sq.m. subject of the expropriation case. This is a different lot, which, according to petitioners, was also taken and used by respondents for the widening of the existing roadway. As owners thereof, they alleged that it is proper that they be paid the corresponding just compensation, and in the event that respondents fail or refuse to pay the corresponding just compensation, that said lot be reconveyed to them. x x x Although petitioners will be presenting the Deed of Absolute Sale dated November 22, 2005 both in their Complaint in Intervention and in the case for recovery of possession and/or payment of just compensation, the said document will only prove that they are now the owners of the subject property having purchased the same from Planters Bank, the registered owner; hence, the just compensation should be paid to them. Still, the subject matter of the two cases are different x x x. The 185-sq.m. is an entirely different lot and can never be the subject of the pending expropriation case. It should be stressed that in the expropriation case, respondents are already willing to pay the just compensation for the 90 sq.m., subject only to judicial determination as to the amount thereof. There is no more issue on that. On the other hand, in the case for recovery of possession and/or payment of just compensation, petitioners need to prove the area taken and used by the government and the amount of compensation justly due them.

3. ID.; ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION; THE TEST TO DETERMINE WHETHER THE CAUSES OF

ACTION ARE IDENTICAL IS TO ASCERTAIN WHETHER THE SAME EVIDENCE WILL SUSTAIN BOTH ACTIONS, OR WHETHER THERE IS AN IDENTITY IN THE FACTS ESSENTIAL TO THE MAINTENANCE OF THE TWO ACTIONS.— The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint.

4. ID.; ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; WHEN THE LANDOWNER'S PROPERTY IS TAKEN BY THE GOVERNMENT FOR PUBLIC USE WITHOUT INITIATING EXPROPRIATION PROCEEDINGS AND WITHOUT PAYMENT OF JUST COMPENSATION, THE LANDOWNER MAY RECOVER HIS PROPERTY IF ITS RETURN IS STILL FEASIBLE OR, IF IT IS NOT, HE MAY DEMAND PAYMENT OF JUST COMPENSATION FOR THE LAND TAKEN.— Jurisprudence clearly provides for the landowner's remedies when his property is taken by the government for public use without the government initiating expropriation proceedings and without payment of just compensation: he may recover his property if its return is still feasible or, if it is not, he may demand payment of just compensation for the land taken. What happened in this case is a *de facto* expropriation, wherein the 185 sq.m. lot was taken and used by respondents for the widening of the existing road without paying the just compensation, not even the requisite condemnation proceedings having been instituted. The 185 sq.m. lot was not even made subject of the expropriation case filed by respondents. This Court has addressed situations in which the government took control and possession of properties for

public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages x x x.

APPEARANCES OF COUNSEL

Marcelo & Associates Law Firm for petitioners.
The Solicitor General 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 April 26, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 90392, which affirmed the Order[3] of the Regional Trial Court (RTC) of Valenzuela City, Branch 171 dismissing Sps. Norberto De Guzman and Felicitas C. De Guzman's (petitioners) complaint on the ground of forum shopping. Likewise assailed is the Resolution[4] dated November 22, 2011, which denied petitioners' Motion for Reconsideration for lack of merit.

Facts of the Case

This case originated from a Complaint[5] for recovery of possession and/or payment of just compensation filed by petitioners against Republic of the Philippines and the Toll Regulatory Board (TRB; collectively respondents) before the RTC of Valenzuela, Branch 171 docketed as Civil Case No. 180-V-06 (recovery of possession).

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[1] *Rollo*, pp. 15-25.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring; *id.* at 169-176.

[3] Penned by Presiding Judge Maria Nena J. Santos; *id.* at 121-123.

[4] *Id.* at 184-185.

[5] *Id.* at 51-55.

Records show that Planters Development Bank (Planters Bank) is the registered owner of a parcel of land with an area of 1,238 square meters (sq.m.) and covered by Transfer Certificate of Title (TCT) No. V-71509.[6] It was subdivided into three lots: (1) Lot 1047-C-2-D-1 [90 sq.m.]; (2) Lot 1047- C-2-D-2 [185 sq.m.]; and (3) Lot 1047-C-2-D-3 [963 sq.m.].

On November 15, 2004, respondents filed a Complaint[7] for expropriation against Planters Bank over Lot 1047-C-2-D-1 before the RTC of Valenzuela City, Branch 75 and docketed as Civil Case No. 264-V-04 (expropriation). The expropriation of the lot is necessary for the construction and/or rehabilitation of toll facilities along the North Luzon Expressway (NLEX) as an integral part of the NLEX Project.

On November 22, 2005, Planters Bank sold the entire property covered by TCT No. V-71509 to petitioners. Petitioners then filed a Complaint In Intervention[8] in the expropriation case stating that they are the new owners of the property by virtue of a Deed of Absolute Sale.[9] In the same intervention, petitioners alleged that respondents converted another portion of the property consisting of 185 sq.m. (Lot 1047-C-2-D-2) for road widening and sought for the payment of just compensation for said taking.

The RTC granted petitioners' intervention.[10]

In their Letter[11] dated August 30, 2006, petitioners informed the TRB that they are the new owners of the lot and demanded the payment of ₱1,572,500.00 as just compensation for Lot 1047-C-2-D-2, which the TRB converted into a road, together with the payment of just compensation for Lot 1047-C-2-D-1. The TRB refused and failed to pay the same. Hence, on

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[6] *Id.* at 36-37.

[7] *Id.* at 27-32.

[8] *Id.* at 41-43.

[9] *Id.* at 56-58.

[10] *Id.* at 197.

[11] *Id.* at 44.

September 12, 2006, petitioners filed this Complaint[12] for recovery of possession and/or payment of just compensation alleging that they should also be paid just compensation for Lot 1047-C-2-D-2, which was included by respondents for the widening of an existing roadway. In the event that respondents refuse to pay the just compensation for Lot 1047-C-2-D-2, petitioners pray that the lot be reconveyed to them.[13]

Respondents filed a Motion to Dismiss[14] on the following grounds: (1) the complaint lacks a cause of action; (2) petitioners failed to comply with SC Administrative Circular 04-94 and Rule 7, Section 4 of the Rules on Civil Procedure; and (3) the suit is against the State, which has not given its consent to be sued.[15] Respondents averred that in the exercise of the power of eminent domain, the government is only bound to deal with registered owners and that payment of just compensation must be made only to Planters Bank and not to petitioners.[16] Also, the complaint was not properly verified and petitioners failed to state in the certification of non-forum shopping that their prayer for payment of just compensation and recovery of possession of Lot 1047-C-2-D-2 had already been raised in the expropriation case.[17]

Ruling of the Regional Trial Court

On April l9, 2006, the RTC issued an Order[18] dismissing the complaint filed in violation of the rule on non-forum shopping.[19] The admission of petitioners that they have intervened in the expropriation proceedings instituted by

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[12] *Id.* at 51-55.

[13] *Id.* at 54.

[14] *Id.* at 60-71.

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

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

[17] *Id.* at 65-67.

[18] Penned by Presiding Judge Maria Nena J. Santos; *id.* at 121-123.

[19] *Id.* at 123.

respondents against Planters Bank concerning the property which is pending before the RTC, Branch 75 (expropriation case) is evidence of forum shopping. The RTC ruled that the expropriation with intervention case and the recovery of possession case have the same parties and there is identity of rights asserted and reliefs prayed for. Petitioners were also seeking to be compensated for the same adjoining lot allegedly belonging to them covered by TCT No. V-71509 in the name of Planters Bank, which is also allegedly covered by the Deed of Sale executed by Planters Bank in favor of petitioners. Further, petitioners would be presenting the same evidence in the expropriation case when they attempt to prove ownership of the property and their entitlement to just compensation.[20]

Petitioners moved for reconsideration[21] but it was denied in the Order[22] dated August 28, 2007 of the RTC.

An appeal was filed by petitioners to the CA.

Ruling of the Court of Appeals

In its Decision[23] dated April 26, 2011, the CA affirmed the RTC Order dismissing the complaint on the ground of forum shopping. The CA ruled that there is identity of parties and identity of rights asserted between Civil Case Civil Case No. 264-V-04, the expropriation with intervention case and the case for recovery of possession. The same evidence would sustain both actions, *i.e.*, the Deed of Absolute Sale dated November 22, 2005, as petitioners attempt to prove ownership of the lots and entitlement to just compensation. The CA ruled that while the expropriation case involves Lot 1047-C-2-D-1 and the case for recovery of possession case refers to Lot 1047-C-2-D-2, it bears stressing that both lots are covered by a single certificate of title — TCT No. V-71509. Thus, a decision in this case for recovery of possession would necessarily affect the case for

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[20] *Id.* at 122-123.

[21] *Id.* at 124-129.

[22] *Id.* at 139-140.

[23] *Supra* note 2.

expropriation with intervention such that if the RTC, Branch 75 decides to grant petitioners' prayer for just compensation or reconveyance, it would preempt the RTC, Branch 171, to act and decide upon the propriety of petitioners' intervention. The CA held that petitioners intended to fast track the proceedings in the expropriation case by filing the instant case, in the hope that once their ownership is established, their entitlement to just compensation for Lot 1047-C-2-D-1 would follow as a matter of course.

Petitioners moved for reconsideration[24] but it was denied in Resolution[25] dated November 22, 2011.

Hence, this Petition for Review on *Certiorari*[26] under Rule 45 filed by petitioners.

Issue

The issue is whether petitioners are guilty of forum shopping in filing this complaint for recovery of possession and/or payment of just compensation after filing a complaint in intervention in the expropriation case.

Petitioners argue that there is no forum shopping in this second case because there is no identity of rights asserted and reliefs prayed for, and the judgment in one case would not amount to *res judicata* in the other case. The 185 sq.m. property in the case for recovery of possession and/or just compensation is entirely different and separate from the 90 sq.m. lot subject of the expropriation case. While petitioners have been asking for just compensation for the 185 sq.m. lot in the expropriation case, this relief is quite impossible to be granted by the RTC since the expropriation case pertains only to the 90 sq.m. property, which is the subject of the expropriation case.

Respondents, on the other hand, claim that petitioners violated the rule against forum shopping. The elements of *litis pendentia*

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[24] *Rollo*, pp. 177-182.

[25] *Id.* at 184-185.

[26] *Supra* note 1.

are present: (1) identity of parties; (2) identity of rights asserted and reliefs prayed for; and (c) the judgment in the recovery of possession case would amount to *res judicata* in the expropriation case. Also, respondents posit that the issue of ownership should be litigated in the expropriation court, the latter being empowered to entertain conflicting claims of ownership of the condemned property and adjudge the rightful owner thereof. This is due to the intimate relationship of the issue of ownership with the claim for the expropriation payment.

Ruling of the Court

The petition is meritorious.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[27] Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.[28]

The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action

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[27] *Dy v. Yu,* 763 Phil. 491, 511 (2015).

[28] *Heirs of Marcelo Sotto v. Palicte,* G.R. No. 159691 (Resolution), February 17, 2014.

will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[29]

The elements of *litis pendentia* are not present in the two cases. There is no identity of rights asserted and reliefs prayed for in the expropriation case and the recovery of possession case.

Records show that on December 1, 2005, petitioners filed a Complaint in Intervention in the expropriation case. In filing the Complaint in Intervention, petitioners averred that they have a legal interest in the matter in litigation considering that they are the owners of the subject property by virtue of the Deed of Absolute Sale executed by Planters Bank in their favor.

On September 12, 2006 during the pendency of the expropriation case, petitioners filed the case for recovery of possession and/or payment of just compensation alleging that they are the owners of the 185 sq.m. parcel of land, which had been used by herein respondents in the widening of an existing roadway, and that they should be paid with the corresponding just compensation.

While there exists identity of parties in both cases, there is no identity of rights asserted and reliefs prayed for. Be it noted that petitioners were not originally parties in the expropriation case, they became parties thereto when they filed their Complaint in Intervention, which was granted by the RTC.

The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.[30] Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1)

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[29] *Id.*

[30] *Grace Park International Corporation v. Eastwest Banking Corporation*, 791 Phil. 570, 578 (2016).

whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint.[31]

In the expropriation case filed by respondents, the subject matter is the 90 sq.m. property (Lot 1047-C-2-D-1). The expropriation of the lot is necessary for the construction and/or rehabilitation of toll facilities along NLEX. Expropriation is the procedure by which the government takes possession of private property for public use, with payment of just compensation. It is forced taking of private property, the landowner being really without a ghost of a chance to defeat the case of the expropriating agency. In other words, in expropriation, the private owner is deprived of property against his will.[32]

Thus, in instituting the expropriation case, respondents are certain that there is a need to take the 90 sq.m. private property for the public purpose of implementing the construction, rehabilitation and expansion of the NLEX Project. Petitioners intervened therein claiming that they are new owners of the property and that they are so situated as to be adversely affected by the disposition of the property.

On the other hand, the recovery of possession case filed by petitioners concerns another subject matter — the 185 sq.m. lot (Lot 1047-C-2-D-2) — adjoining the 90 sq.m. subject of the expropriation case. This is a different lot, which, according to petitioners, was also taken and used by respondents for the widening of the existing roadway. As owners thereof, they alleged that it is proper that they be paid the corresponding just compensation, and in the event that respondents fail or refuse to pay the corresponding just compensation, that said lot be reconveyed to them.

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[31] *Id.* at 577.

[32] *National Power Corporation v. Posada*, 755 Phil. 613, 638 (2015).

Jurisprudence clearly provides for the landowner's remedies when his property is taken by the government for public use without the government initiating expropriation proceedings and without payment of just compensation: he may recover his property if its return is still feasible or, if it is not, he may demand payment of just compensation for the land taken.[33] What happened in this case is a *de facto* expropriation,[34] wherein the 185 sq.m. lot was taken and used by respondents for the widening of the existing road without paying the just compensation, not even the requisite condemnation proceedings having been instituted.[35] The 185 sq.m. lot was not even made subject of the expropriation case filed by respondents.

This Court has addressed situations in which the government took control and possession of properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages,[36] *viz.*:

> x x x This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.
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> The issue in this case is not novel.
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> In *Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR]*, PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings. In 1990, Forfom filed a recovery of possession of real property and/or damages against PNR. In *Eusebio v. Luis*, respondent's parcel of land was taken in 1980 by the City of Pasig and used as a municipal road now known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In

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[33] *Rebadulla v. Republic*, G.R. Nos. 222159 & 222171, January 31, 2018; *National Power Corp. v. Sps. Malijan*, 802 Phil. 727 (2016).

[34] *Mun. of La Carlota v. Spouses Gan*, 150-A Phil. 588 (1972).

[35] *Id.* at 589.

[36] *National Power Corp. v. Spouses Malijan*, 802 Phil. 727, 737 (2016).

1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In *Manila International Airport Authority v. Rodriguez*, in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were initiated. In 1997, respondent demanded the payment of the value of the property, but the demand remained unheeded prompting him to institute a case for *accion reinvindicatoria* with damages against petitioner. In *Republic v. Sarabia*, sometime in 1956, the Air Transportation Office (ATO) took possession and control of a portion of a lot situated in Aklan, registered in the name of respondent, without initiating expropriation proceedings. Several structures were erected thereon including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group. In 1995, several stores and restaurants were constructed on the remaining portion of the lot. In 1997, respondent filed a complaint for recovery of possession with damages against the storeowners where ATO intervened claiming that the storeowners were its lessees.

The Court in the above-mentioned cases was confronted with common factual circumstances where the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation. The Court has uniformly ruled that just compensation is the value of the property at the time of taking that is controlling for purposes of compensation. x x x[37] (Citations omitted)

Although petitioners will be presenting the Deed of Absolute Sale dated November 22, 2005 both in their Complaint in Intervention and in the case for recovery of possession and/or payment of just compensation, the said document will only prove that they are now the owners of the subject property

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[37] *Sec. of the DPWH v. Sps. Tecson*, 713 Phil. 55, 72 (2013).

having purchased the same from Planters Bank, the registered owner; hence, the just compensation should be paid to them. Still, the subject matter of the two cases are different, as afore-explained. The 185-sq.m. is an entirely different lot and can never be the subject of the pending expropriation case. It should be stressed that in the expropriation case, respondents are already willing to pay the just compensation for the 90 sq.m., subject only to judicial determination as to the amount thereof. There is no more issue on that. On the other hand, in the case for recovery of possession and/or payment of just compensation, petitioners need to prove the area taken and used by the government and the amount of compensation justly due them.

Considering that these two cases involve the same parties and some of the issues raised are the same, the Court orders the consolidation of Civil Case No. 264-V-04 (case for expropriation with intervention) and Civil Case No. 180-V-06 (case for recovery of possession and/or payment of just compensation), in order to expedite the proceedings.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated April 26, 2011 and the Resolution dated November 22, 2011 of the Court of Appeals in CA-G.R. CV No. 90392 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 180-V-06 and Civil Case No. 264-V-04 are ordered **CONSOLIDATED** in order to resolve these cases with reasonable dispatch.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220686. March 9, 2020]

ICON DEVELOPMENT CORPORATION, *petitioner, vs.* **NATIONAL LIFE INSURANCE COMPANY OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; SHOULD COVER ONLY QUESTIONS OF LAW AS THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTION.— The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45. As a rule, the Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. Petitions for review on *certiorari* should cover only questions of law as this Court is not a trier of facts. However, the rules do admit exceptions such as when the CA's findings differed from the findings of the RTC. In this instance, there is a reason to make exception to the rule since the finding of the appellate court is contrary to that of the trial court. The incongruent factual findings of the RTC on one hand, and the CA on the other, compel the Court to revisit the factual circumstances of the instant case.

2. MERCANTILE LAW; INSURANCE LAW; BUSINESS OF INSURANCE; CONSERVATORSHIP; CONSIDERED TO BE IN THE NATURE OF A REHABILITATION PROCEEDING AND IT HAS FOR ITS PURPOSE THE CONTINUANCE OF CORPORATE LIFE AND ACTIVITIES, AND REINSTATEMENT OF THE CORPORATION TO ITS FORMER STATUS OF SUCCESSFUL OPERATION.— Conservatorship proceedings against a financially distressed insurance company are resorted to only when such company is in a state of continuing inability to maintain a condition of solvency or liquidity deemed adequate to protect the interest of policyholders and creditors. An insurance company placed under conservatorship is facing financial difficulties which require the appointment of a conservator to

take charge of its assets, liabilities, and management aimed at preserving its resources and restoring its viability as a going business enterprise. Conservatorship, under Section 248 of the Insurance Code, is in the nature of a rehabilitation proceeding. Rehabilitation signifies a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The conservator may only act with the approval of the Insurance Commissioner with respect to the major aspects of rehabilitation. As regards the ordinary details of administration, the conservator has implied authority by virtue of his appointment to proceed without the approval of the Insurance Commissioner. He is clothed with such discretion in conducting and managing the affairs of the insurance company placed under his control. Clearly, a conservatorship proceeding means a conservation of company assets and business during the period of financial difficulties or inability to maintain a condition of solvency. Hence, it can be deduced that the purpose of conservatorship is for the continuance of corporate life and activities, and reinstatement of the corporation to its former status of successful operation.

3. **ID.; ID.; ID.; ID.; THE POWER OF THE CONSERVATOR TO PRESERVE THE ASSETS OF A DISTRESSED COMPANY DOES NOT INCLUDE THE TOTAL REPLACEMENT OR SUBSTITUTION OF THE EXISTING BOARD OF DIRECTORS AND CORPORATE OFFICERS TO THE EXTENT OF MAKING THE LATTER INEFFECTIVE DURING REHABILITATION.—** While admittedly, the Insurance Code gives vast and far-reaching powers to the conservator of a distressed company, it must be pointed out that such powers must be related to the preservation of the assets of the company. The Insurance Code does not provide that the power of the conservator to preserve the assets of a distressed company includes the total replacement or substitution of the existing board of directors and corporate officers to the extent of making the latter ineffective during rehabilitation. There is nothing in the law which provides that a conservator supplants the board of directors and management of the company. Although, under the law, the appointed conservator has the power to overrule or revoke the actions of the previous management and board of directors of the distressed company, this should not be construed as to totally undress the present and existing board

of directors and corporate officers of their functions during rehabilitation proceeding. Consequently, the board of directors and corporate officers continue to exercise their power as such, including the collection of debts *via* foreclosure of mortgaged properties. Their actions, however, can be revoked by the conservator if they are prejudicial to the corporation and worsen the financial difficulty that the company is facing. To stress, a company is placed under conservatorship in order to prolong its corporate life in an effort to rehabilitate and restore it of its former status as a financially fluid entity. The conservator is appointed to take charge of the company's assets, liabilities, and management aimed at restoring its viability as a going business enterprise and not to diminish and deplete its resources worsening the financial situation. Logically, the purpose includes the effective function of the board of directors and corporate officers such as collection of debts through foreclosure of real estate mortgage.

4. ID.; ID.; ID.; ID.; AN ACTION MAY STILL BE FILED BY THE INSURANCE COMPANY'S BOARD OF DIRECTORS EVEN IN THE ABSENCE OF THE CONSERVATOR'S APPROVAL, AS THE INSURANCE COMPANY'S JURIDICAL PERSONALITY THROUGH ITS BOARD OF DIRECTORS IS NOT REPLACED BY THE CONSERVATOR.— The conservatorship of an insurance company should be likened to that of a bank rehabilitation. A cursory reading of Section 28-A of the Central Bank Act, as amended by Presidential Decree No. 1937, and Section 248 of the Insurance Code, as amended, reveals that the powers and functions of the conservators of a distressed bank and an insurance company are essentially the same. This Court held that once a bank is placed under conservatorship, an action may still be filed on behalf of that bank even without prior approval of the conservator. Conservator's approval is not necessary where the action is instituted by the majority of the bank's stockholders. A bank retains its juridical personality even if placed under conservatorship; it is neither replaced nor substituted by the conservator. This rule should likewise govern insurance companies. An action may still be filed by the insurance company's board of directors even in the absence of the conservator's approval. The insurance company's juridical personality through its board of directors is not replaced by the conservator.

5. REMEDIAL LAW; A.M. NO. 99-10-05-0 (GUIDELINES IN EXTRAJUDICIAL AND JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE); A WRIT OF PRELIMINARY INJUNCTION (WPI) OR TEMPORARY RESTRAINING ORDER (TRO) CANNOT BE ISSUED AGAINST EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE ON A MERE ALLEGATIONS OF PAYMENT, OVERPAYMENT, AND IMPOSITION OF UNCONSCIONABLE INTEREST, AS WELL AS WHEN THE REQUIREMENTS FOR THE ISSUANCE OF A WPI AND TRO ARE NOT COMPLIED WITH.— A.M. No. 99-10-05-0 embodies the guidelines in extra judicial and judicial foreclosure of real estate mortgages x x x. [A] WPI or TRO cannot be issued against extrajudicial foreclosure of real estate mortgage on a mere allegation that the debt secured by mortgage has been paid or is not delinquent unless the debtor presents an evidence of payment. Even an allegation of unconscionable interest being imposed on the loan by the mortgagee shall no longer be a ground to apply for WPI. In addition, the rule prohibits the issuance of TRO or WPI unless the debtor pays the mortgagee at least 12% *per annum* interest on the principal obligation as stated in the application for foreclosure sale which shall be updated monthly while the case is pending. Likewise, it is mandated that all the requirements and restrictions prescribed for the issuance of a TRO and WPI, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply. In the present case, the Court finds that the trial court judge erred in issuing the TRO and WPI based simply on petitioner's allegations of payment, overpayment, and the respondent's imposition of unconscionable interest. It must be emphasized that the petitioner did not present a single evidence of overpayment of the obligation or even proof of payment thereof. Evidently, the RTC's Order enjoining the foreclosure proceedings is a patent circumvention of the guidelines outlined in A.M. No. 99-10-05-0. Moreover, nothing in the records shows that the petitioner paid the respondent at least 12% *per annum* interest on the principal obligation as stated in the application for foreclosure sale. Lastly, the petitioner failed to post a bond which is equal to the amount of the outstanding debt. It appears that the petitioner posted a bond in the amount of ₱2,500,000.00 only, which is way below the outstanding debt of ₱274,497, 565.60.

The bond posted is even short of the principal loan of ₱31,034,510.00. Thus, the trial court judge should have applied A.M. No. 99-10-05-0 and denied the petitioner's application for TRO and WPI.

6. CIVIL LAW; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT; REQUISITES.— The principle of unjust enrichment is found in Article 22 of the Civil Code x x x. Clearly, there is unjust enrichment when: (1) A person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another. After a judicious scrutiny of the factual background and circumstances of the instant case, the Court finds that the petitioner failed to forward an evidence of payment and overpayment. It must always be remembered that a mere allegation is not a proof and the burden of evidence lies with the party who asserts the affirmative of an issue. The petitioner only based this assertion of unjust enrichment on bare allegations, without any other evidence to substantiate it. Therefore, the respondent was not unjustly benefited at the petitioner's expense.

APPEARANCES OF COUNSEL

Vicente M. Joyas for petitioner.
Bodegon Estorninos Guerzon Borje & Gozos for respondent.

D E C I S I O N

INTING, *J.*:

Before the Court is a petition for review[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated May 26, 2015 and the Resolution[3] dated August 20, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 128708 which reversed and

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[1] *Rollo*, pp. 53-64.

[2] *Id.* at 66-81; penned by Associate Justice Melchor Q.C. Sadang with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier (now a member of the Court), concurring.

[3] *Id.* at 84-85.

set aside the Orders dated January 28, 2012,[4] February 17, 2012,[5] February 20, 2012,[6] March 29, 2012[7] and December 7, 2012[8] of the Regional Trial Court (RTC), Branch 60, Lucena City.

The Facts

On various dates, Icon Development Corporation (petitioner) obtained several loans from National Life Insurance Company of the Philippines (respondent). As security for the loans, several properties were mortgaged by the petitioner to the respondent. These properties are located in Makati City and Tayabas, Quezon. The petitioner made several payments until 2008 when it suddenly refused to make further payments despite repeated demands from the respondent.[9]

On November 25, 2011, after the petitioner defaulted in the payment of its obligations, the respondent filed a Petition for Extrajudicial Foreclosure[10] of the mortgaged properties. It alleged that the petitioner failed to pay its outstanding balance of ₱274,497,565.60 despite several written and verbal demands.

On November 23, 2011, the provincial Sheriff issued a Notice of Extra-Judicial Sale[11] setting the auction of the mortgaged properties.

On December 27, 2011, the petitioner instituted before the RTC a Complaint for the Discharge of Obligation/or Determination of Actual Indebtedness, and Declaration of Nullity with Temporary Restraining Order (TRO)/Writ of Preliminary Injunction (WPI) with Damages.[12]

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[4] CA *rollo*, pp. 55-58.

[5] *Id.* at 59-62; rendered by Judge Romeo L. Villanueva.

[6] *Id.* at 81-84.

[7] *Id.* at 85.

[8] *Id.* at 86-97.

[9] *Rollo*, p. 67.

[10] *Id.* at 117-121.

[11] CA *rollo*, pp. 193-194.

[12] *Id.* at 123-129.

In the complaint, the petitioner insisted: that the respondent is collecting an exorbitant and unconscionable interest; that it paid 550 membership shares to the respondent valued at ₱100,000.00 per share, but the latter declared its cost at ₱250,000.00 per share;[13] that despite the payment of these shares, the respondent stated that the amount was not credited to the petitioner; that due to the amounts paid, the petitioner made an overpayment to the respondent; that it could constitute an unjust enrichment on the part of the respondent if it will be able to acquire ₱1 Billion worth of properties to pay a loan of ₱31,513,152.69;[14] that the officers who secured the loans had no authority from the petitioner; and that the respondent is under conservatorship; thus, the directors who initiated the foreclosure had no authority to do so.[15]

The respondent opposed the petitioner's application for TRO[16] and cited Administrative Matter (A.M.) No. 99-10-05-0,[17] which prohibits injunctive reliefs in extrajudicial foreclosure of real estate mortgage. It claimed that the petitioner failed to establish a clear right to any injunctive reliefs.[18]

On January 13, 2012, Atty. Clifford E. Chua (Atty. Chua), the appointed conservator of the respondent, filed a Manifestation[19] stating that he authorized the foreclosure petition.

The Orders of the RTC

On January 28, 2012, the RTC issued an Order[20] granting the TRO and enjoining the *Ex-Officio* Provincial Sheriff of

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[13] *Id.* at 125.

[14] *Id.* at 126.

[15] *Id.* at 126-127.

[16] *Id.* at 130-138.

[17] Procedure in Extra-Judicial or Judicial Foreclosure of Real Estate Mortgage as amended by OCA Circular No. 25-2007 (March 5, 2007).

[18] CA *rollo*, p. 136.

[19] *Id.* at 195.

[20] *Id.* at 55-58.

Quezon Province and the respondent from conducting the auction sale.[21] It ruled that the respondent is under conservatorship; thus, the filing of foreclosure petition by its directors was invalid. The RTC also found that the conservator's Manifestation cannot be taken into consideration as it was not formally offered as evidence. Lastly, the RTC declared that A.M. No. 99-10-05-0 is not applicable because the authority of the persons who initiated the foreclosure was put into issue.[22]

Thereafter, the respondent moved for reconsideration, but the RTC denied it in its Order[23] dated February 17, 2012.

On February 20, 2012, the RTC issued an Order[24] granting the issuance of WPI and fixing the bond thereof at ₱2,500,000.00. The RTC found that the petitioner made an overpayment to the respondent. Accordingly, it would be unfair for the respondent to foreclose the mortgaged properties.[25]

On March 16, 2012, the respondent filed a Motion for Reconsideration with Motion to Inhibit[26] citing loss of confidence in the judge's impartiality in hearing the case.

Meanwhile, on March 29, 2012, the RTC issued an Order[27] directing the issuance of WPI after the petitioner posted the required bond.

On December 7, 2012, the RTC issued another Order[28] suspending the proceedings and referred the case to the Insurance Commission because the issues are allegedly within the latter's jurisdiction. The RTC cited the doctrine of primary

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[21] *Id.* at 57.

[22] *Id.*

[23] *Id.* at 59-62.

[24] *Id.* at 81-84.

[25] *Id.* at 83.

[26] *Id.* at 98-116.

[27] *Id.* at 85.

[28] *Id.* at 86-97.

jurisdiction as a ground in referring the case to the Insurance Commission.[29] The dispositive portion of the Order provides:

> Wherefore, pending action of this Court on Motion for Reconsideration with Motion to Inhibit, let the following issues be REFERRED to THE INSURANCE COMMISSION for immediate determination and resolution, to wit:
>
> I. WHETHER OR NOT THE FILING OF THE PETITION FOR EXTRA-JUDICIAL FORECLOSURE IS VALID CONSIDERING THE LACK OF AUTHORITY OF THE OFFICERS WHO INITIATED THE SAME
>
> II. WHETHER OR NOT THE FILING OF THE PETITION FOR EXTRA-JUDICIAL FORECLOSURE IS APPROPRIATE CONSIDERING THAT ICON DEVELOPMENT IS NOT IN DEFAULT FOR LACK OF DEMAND BY THE CONSERVATOR
>
> The parties through their respective counsels are directed to initiate and/or commence their proper action before the INSURANCE COMMISSION, Metro Manila.
>
> x x x x x x x x x[30]

Aggrieved, the respondent filed a Petition[31] for *Certiorari* and Prohibition with Prayer for the Issuance of a TRO and/or a WPI under Rule 65 of the Rules of Court before the CA.

The Ruling of the CA

On May 26, 2015, the CA promulgated the assailed Decision[32] reversing the RTC's Orders, to wit:

> WHEREFORE, the petition for *certiorari* is PARTIALLY GRANTED. The Orders dated January 28, 2012, February 17, 2012, February 20, 2012, March 29, 2012 and December 7, 2012 of the RTC of Lucena City, Branch 60, in Civil Case No. 2011-59 are REVERSED and SET ASIDE. The motion to prohibit respondent judge from taking further cognizance of the case is DENIED.

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[29] *Id.* at 95-97.

[30] *Id.* at 97.

[31] *Id.* at 3-51.

[32] *Rollo*, pp. 66-81.

SO ORDERED.[33]

The CA held that the RTC misapplied the doctrine on primary jurisdiction as the issues before the latter do not involve technical matters that require the specialized skills and expertise of the Insurance Commissioner. It found that the issues are purely legal questions which are within the competence and jurisdiction of the RTC and not with the Insurance Commissioner.[34]

Likewise, the CA ruled that a conservator of a distressed corporation does not supplant the board of directors or management. The CA stressed that the board of directors and corporate officers continue to exercise their powers as such including the collection of debts through foreclosure of the mortgaged properties. Accordingly, the respondent's board of directors could validly authorize the filing of foreclosure proceeding.[35]

Moreover, the CA highlighted that the RTC gravely abused its discretion when it failed to apply the guidelines in extrajudicial and judicial foreclosure of real estate mortgage as outlined in A.M. No. 99-10-05-0.[36]

Finally, the CA denied the motion for inhibition filed by the respondent. According to the CA, there is no act or conduct on the part of the RTC judge from which suspicion of bias and partiality can be appreciated.[37]

The petitioner moved for reconsideration,[38] but the CA denied it in its assailed Resolution dated August 20, 2015.

Hence, the instant petition raising the following errors, to wit:

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[33] *Id.* at 80.

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

[35] *Id.* at 77.

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

[37] *Id.* at 80.

[38] See Motion for Reconsideration, *id.* at 86-92.

I- THE HONORABLE [CA] ERRED IN NOT SUSTAINING THE RULING OF THE REGIONAL TRIAL COURT THAT THE DIRECTORS OF A COMPANY UNDER CONSERVATORSHIP CANNOT INITIATE A PETITION FOR EXTRA-JUDICIAL FORECLOSURE OF MORTGAGED PROPERTIES OF THE COMPANY'S DEBTOR SINCE THAT IS A COLLECTION OF DEBTS WHICH MUST BE SOLELY INITIATED BY THE CONSERVATOR

II- THE HONORABLE COURT OF APPEALS ERRED IN APPLYING A.M. NO. 99-10-05-0 DESPITE THE FACT OF PRELIMINARY FINDING BY THE REGIONAL TRIAL COURT OF OVERPAYMENT

III- THE COURT OF APPEALS ERRED IN NOT CONSIDERING AN UNJUST ENRICHMENT ON THE PART OF THE RESPONDENT FOR NOT APPLYING THE PAYMENT AND RETURNING THE OVERPAYMENT

IV- THE COURT OF APPEALS ERRED IN CONSIDERING THE PETITIONER IN DEFAULT DESPITE LACK OF DEMAND BY THE CONSERVATOR[39]

The basic contention of the petitioner is that the task of filing extrajudicial foreclosure during conservatorship belongs to the conservator and not to the board of directors of the subject company. The petitioner maintains that it was unlawful for the respondent's board of directors to initiate the foreclosure proceedings as the latter was not authorized by the conservator.[40]

The petitioner also contends that the demands made by the respondent's directors were not sufficient to put it in default as the conservator did not accede to their actions.[41]

Moreover, the petitioner insists that it already paid its obligations to the respondent and it even made an overpayment. Accordingly, the respondent will be unjustly enriched if it will be allowed to foreclose the mortgaged properties.[42]

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[39] *Id.* at 58.

[40] *Id.* at 59.

[41] *Id.* at 60.

[42] *Id.* at 59.

Further, the petitioner argues that A.M. No. 99-10-05-0 is not applicable in this case as the obligation was already extinguished by payment.[43]

In its Comment[44] dated June 3, 2016, the respondent emphasizes the applicability of A.M. No. 99-10-05-0, which prohibits the issuance of temporary restraining order and writ of injunction against foreclosure real estate mortgage without complying with the conditions set forth therein. It asserts that the petitioner utterly failed to submit a proof of payment or overpayment of the latter's obligations.[45]

The respondent pleads that since the petitioner failed to comply with the requirements outlined in A.M. No. 99-10-05-0, the RTC Judge should not have enjoined the foreclosure proceeding.[46]

Lastly, the respondent claims that its board of directors had the authority to demand payment and foreclose the real properties mortgaged by the petitioner. According to the respondent, the authority of its board of directors to initiate the foreclosure of the mortgaged properties was confirmed by the conservator himself.[47]

Our Ruling

The petition must fail.

The first and fourth issues, being interrelated, will be discussed jointly.

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.[48] As a rule, the Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[49]

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[43] *Id.*

[44] *Id.* at 130-144.

[45] *Id.* at 138-139.

[46] *Id.* at 139.

[47] *Id.* at 141-142.

[48] Section 1, Rule 45, RULES OF COURT.

[49] *Rep. of the Phils. v. De Borja*, 803 Phil. 8, 17 (2017), citing *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

Petitions for review on *certiorari* should cover only questions of law as this Court is not a trier of facts.[50] However, the rules do admit exceptions[51] such as when the CA's findings differed from the findings of the RTC. In this instance, there is a reason to make exception to the rule since the finding of the appellate court is contrary to that of the trial court. The incongruent factual findings of the RTC on one hand, and the CA on the other, compel the Court to revisit the factual circumstances of the instant case.

On whether the respondent's directors can initiate foreclosure even without the authority of the conservator.

Conservatorship proceedings against a financially distressed insurance company are resorted to only when such company is in a state of continuing inability to maintain a condition of solvency or liquidity deemed adequate to protect the interest of policyholders and creditors.[52] An insurance company placed

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[50] *Heirs of Jose and Helen S. Mariano v. City of Naga*, G.R. No. 197743, March 12, 2018, 858 SCRA 179, 201. Citations omitted.

[51] As provided in *Medina v. Mayor Asistio, Jr.* (269 Phil. 225, 232 [1990]), the following are the exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

[52] *Garcia v. NLRC*, 237 Phil. 623, 635 (1987).

under conservatorship is facing financial difficulties which require the appointment of a conservator to take charge of its assets, liabilities, and management aimed at preserving its resources and restoring its viability as a going business enterprise.[53]

Conservatorship, under Section 248[54] of the Insurance Code, is in the nature of a rehabilitation proceeding. Rehabilitation signifies a continuance of corporate life and activities in an

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[53] *Id.*

[54] Now Section 255 under Republic Act No. 10607:

"SECTION 255. If at any time before, or after, the suspension or revocation of the certificate of authority of an insurance company as provided in the preceding title, the Commissioner finds that such company is in a state of continuing inability or unwillingness to maintain a condition of solvency or liquidity deemed adequate to protect the interest of policyholders and creditors, he may appoint a conservator to take charge of the assets, liabilities, and the management of such company, collect all moneys and debts due to said company and exercise all powers necessary to preserve the assets of said company, reorganize the management thereof, and restore its viability. The said conservator shall have the power to overrule or revoke the actions of the previous management and board of directors of the said company, any provision of law, or of the articles of incorporation or bylaws of the company, to the contrary notwithstanding, and such other powers as the Commissioner shall deem necessary.

The conservator may be another insurance company doing business in the Philippines, any officer or officers of such company, or any other competent and qualified person, firm or corporation. The remuneration of the conservator and other expenses attendant to the conservation shall be borne by the insurance company concerned.

The conservator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on the conservator.

The conservator appointed shall report and be responsible to the Commissioner until such time as the Commissioner is satisfied that the insurance company can continue to operate on its own and the conservatorship shall likewise be terminated should the Commissioner, on the basis of the report of the conservator or of his own findings, determine that the continuance in business of the insurance company would be hazardous to policyholders and creditors, in which case the provisions of Title 15 shall apply.

effort to restore and reinstate the corporation to its former position of successful operation and solvency.[55] The conservator may only act with the approval of the Insurance Commissioner with respect to the major aspects of rehabilitation. As regards the ordinary details of administration, the conservator has implied authority by virtue of his appointment to proceed without the approval of the Insurance Commissioner. He is clothed with such discretion in conducting and managing the affairs of the insurance company placed under his control.[56] Clearly, a conservatorship proceeding means a conservation of company assets and business during the period of financial difficulties or inability to maintain a condition of solvency. Hence, it can be deduced that the purpose of conservatorship is for the continuance of corporate life and activities, and reinstatement of the corporation to its former status of successful operation.

While admittedly, the Insurance Code gives vast and far-reaching powers to the conservator of a distressed company, it must be pointed out that such powers must be related to the preservation of the assets of the company. The Insurance Code does not provide that the power of the conservator to preserve the assets of a distressed company includes the total replacement or substitution of the existing board of directors and corporate officers to the extent of making the latter ineffective during rehabilitation. There is nothing in the law which provides that a conservator supplants the board of directors and management of the company.

Although, under the law, the appointed conservator has the power to overrule or revoke the actions of the previous

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No insurance company, life or non-life, or any professional reinsurer, ordered to be liquidated by the Commissioner under the provisions hereunder may be rehabilitated or authorized to transact anew, insurance or reinsurance business, as the case may be."

[55] *Phil. Veterans Bank Employees Union-N.U.B.E. v. Hon. Vega*, 412 Phil. 449, 454 (2001), citing *Ruby Industrial Corporation v. CA*, 348 Phil. 480, 497 (1998).

[56] *Supra* note 52 at 636, citing *Lucas v. Mfg. Lumbermen's Underwriters*, 349 Mo 835,163 SW 2d 750.

management and board of directors of the distressed company, this should not be construed as to totally undress the present and existing board of directors and corporate officers of their functions during rehabilitation proceeding. Consequently, the board of directors and corporate officers continue to exercise their powers as such, including the collection of debts *via* foreclosure of mortgaged properties. Their actions, however, can be revoked by the conservator if they are prejudicial to the corporation and worsen the financial difficulty that the company is facing.

To stress, a company is placed under conservatorship in order to prolong its corporate life in an effort to rehabilitate and restore it of its former status as a financially fluid entity. The conservator is appointed to take charge of the company's assets, liabilities, and management aimed at restoring its viability as a going business enterprise and not to diminish and deplete its resources worsening the financial situation. Logically, this purpose includes the effective function of the board of directors and corporate officers such as collection of debts through foreclosure of real estate mortgage.

The conservatorship of an insurance company should be likened to that of a bank rehabilitation. A cursory reading of Section 28-A[57] of the Central Bank Act, as amended

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[57] SEC. 28-A. Appointment of conservator. — Whenever, on the basis of a report submitted by the appropriate supervising or examining department, the Monetary Board finds that a bank or a non-bank financial intermediary performing quasi-banking functions is in a state of continuing inability or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator to take charge of the assets, liabilities, and the management of that institution, collect all monies and debts due said institution and exercise all powers necessary to preserve the assets of the institution, reorganize the management thereof, and restore its viability. He shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or non-bank financial intermediary performing quasi-banking functions, any provision of law to the contrary notwithstanding, and such other powers as the Monetary Board shall deem necessary.

by Presidential Decree No. 1937,[58] and Section 248[59] of the Insurance Code, as amended, reveals that the powers and functions of the conservators of a distressed bank and an insurance company are essentially the same. This Court held that once a bank is placed under conservatorship, an action may still be filed on behalf of that bank even without prior approval of the conservator.[60] Conservator's approval is not necessary where the action is instituted by the majority of the bank's stockholders.[61] A bank retains its juridical personality even if placed under conservatorship; it is neither replaced nor substituted by the conservator.[62] This rule should likewise govern insurance companies. An action may still be filed by the insurance company's board of directors even in the absence of the conservator's approval. The insurance company's juridical personality through its board of directors is not replaced by the conservator.

Apparently, the foreclosure proceeding in this case was initiated to collect the petitioner's debts. Such action is in accordance with the purpose of conservatorship, *i.e.*, to preserve the assets of the respondent and restore its previous financial status. Evidently, the trial court judge's order of issuing the TRO and WPI, and stopping the foreclosure of the mortgaged properties defeated the purpose of the respondent's rehabilitation.

Having been established that the conservatorship of an insurance company does not in any way diminish the function of the board of directors during rehabilitation proceedings, this Court affirms that the respondent's juridical personality continued even if it was placed under conservatorship. There

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[58] Further Amending Republic Act No. 265, as Amended, Otherwise Known as "The Central Bank Act."

[59] *Supra* note 54.

[60] *Central Bank of the Phils. v. Court of Appeals*, 284-A Phil. 143, 179 (1992).

[61] *Id.*

[62] *Id.*

is no doubt that the respondent's board of directors could validly authorize the foreclosure even without prior approval of the conservator.

Consequently, the demands made by the respondent's board of directors, even without the authority of the conservator, were sufficient to put the petitioner in default. Their power to demand payment is part of the efforts to rehabilitate the respondent and restore it to its former status as a financially fluid corporation. Not a single rule prohibits them from cooperating with the conservator in restoring the financial status of the company subject of rehabilitation. To prevent the respondent's board of directors from collecting debts through foreclosure of the subject properties will surely frustrate the restoration of the respondent's previous financial standing.

Moreover, during conservatorship, it is the appointed conservator who can question the authority of the respondent's board of directors to initiate foreclosure proceedings, and not the petitioner. Here, it was Atty. Chua who had the personality to object to any actions of the respondent's directors or officers. He can even countermand any of the latter's decision, if he found it prejudicial to the respondent's rehabilitation. For this reason, the petitioner was mistaken when they inquired into the authority of the respondent's directors in filing the petition for foreclosure of real estate mortgage during conservatorship.

Finally, a careful review of the records and the factual circumstances surrounding the instant case, reveals that the appointed conservator, Atty. Chua, filed a Manifestation stating that he authorized the filing of the foreclosure proceedings.[63] This circumstance should have cautioned the trial judge in enjoining the foreclosure of the mortgaged properties.

On whether A.M. No. 99-10-05-0 was observed.

A.M. No. 99-10-05-0 embodies the guidelines in extrajudicial and judicial foreclosure of real estate mortgages thus:

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[63] *Rollo,* pp. 68, 142.

(1) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued *on the allegation that the loan secured by the mortgage has been paid or is not delinquent* unless the application is verified and supported by evidence of payment.

(2) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the interest on the loan is unconscionable, *unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale*, which shall be updated monthly while the case is pending.

(3) Where a writ of preliminary injunction has been issued against a foreclosure of mortgage, the disposition of the case shall be speedily resolved. To this end, the court concerned shall submit to the Supreme Court, through the Office of the Court Administrator, quarterly reports on the progress of the cases involving ten million pesos and above.

(4) All requirements and restrictions prescribed for the issuance of a temporary restraining order/writ of preliminary injunction, such as the *posting of a bond, which shall be equal to the amount of the outstanding debt*, and the time limitation for its effectivity, shall apply as well to a *status quo* order.[64] (Italics Ours)

With the foregoing yardstick, it is crystal clear that a WPI or TRO cannot be issued against extrajudicial foreclosure of real estate mortgage on a mere allegation that the debt secured by mortgage has been paid or is not delinquent unless the debtor presents an evidence of payment. Even an allegation of unconscionable interest being imposed on the loan by the mortgagee shall no longer be a ground to apply for WPI.[65] In addition, the rule prohibits the issuance of TRO or WPI unless the debtor pays the mortgagee at least 12% *per annum* interest on the principal obligation as stated in the application for foreclosure sale which shall be updated monthly while the case is pending. Likewise, it is mandated that all the requirements

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[64] OCA Circular No. 25-2007.

[65] *Phil. National Bank v. Castalloy Technology Corp., et al.*, 684 Phil. 438, 448 (2012).

and restrictions prescribed for the issuance of a TRO and WPI, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply.

In the present case, the Court finds that the trial court judge erred in issuing the TRO and WPI based simply on petitioner's allegations of payment, overpayment, and the respondent's imposition of unconscionable interest. It must be emphasized that the petitioner did not present a single evidence of overpayment of the obligation or even proof of payment thereof. Evidently, the RTC's Order enjoining the foreclosure proceedings is a patent circumvention of the guidelines outlined in A.M. No. 99-10-05-0.

Moreover, nothing in the records shows that the petitioner paid the respondent at least 12% *per annum* interest on the principal obligation as stated in the application for foreclosure sale. Lastly, the petitioner failed to post a bond which is equal to the amount of the outstanding debt. It appears that the petitioner posted a bond in the amount of ₱2,500,000.00 only, which is way below the outstanding debt of ₱274,497,565.60. The bond posted is even short of the principal loan of ₱31,034,510.00. Thus, the trial court judge should have applied A.M. No. 99-10-05-0 and denied the petitioner's application for TRO and WPI.

On whether the respondent was unjustly enriched.

The petitioner's allegation of unjust enrichment in the instant petition is premised on its assertion before the trial court that there was payment and overpayment made to the respondent. The petitioner insists that it was able to present proof of payment and overpayment before the trial court. This Court disagrees.

The principle of unjust enrichment is found in Article 22 of the Civil Code, *to wit*:

Art. 22. *Every person who through an act of performance by another, or any other means, acquires or comes into possession of*

something at the expense of the latter without just or legal ground, shall return the same to him. (Italics supplied.)

Clearly, there is unjust enrichment when: (1) A person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another.[66]

After a judicious scrutiny of the factual background and circumstances of the instant case, the Court finds that the petitioner failed to forward an evidence of payment and overpayment. It must always be remembered that a mere allegation is not a proof and the burden of evidence lies with the party who asserts the affirmative of an issue.[67] The petitioner only based this assertion of unjust enrichment on bare allegations, without any other evidence to substantiate it. Therefore, the respondent was not unjustly benefited at the petitioner's expense.

In conclusion, this Court affirms the CA's ruling that the trial court committed grave abuse of discretion when it issued the TRO and WPI considering that their issuances are contrary to law and established jurisprudence.

WHEREFORE, the petition is **DENIED**. The Decision dated May 26, 2015 and the Resolution dated August 20, 2015 of the Court of Appeals in CA-G.R. SP No. 128708 are **AFFIRMED**.

SO ORDERED.

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

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[66] *GSIS, et al. v. COA, et al.*, 694 Phil. 518, 526 (2012), citing *Tamio v. Ticson*, 485 Phil. 434, 443 (2004).

[67] *Arroyo v. Court of Appeals*, G.R. No. 202860, April 10, 2019.

THIRD DIVISION

[G.R. No. 227070. March 9, 2020]

ADAMSON UNIVERSITY FACULTY AND EMPLOYEES UNION, represented by its president, and ORESTES DELOS REYES, *petitioners, vs.* **ADAMSON UNIVERSITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE LOWER TRIBUNAL'S FACTUAL FINDINGS ARE NOT REVIEWED THEREIN FOR THE COURT ONLY CONSIDERS QUESTIONS OF LAW.— We will no longer review the lower tribunals' factual findings. In a Rule 45 petition, this Court only considers questions of law. It is not our function to re-analyze evidence. x x x Here, both the Court of Appeals and the Panel of Voluntary Arbitrators found that petitioner exclaimed *"anak ng puta"* upon encountering Paula Mae. Their findings on his subsequent acts are also similar and were not shown to be devoid of support. The lower tribunals similarly considered the evidence by both parties. Thus, this Court accords weight to these findings.

2. POLITICAL LAW; ADMINISTRATIVE LAW; BATAS PAMBANSA BLG. 232 (THE EDUCATION ACT OF 1982); GRAVE MISCONDUCT; UTTERING AN EXPLETIVE OUT LOUD IN THE SPUR OF THE MOMENT IS NOT GRAVE MISCONDUCT PER SE, BUT THE REFUSAL TO ACKNOWLEDGE THE MISTAKE AND ATTEMPT TO CAUSE FURTHER DAMAGE AND DISTRESS TO A MINOR STUDENT NEGATE PROFESSIONALISM AND CONTRADICT A PROFESSOR'S RESPONSIBILITY OF GIVING PRIMACY TO THE STUDENT'S INTERESTS AND RESPECTING THE INSTITUTION IN WHICH HE TEACHES.— Petitioner was charged with gross misconduct and unprofessional behavior in violation of Section 16(4) of Batas Pambansa Blg. 232, or the Education Act of 1982. x x x In *National Labor Relations Commission v. Salgarino*, this Court elaborated on what constitutes serious misconduct x x x.

Misconduct is not considered serious or grave when it is not performed with wrongful intent. If the misconduct is only simple, not grave, the employee cannot be validly dismissed. A teacher exclaiming *"anak ng puta"* after having encountered a student is an unquestionable act of misconduct. However, whether it is serious misconduct that warrants the teacher's dismissal will depend on the context of the phrase's use. *"Anak ng puta"* is similar to *"putang ina"* in that it is an expletive sometimes used as a casual expression of displeasure, rather than a personal attack or insult. x x x A review of the records reveals that the utterance in question, *"anak ng puta,"* was an expression of annoyance or exasperation. Both petitioner and Paula Mae were pulling from each side of the door, prompting the professor to exclaim frustration without any clear intent to maliciously damage or cause emotional harm upon the student. That they had not personally known each other before the incident, and that petitioner had no personal vendetta against Paula Mae as to mean those words to insult her, confirm this conclusion. However, it is petitioner's succeeding acts that aggravated the misconduct he committed. He not only denied committing the act, but he also refused to apologize for it and even filed a counter-complaint against Paula Mae for supposedly tarnishing his reputation. He even refused to sign the receiving copy of the notices that sought to hold him accountable for his act. While uttering an expletive out loud in the spur of the moment is not grave misconduct per se, the refusal to acknowledge this mistake and the attempt to cause further damage and distress to a minor student cannot be mere errors of judgment. Petitioner's subsequent acts are willful, which negate professionalism in his behavior. They contradict a professor's responsibility of giving primacy to the students' interests and respecting the institution in which he teaches. In the interest of self-preservation, petitioner refused to answer for his own mistake; instead, he played the victim and sought to find fault in a student who had no ill motive against him.

3. ID.; ID.; ADMINISTRATIVE CHARGES; PRINCIPLE OF TOTALITY OF INFRACTIONS; PROVIDES THAT IN DETERMINING THE SANCTION IMPOSABLE ON AN EMPLOYEE, THE EMPLOYER MAY CONSIDER THE FORMER'S PAST MISCONDUCT AND PREVIOUS INFRACTIONS.— This Court x x x notes the Panel of Voluntary Arbitrators' factual finding that a similar complaint had already been filed against petitioner. x x x The Panel of

Voluntary Arbitrators also noted that his aggressive behavior extends to his colleagues x x x. The reports reveal petitioner's pugnacious character and ill-mannered conduct. In *Sy v. Neat, Inc*, this Court discussed the principle of totality of infractions: In determining the sanction imposable on an employee, the employer may consider the former's past misconduct and previous infractions. Also known as the principle of totality of infractions, the Court explained such concept in *Merin v. National Labor Relations Commission, et al.* x x x. Likewise, in *Sugue v. Triumph International (Phils.), Inc.*, this Court stated that employers are not expected to retain an employee whose behavior causes harm to its establishment x x x. Petitioner cannot rely on his 20-year stay in the university to shield him from liability. Quite the contrary, "the longer an employee stays in the service of the company, the greater is his responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company." For all these reasons, petitioner's dismissal was valid.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICES OF EMPLOYERS; THE DISMISSAL OF AN EMPLOYEE WHICH IS NOT MEANT TO VIOLATE THE RIGHT TO SELF-ORGANIZE CANNOT BE DEEMED UNFAIR LABOR PRACTICE.— The various acts of unfair labor practice are found under Article 259 of the Labor Code x x x. Unfair labor practices are violative of the constitutional right of workers to self-organize x x x. In *UST Faculty Union v. University of Santo Tomas*, this Court ruled that the person who alleges the unfair labor practice has the burden of proving it with substantial evidence x x x. In determining whether an act of unfair labor practice was committed, the totality of the circumstances must be considered. *In Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, this Court discussed that if the unfair treatment does not relate to or affect the workers' right to self-organize, it cannot be deemed unfair labor practice. A dismissal of a union officer is not necessarily discriminatory, especially when that officer committed an act of misconduct. In fact, union officers are held to higher standards x x x. In this case, it is clear that petitioner's dismissal, which was brought about by his personal acts, does not constitute unfair labor practice as provided under the Labor Code. Dismissing him was not meant to violate the right of the university employees to self-

organize. Neither was it meant to interfere with the Union's activities. Likewise, petitioner failed to prove that the proceedings were done with haste and bias. Finally, petitioner cannot raise the defense that he was the Union's president; this does not make him immune from liability for his acts of misconduct.

5. ID.; ID.; MANAGEMENT PREROGATIVE TO DISMISS EMPLOYEES; CONSIDERED VALID AS LONG AS IT IS DONE IN GOOD FAITH AND WITHOUT MALICE.— An employer's management prerogative to dismiss an employee is valid as long as it is done in good faith and without malice. In *Wise and Co., Inc. v. Wise & Co., Inc. Employees Union-NATU*: The Court holds that it is the prerogative of management to regulate, according to its discretion and judgment, all aspects of employment. This flows from the established rule that labor law does not authorize the substitution of the judgment of the employer in the conduct of its business. Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employers' interest and not for the purpose of defeating or circumventing the rights of employees under special laws or valid agreement and are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite. In this case, this Court finds no bad faith on respondent's part in dismissing petitioner.

APPEARANCES OF COUNSEL

Pro Labor Legal Assistance Center for petitioners.
Alberto Balbalan, Jr. for respondent.

D E C I S I O N

LEONEN, *J.*:

The use of expletives as a casual expression of surprise or exasperation is not serious misconduct per se that warrants an employee's dismissal. However, the employee's subsequent acts showing willful and wrongful intent may be considered in determining whether there is a just cause for their employment termination.

This Court resolves the Petition[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the Panel of Voluntary Arbitrators' Decision[4] finding that Orestes Delos Reyes (Delos Reyes) was validly dismissed from employment.

Delos Reyes was a university professor and the assistant chairperson of the Social Sciences Department of Adamson University (Adamson).[5] He was also the president of the Adamson University Faculty and Employees Union (the Union), a duly registered labor union and the sole and exclusive bargaining agent of Adamson's faculty and non-academic personnel.[6]

On September 5, 2014, Adamson received an administrative complaint against Delos Reyes. Josephine Esplago (Josephine) had apparently sued him on behalf of her daughter, 17-year-old Paula Mae Perlas (Paula Mae), a third year psychology student at Adamson. Josephine claimed that Delos Reyes violated the University Code of Conduct and Republic Act No. 7610 for abusing her child, a minor.[7]

By Josephine's account, Paula Mae encountered Delos Reyes as the professor was about to enter the faculty room of the Department of Foreign Languages. Paula Mae was holding the

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[1] *Rollo*, pp. 12-39. Filed under Rule 45 of the Rules of Court.

[2] *Id.* at 362-384. The Decision dated April 28, 2016 was penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang, of the Ninth Division, Court of Appeals, Manila.

[3] *Id.* at 405. The Resolution dated August 17, 2016 was penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang of the Ninth Division, Court of Appeals, Manila.

[4] *Id.* at 276-286. The May 12, 2015 Decision was penned by the Panel of Voluntary Arbitrators, consisting of Chair Norberto M. Alensuela, Sr. and Members Jaime B. Montealegre and Elmer D. Nitura.

[5] *Id.* at 364.

[6] *Id.*

[7] *Id.* at 204 and 365.

doorknob on her way out of the office, while Delos Reyes held the doorknob on the other side. When Paula Mae stepped aside, Delos Reyes allegedly exclaimed the words *"anak ng puta"* and walked on without any remorse. This caused emotional trauma to Paula Mae.[8]

On September 11, 2014, the president of Adamson created an Ad Hoc Investigating and Hearing Committee (Ad Hoc Committee) to hear the case and later submit its findings and recommendations to the Vice President for Academic Affairs for decision-making.[9]

On September 12, 2014, the Ad Hoc Committee issued a show cause memorandum to Delos Reyes, asking him to explain within five days why he should not be charged with gross misconduct and unprofessional behavior.[10]

When Delos Reyes had initially not filed an answer, he was granted a three-day extension.[11] By then, he submitted a written explanation using the Union's letterhead and signing as its president, denying the accusations against him. Delos Reyes "also filed a counter-complaint against Paula Mae for maligning and tarnishing his established reputation in the university."[12]

The two cases were consolidated, and the hearing was held on October 7, 2014. Delos Reyes was represented by counsel.[13]

On October 24, 2014, Delos Reyes was issued a Notice of Dismissal.[14] He sought reconsideration, but this was denied.[15] On October 30, 2014, Adamson put out a paid advertisement

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[8] *Id.* at 204.

[9] *Id.* at 365.

[10] *Id.* at 366.

[11] *Id.* at 154.

[12] *Id.* at 366 and 370.

[13] *Id.* at 376.

[14] *Id.* at 366.

[15] *Id.* at 371.

on the Philippine Daily Inquirer's newspaper and website, which Delos Reyes claimed tarnished his reputation by announcing his dismissal.[16]

Delos Reyes filed a Notice of Strike before the National Conciliation and Mediation Board, but the parties eventually agreed to refer the matter to voluntary arbitration.[17]

After evaluating the evidence, the Panel of Voluntary Arbitrators ruled that Delos Reyes was validly dismissed in its May 12, 2015 Decision.[18] It noted that as a teacher of a Catholic educational institution and the Union's president, Delos Reyes had been "expected to exhibit conduct worthy of emulation"[19] but failed to do so. It deemed his use of the words *"anak ng puta"* without the slightest provocation as a grave depravity, especially when directed at a minor student.[20] It also weighed against him other previously filed complaints that showed his unprofessional behavior.[21]

The dispositive portion of the Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered DECLARING that the dismissal of individual complainant Orestes Delos Reyes is valid and DISMISSING the instant complaint for lack of merit.
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> SO ORDERED.[22]

Delos Reyes filed a Petition for Review, but this was denied.[23] In its April 28, 2016 Decision,[24] the Court of Appeals

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[16] *Id.* at 367.

[17] *Id.* at 276.

[18] *Id.* at 276-286.

[19] *Id.* at 280.

[20] *Id.* at 280-281.

[21] *Id.* at 283-284.

[22] *Id.* at 286.

[23] *Id.* at 383.

[24] *Id.* at 362-384.

preliminarily found that Delos Reyes was "amply accorded his right to procedural due process."[25] It went onto find him guilty of gross misconduct after considering Paula Mae's minority and her family's circumstances.[26] It also found his defenses of alibi and denial unsubstantiated and weak against Paula Mae's positive and categorical testimony.[27]

The Court of Appeals further ruled that Adamson was not liable for unfair labor practice since Delos Reyes's dismissal did not threaten the Union's existence. According to it, his headship in the Union did not make him immune from suit or excuse him from liability for gross misconduct and unprofessional behavior.[28]

After the Court of Appeals had denied his Motion for Reconsideration in its August 17, 2016 Resolution,[29] Delos Reyes filed this Rule 45 Petition[30] against Adamson.

Petitioner claims that respondent treated his case with such disparity from cases involving other employees. He alleges that respondent has chosen not to dismiss other employees despite findings of sexual harassment or theft of class records.[31] He insists that the complaint against him was hastily acted upon without the parties being able to talk and clarify the matter.[32] Moreover, he argues that the Ad Hoc Committee was biased against him,[33] recalling how it tackled unrelated complaints that he was not afforded any opportunity to refute.[34] He further

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[25] *Id.* at 376.

[26] *Id.* at 379-380.

[27] *Id.* at 380.

[28] *Id.* at 383.

[29] *Id.* at 405.

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

[31] *Id.* at 20 and 480.

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

[33] *Id.* at 23.

[34] *Id.* at 26 and 480.

points out that unlike hearings for other employees, his was attended by the university counsel who assisted the Ad Hoc Committee.[35] He also claims that the Ad Hoc Committee acted as Paula Mae's counsel, providing her with pieces of evidence and leading her to change her version of where the incident took place.[36]

As to the actual incident, petitioner denies that he "unjustifiably, angrily" yelled *"anak ng puta"* at Paula Mae.[37] He points out inconsistencies in her testimony, arguing that he was in his classroom, and not where Paula Mae had claimed, when the incident happened. In any case, he insists that he had no motive to malign Paula Mae, who was never his student, and whom he did not know before this incident.[38]

Petitioner also contends that *"anak ng puta"* per se is neither defamatory nor constitutive of gross misconduct and unprofessional behavior. He argues that there was no proof that he had perverse or corrupt motivations in violating the school policy.[39]

Should he be found guilty, petitioner asserts that dismissal was too harsh a penalty for the alleged infraction, especially since it would have been his first offense after 20 years of service.[40] He attests that he was well loved by his students and that he had been professional throughout his stint, mindful of others' feelings.[41]

Petitioner further contends that his dismissal constitutes unfair labor practice as it was done on account of his union activities, which involved taking a stand against the school's K-12 policies.

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[35] *Id.* at 28.

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

[37] *Id.* at 27.

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

[39] *Id.* at 25 and 31.

[40] *Id.* at 31.

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

He claims that respondent saw the complaint as an opportunity to get rid of him for being critical of the school's actions. He also asserts that the dismissal was done at the time the Union was mourning the death of its secretary.[42]

In its Comment,[43] respondent argues that petitioner raises questions of fact not proper in a Rule 45 petition.[44] It also points out that he is bound by the Panel of Voluntary Arbitrators' Decision under the parties' Collective Bargaining Agreement, which provided that during arbitration, the Panel's decision shall be final and cannot be appealed.[45]

Moreover, respondent argues that petitioner impleads the Union in this case—even without being authorized to do so—just to intimidate Paula Mae and her mother. It points out that the Verification attached to the Petition only shows him as the petitioner. It also asserts that the controversy has no connection with the Union's activities or right to self-organize, as respondent and the Union still have a good relationship and have entered into a new Collective Bargaining Agreement.[46]

Maintaining that petitioner was accorded due process, respondent asserts that he was given an opportunity to be heard through his written explanation, memorandum, and an administrative hearing.[47]

As to the incident itself, respondent insists on petitioner's guilt for gross misconduct and unprofessional behavior.[48] It notes that Paula Mae was emotionally traumatized even weeks after the incident, as she was sensitive to words such as *"anak ng puta,"* having been raised by a single mother and not being

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[42] *Id.* at 18 and 32.

[43] *Id.* at 417-475.

[44] *Id.* at 418 and 429-431.

[45] *Id.* at 417 and 428.

[46] *Id.* at 432.

[47] *Id.* at 435-436.

[48] *Id.* at 418.

exposed to swearwords.[49] It contends that as a professor of a Catholic school, petitioner was expected to protect the students' interests and welfare.[50] It also notes that petitioner did not say *"anak ng puta"* jokingly, but in a harsh and angry manner.[51] Petitioner could not have said it in surprise either, respondent points out, because it was unlikely that he did not notice Paula Mae through the door's glass window.[52]

Respondent likewise argues that petitioner cannot deny the incident itself.[53] According to it, Paula Mae was not shown to have been motivated by ill will, and the minor inconsistencies in her testimony had already been clarified in the hearing.[54] Her testimony was also corroborated by three (3) students who witnessed the incident and talked to Paula Mae.[55] Against this, respondent posits that petitioner's alibi cannot prevail especially since his classroom was in the same building, a mere floor and a five-minute walk from the incident scene.[56]

Respondent points out that petitioner refused to apologize to Paula Mae; instead, he filed a complaint against her to ensure that she would withdraw her case.[57] It notes that he would do this every time a complaint is filed against him, causing the other party to withdraw or just amicably settle the matter.[58]

According to respondent, Paula Mae's case was among the many complaints that show petitioner's abrasive personality

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[49] *Id.* at 418 and 442.

[50] *Id.* at 447 and 458.

[51] *Id.* at 448.

[52] *Id.* at 447 and 459.

[53] *Id.* at 445.

[54] *Id.* at 437 and 469.

[55] *Id.* at 445.

[56] *Id.* at 446.

[57] *Id.* at 443.

[58] *Id.* at 461.

and propensity to repeat the same transgressions.[59] His unjust refusal to sign the receiving copy of the documents being served on him only adds to his unprofessional behavior, respondent notes.[60] It argues that employers may validly consider previous records, especially if offenses are similar in nature,[61] and can let go of an employee whose service is inimical to its interests.[62]

Respondent also argues that the length of petitioner's service does not mitigate his liability, but actually demands a greater responsibility to comply with workplace rules.[63] It asserts that petitioner's previous merits are immaterial and do not disprove the incident or negate his liability.[64]

Respondent contends that it is not guilty of unfair labor practice, since the dismissal was not related to the Union's activities, its right to self-organize, or its existence; rather, it was solely due to petitioner's personal actions. Prior to the incident, respondent submits, it even extended him a cash advance of ₱200,000.00, showing their previously good relations.[65] In any case, respondent maintains that the Union president is not immune from suit or liability for gross misconduct or unprofessional behavior.[66]

Finally, as to the news of petitioner's dismissal being published, respondent states that this was done to protect its reputation against petitioner's untruthful public statements that he was dismissed for his views on the K-12 program. Respondent attests that it only sought to clarify that the cause of his dismissal was his misconduct.[67]

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[59] *Id.* at 418 and 449-450.

[60] *Id.* at 464.

[61] *Id.* at 451.

[62] *Id.* at 457 and 468.

[63] *Id.* at 457.

[64] *Id.* at 432-433.

[65] *Id.* at 470.

[66] *Id.* at 472.

[67] *Id.* at 433-434.

In his Reply,[68] petitioner explains that as the Union's president, he is sometimes in collision with the school management, especially when promoting the rights and welfare of association members and, occasionally, students.[69] He also points out that the cash advance of ₱200,000.00 is not an extraordinary accommodation, as it is given to all qualified employees.[70]

The issues for this Court's resolution are:

First, whether or not petitioner Orestes Delos Reyes was validly dismissed from employment; and

Second, whether or not his dismissal constitutes unfair labor practice.

This Court affirms the Court of Appeals' ruling.

We will no longer review the lower tribunals' factual findings. In a Rule 45 petition, this Court only considers questions of law. It is not our function to re-analyze evidence. In *Fuji Television Network, Inc. v. Espiritu*:[71]

> When a decision of the Court of Appeals under a Rule 65 petition is brought to this court by way of a petition for review under Rule 45, only questions of law may be decided upon. As held in *Meralco Industrial v. National Labor Relations Commission*:
>
> > This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of appeals, are conclusive upon the parties and binding on this Court.

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[68] *Id.* at 479-482.

[69] *Id.* at 480.

[70] *Id.* at 481.

[71] 749 Phil. 388 (2014) [Per *J.* Leonen, Second Division].

Career Philippines v. Serna, citing *Montoya v. Transmed*, is instructive on the parameters of judicial review under Rule 45:

> As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:
>
> > In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.* In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[72] (Emphasis in the original, citations omitted)

Here, both the Court of Appeals and the Panel of Voluntary Arbitrators found that petitioner exclaimed *"anak ng puta"* upon encountering Paula Mae. Their findings on his subsequent acts are also similar and were not shown to be devoid of support. The lower tribunals similarly considered the evidence by both parties. Thus, this Court accords weight to these findings.

This Court finds that petitioner was validly dismissed.

The following are grounds for termination under the Labor Code:

> ARTICLE 297. (282) *Termination by Employer.* — An employer may terminate an employment for any of the following causes:

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[72] *Id.* at 415-416.

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

Petitioner was charged with gross misconduct and unprofessional behavior in violation of Section 16(4) of Batas Pambansa Blg. 232, or the Education Act of 1982.[73] The provision states:

SECTION 16. *Teacher's Obligations.* — Every teacher shall:

1. Perform his duties to the school by discharging his responsibilities in accordance with the philosophy, goals, and objectives of the school.
2. Be accountable for the efficient and effective attainment of specified learning objectives in pursuance of national development goals within the limits of available school resources.
3. Render regular reports on performance of each student and to the latter and the latter's parents and guardians with specific suggestions for improvement.
4. *Assume the responsibility to maintain and sustain his professional growth and advancement and maintain professionalism in his behavior at all times.*
5. Refrain from making deductions in students' scholastic ratings for acts that are clearly not manifestations of poor scholarship.
6. Participate as an agent of constructive social, economic, moral, intellectual, cultural and political change in his school and

[73] *Rollo,* p. 202.

> the community within the context of national policies. (Emphasis supplied)

In *National Labor Relations Commission v. Salgarino*,[74] this Court elaborated on what constitutes serious misconduct:

> Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and *implies wrongful intent and not mere error of judgment*. The misconduct to be serious within the meaning of the act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the work of the employee to constitute just cause from his separation.
>
> In order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been *performed with wrongful intent*.[75] (Emphasis in the original, citation omitted)

Misconduct is not considered serious or grave when it is not performed with wrongful intent. If the misconduct is only simple, not grave, the employee cannot be validly dismissed.[76]

A teacher exclaiming *"anak ng puta"* after having encountered a student is an unquestionable act of misconduct. However, whether it is serious misconduct that warrants the teacher's dismissal will depend on the context of the phrase's use. *"Anak ng puta"* is similar to *"putang ina"* in that it is an expletive sometimes used as a casual expression of displeasure, rather than a personal attack or insult. In *Pader v. People*:[77]

> In *Reyes vs. People*, we ruled that the expression *"putang ina mo"* is a common enough utterance in the dialect that is often employed, not really to slander but rather to express anger or displeasure. In

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[74] 529 Phil. 355 (2006) [Per J. Chico-Nazario, First Division].

[75] *Id.* at 368-369.

[76] *Id.* at 368.

[77] 381 Phil. 932 (2000) [Per J. Pardo, First Division].

fact, more often, it is just an expletive that punctuates one's expression of profanity. We do not find it seriously insulting that after a previous incident involving his father, a drunk Rogelio Pader on seeing Atty. Escolango would utter words expressing anger. Obviously, the intention was to show his feelings of resentment and not necessarily to insult the latter. Being a candidate running for vice mayor, occasional gestures and words of disapproval or dislike of his person are not uncommon.[78] (Citation omitted)

A review of the records reveals that the utterance in question, *"anak ng puta,"* was an expression of annoyance or exasperation. Both petitioner and Paula Mae were pulling from each side of the door, prompting the professor to exclaim frustration without any clear intent to maliciously damage or cause emotional harm upon the student. That they had not personally known each other before the incident, and that petitioner had no personal vendetta against Paula Mae as to mean those words to insult her, confirm this conclusion.

However, it is petitioner's succeeding acts that aggravated the misconduct he committed. He not only denied committing the act, but he also refused to apologize for it and even filed a counter-complaint against Paula Mae for supposedly tarnishing his reputation. He even refused to sign the receiving copy of the notices that sought to hold him accountable for his act.

While uttering an expletive out loud in the spur of the moment is not grave misconduct per se, the refusal to acknowledge this mistake and the attempt to cause further damage and distress to a minor student cannot be mere errors of judgment. Petitioner's subsequent acts are willful, which negate professionalism in his behavior. They contradict a professor's responsibility of giving primacy to the students' interests and respecting the institution in which he teaches. In the interest of self-preservation, petitioner refused to answer for his own mistake; instead, he played the victim and sought to find fault in a student who had no ill motive against him.

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[78] *Id.* at 936.

Indeed, had he been modest enough to own up to his first blunder, petitioner's case would have gone an entirely different way.

This Court likewise notes the Panel of Voluntary Arbitrators' factual finding that a similar complaint had already been filed against petitioner. In its Decision, it found:

> In another occasion, a complaint for verbal abuse was filed against individual complainant by certain parents for and in behalf of their daughter, a dean's lister of respondent Adamson. However, as indicated by their parents' subsequent letter to the Director of Office for Student Affairs, they agreed to withdraw the said complaint. Their decision to withdraw the complaint was due to the parties' understanding that herein individual complainant should also withdraw his separate complaint against their daughter and the same should not reflect to their daughter's academic record.[79]

The Panel of Voluntary Arbitrators also noted that his aggressive behavior extends to his colleagues:

> In particular, The Director of Human Resource Department Office called his attention through a memorandum for his display of unprofessional behavior. The Director personally witnessed complainant that he openly shouted and displayed dirty finger sign against his immediate superior Chairperson Milagros Urbano.
>
> His subsequent Chairperson Dr. Josielyn Mendoza likewise previously filed a complaint against him for his unruly and disruptive behavior. Among others, Chairperson Mendoza stated that when she was presiding their social science faculty meeting and about to present a fellow professor to report the financial expenses during the previous academe conference, herein individual complainant suddenly interrupted and refused the report to proceed and angrily shouted at her "*Tama na! Mag prankahan tayo!*; that individual complainant exclaimed during the same meeting in front of the other faculty members that Professor Joseph Medillo seems to be the apple of the eyes of their Chairperson; that sometime in 2012, she was threatened by individual complainant saying *"Kapag binigay mo kay Don-don xxx ang OJT ... pasasabugin ko ang departamento xxx Wag kang tumawa, hindi ako nagbibiro, pasasabugin ko talaga ang departamento."*;

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[79] *Rollo*, p. 284.

that she previously witnessed individual complainant challenging Professor Ricky Maano to a fist fight; that "although Prof. Delos Reyes and his infamous attitude was never an urban legend, I and the Social Science department (his mother department) have remained deaf and silent in dealing with all his temperaments through the years. There were already a number of incidents that Prof. Delos Reyes had shown his combative behaviour towards me as the chairperson of the department."

Another separate complaint, Chairperson Mendoza also stated that individual complainant without any provocation suddenly confronted her while she was having a chat with a professor. She reported that "he looked at me with furious eyes and poked a finger at my face and said: *Kaya ikaw tigilan mo na ang pagsasabi na walang ginagawa ang Union!* In a loud voice and in an intimidating manner. xxx *Pasalamat ka at nirerespeto pa kita dahil kay Buknoy!* Referring to my younger brother. xxx his notorious attitude and unprofessional behaviour is not unknown in the university. However, no matter how disruptive and unruly his behaviour may be towards other members of this University, he can freely do so with impunity."[80]

The Ad Hoc Committee had the same findings:

The Committee has been apprised as to the existence of a report and complaint pertaining to his drastic conduct and display of disrespectful behavior last September 1, 2014 when he confronted Dr. Josielyn M. Mendoza, his former Chair at the Social Sciences Department. Respondent has reportedly looked at Ms. Mendoza with furious eyes and poked a finger at her face and said "*Kaya ikaw tigilan mo na ang pagsasabi mo na walang ginagawa ang* Union!" in a loud voice and in an intimidating manner[.] She pointed in her letter-complaint that it was not the first time that respondent disrespected her. She further continued in her complaint that "His notorious attitude and unprofessional behavior is not unknown in the University. However, no matter how disruptive and unruly his behavior may be towards other members of this University he can freely do so with impunity."

In 2001, in his 201 File, the then Director for Human Resource Development Office, Ana Liza M. Ragas even cited the respondent with "display of unprofessional behavior in the office" when he was personally seen to have shouted words and resorted to dirty finger

[80] *Id.*

sign against his past Chairperson, Ms. Milagros Urbano. Even granting for the sake of argument, that there has been a heated exchange argument between the two, a dirty finger sign smacks of indiscipline and unprofessionalism.

On a final note, the open defiance and disrespect to school authorities and processes are magnified in this case as respondent refused to sign any order served on him. He even used, intentionally or unintentionally the letterhead of the AUFEA in his letters to the Committee and signed the same as AUFEA President when he is being complained of as a faculty member and not in his capacity as the Union President. This only shows that respondent had the propensity to commit and display among his peers and, more so, to the students a misbehavior which is a characteristics (*sic*) of misconduct.[81] (Citations omitted)

The reports reveal petitioner's pugnacious character and ill-mannered conduct. In *Sy v. Neat, Inc.*[82] this Court discussed the principle of totality of infractions:

In determining the sanction imposable on an employee, the employer may consider the former's past misconduct and previous infractions. Also known as the principle of totality of infractions, the Court explained such concept in *Merin v. National Labor Relations Commission, et al.*, thus:

> The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past

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[81] *Id.* at 213-214.

[82] *Sy v. Neat, Inc.*, G.R. No. 213748, November 27, 2017, 846 SCRA 612 [Per *J.* Peralta, Second Division].

misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[83] (Citation omitted)

Likewise, in *Sugue v. Triumph International (Phils.), Inc.*,[84] this Court stated that employers are not expected to retain an employee whose behavior causes harm to its establishment:

Indeed, the law imposes many obligations on the employer such as providing just compensation to workers, and observance of the procedural requirements of notice and hearing in the termination of employment. On the other hand, *the law also recognizes the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to his interests*.[85] (Citation omitted)

Petitioner cannot rely on his 20-year stay in the university to shield him from liability. Quite the contrary, "the longer an employee stays in the service of the company, the greater is his responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company."[86]

For all these reasons, petitioner's dismissal was valid.

II

Likewise, respondent is not guilty of unfair labor practice.

The various acts of unfair labor practice are found under Article 259 of the Labor Code:

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[83] *Id.* at 630-631.

[84] 597 Phil. 320 (2009) [Per *J.* Leonardo-De Castro, First Division].

[85] *Id.* at 341.

[86] *Punzal v. ETSI Technologies, Inc.*, 546 Phil. 704, 717-718 (2007) [Per *J.* Carpio Morales, Second Division].

ARTICLE 259. [248] *Unfair Labor Practices of Employers.* — It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: *Provided*, That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

Unfair labor practices are violative of the constitutional right of workers to self-organize:

ARTICLE 258. [247] *Concept of Unfair Labor Practice and Procedure for Prosecution Thereof.* — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

Consequently, unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment as herein provided.

Subject to the exercise by the President or by the Secretary of Labor and Employment of the powers vested in them by Articles 263 and 264 of this Code, the civil aspects of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fees and other affirmative relief, shall be under the jurisdiction of the Labor Arbiters. The Labor Arbiters shall give utmost priority to the hearing and resolution of all cases involving unfair labor practices. They shall resolve such cases within thirty (30) calendar days from the time they are submitted for decision.

Recovery of civil liability in the administrative proceedings shall bar recovery under the Civil Code.

No criminal prosecution under this Title may be instituted without a final judgment finding that an unfair labor practice was committed, having been first obtained in the preceding paragraph. During the pendency of such administrative proceeding, the running of the period of prescription of the criminal offense herein penalized shall be considered interrupted: *Provided, however,* That the final judgment

in the administrative proceedings shall not be binding in the criminal case nor be considered as evidence of guilt but merely as proof of compliance of the requirements therein set forth.

In *UST Faculty Union v. University of Santo Tomas*,[87] this Court ruled that the person who alleges the unfair labor practice has the burden of proving it with substantial evidence:

> The general principle is that one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in the case of ULP, the alleging party has the burden of proving such ULP.
>
> Thus, we ruled in *De Paul/King Philip Customs Tailor v. NLRC* that "a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process".
>
> While in the more recent and more apt case of *Standard Chartered Bank Employees Union (NUBE) v. Confesor*, this Court enunciated:
>
> > **In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim.** Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . .
>
> In other words, whether the employee or employer alleges that the other party committed ULP, it is the burden of the alleging party to prove such allegation with substantial evidence. Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions.[88] (Emphasis in the original, citations omitted)

In determining whether an act of unfair labor practice was committed, the totality of the circumstances must be considered.[89] In *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*,[90] this Court discussed that if the unfair

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[87] 602 Phil. 1016 (2009) [Per *J.* Velasco, Jr., Second Division].

[88] *Id.* at 1025-1026.

[89] See *Republic Savings Bank v. Court of Industrial Relations*, 128 Phil. 230 (1967) [Per *J.* Castro, *En Banc*].

[90] 362 Phil. 452 (1999) [Per *J.* Bellosillo, Second Division].

treatment does not relate to or affect the workers' right to self-organize, it cannot be deemed unfair labor practice. A dismissal of a union officer is not necessarily discriminatory, especially when that officer committed an act of misconduct. In fact, union officers are held to higher standards:

While an act or decision of an employer may be unfair, certainly not every unfair act or decision constitutes unfair labor practice (ULP) as defined and enumerated under Art. 248 of the Labor Code.

There should be no dispute that all the prohibited acts constituting unfair labor practice in essence *relate to the workers' right to self-organization. Thus, an employer may be held liable under this provision if his conduct affects in whatever manner the right of an employee to self-organize*. The decision of respondent GREPALIFE to consider the top officers of petitioner UNION as unfit for reinstatement is not essentially discriminatory and constitutive of an unlawful labor practice of employers under the above-cited provision. Discriminating in the context of the Code involves either encouraging membership in any labor organization or is made on account of the employee's having given or being about to give testimony under the Labor Code. These have not been proved in the case at bar.

To elucidate further, there can be no discrimination where the employees concerned are not similarly situated. *A union officer has larger and heavier responsibilities than a union member. Union officers are duty bound to respect the law and to exhort and guide their members to do the same; their position mandates them to lead by example.* By committing prohibited activities during the strike, de la Rosa as Vice President of petitioner UNION demonstrated a high degree of *imprudence and irresponsibility.* Verily, this justifies his dismissal from employment. Since the objective of the Labor Code is to ensure a stable but dynamic and just industrial peace, the dismissal of undesirable labor leaders should be upheld.

It bears emphasis that the employer is free to regulate all aspects of employment according to his own discretion and judgment. This prerogative flows from the established rule that labor laws do not authorize substitution of judgment of the employer in the conduct of his business. Recall of workers clearly falls within the ambit of management prerogative. The employer can exercise this prerogative without fear of liability so long as it is *done in good faith for the advancement of his interest and not for the purpose of defeating or*

circumventing the rights of the employees under special laws or valid agreements. It is valid as long as it is not performed in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.[91] (Emphasis supplied, citations omitted)

In this case, it is clear that petitioner's dismissal, which was brought about by his personal acts, does not constitute unfair labor practice as provided under the Labor Code. Dismissing him was not meant to violate the right of the university employees to self-organize. Neither was it meant to interfere with the Union's activities.[92] Likewise, petitioner failed to prove that the proceedings were done with haste and bias. Finally, petitioner cannot raise the defense that he was the Union's president; this does not make him immune from liability for his acts of misconduct.

Petitioner also insists that respondent's paid advertisement on the Philippine Daily Inquirer was meant to tarnish his and his family's reputation.[93] However, a reading of the advertisement reveals that it was only meant to clarify particular circumstances about the incident. It reads:

STATEMENT AND CLARIFICATION ON THE DISMISSAL FROM SERVICE OF A FACULTY MEMBER AT ADAMSON UNIVERSITY

Misleading information as to the reason for the dismissal from employment of Mr. Orestes delos Reyes, Jr. at Adamson University is being propagated inside and out of the campus. To put the record straight, the Administration hereby issues this statement regarding the finding of administrative culpability of Mr. delos Reyes, a faculty member and the sitting President of the Adamson University Faculty and Employees Association (AUFEA).

Mr. delos Reyes was charged and found guilty of ***gross misconduct*** and ***unprofessional behavior*** in violation of Section 16 par. 4 of the Education Act of 1982 when he, without provocation, uttered abusive language, in a loud and sharp manner, to a minor female student.

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[91] *Id.* at 463-465.

[92] *Id.*

[93] *Id.* at 367.

Please be informed of the following:

There was a valid charge. Let it be known that the charges against Mr. delos Reyes stemmed from a complaint of abuse of a minor under RA 7610 filed by a BS Psychology student and her mother last September 2, 2014.

There was an impartial body. The complaint has been taken cognizance of, heard and investigated by an impartial body created by the University President.

There was due process and full accord of rights. Mr. delos Reyes has been fully accorded with his rights. He was given ample opportunity to explain his side. A hearing has been conducted and parties were given the right to confront the witnesses against them and adduce further evidence. Mr. delos Reyes was even represented by his counsel during the hearing.

There is no connection between his stand on the K-12 issue and his dismissal. Contrary to Mr. delos Reyes's claims, he was not dismissed from service because of his stand on the K-12 program. Proceedings on the administrative complaint against him began on September 2, 2014, more than a month before the K-12 forum organized by the AUFEA on October 20 and 21, 2014. The University recognizes his right to freely express his viewpoint on the issue. This, however, is irrelevant to the charges made against him by the student and has no bearing on the decision to dismiss him.

The administration wishes to underscore that culpability attaches to anyone, regardless of position and status. The speculation that Mr. de los Reyes is being singled out and persecuted, as being spread by unnamed individuals, thus, giving the insinuation of union busting is untrue and false. Position in the academe or in the union does not make one immune from liability or provide an exempting circumstance. Mr. de los Reyes has been charged in his capacity as member of Faculty and not his being the President of AUFEA. His other designation is by far immaterial to the charges leveled against him.

To this end, the Administration exhorts the community to be discerning and perceptive of the kind of information and talks being disseminated on the matter stated.[94] (Emphasis in the original)

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[94] *Id.* at 115.

An employer's management prerogative to dismiss an employee is valid as long as it is done in good faith and without malice. In *Wise and Co., Inc. v. Wise Co., Inc. Employees Union-NATU*:[95]

> The Court holds that it is the prerogative of management to regulate, according to its discretion and judgment, all aspects of employment. This flows from the established rule that labor law does not authorize the substitution of the judgment of the employer in the conduct of its business. Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employers' interest and not for the purpose of defeating or circumventing the rights of employees under special laws or valid agreement and are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.[96] (Citations omitted)

In this case, this Court finds no bad faith on respondent's part in dismissing petitioner.

WHEREFORE, the Petition is **DENIED.** The Court of Appeals' April 28, 2016 Decision and August 17, 2016 Resolution are **AFFIRMED**. Petitioner Orestes Delos Reyes was validly dismissed from employment.

SO ORDERED.

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

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[95] 258-A Phil. 316 (1989) [Per *J.* Gancayco, First Division].

[96] *Id.* at 321-322.

FIRST DIVISION

[G.R. No. 228356. March 9, 2020]

MERIAN B. SANTIAGO, *petitioner, vs.* **SPOUSES EDNA L. GARCIA and BAYANI GARCIA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; PARTNERSHIP; TO FORM A PARTNERSHIP REQUIRES AN AGREEMENT OR CONTRACT.—** By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. Partnership is essentially a result of an agreement or a contract, either express or implied, oral or in writing, between two or more persons. x x x [T]he receipt by a person of a share of the profits, or of a payment of a contingent amount in case of profits earned, is not a conclusive evidence of partnership. Article (Art.) 1769(3) of the Civil Code provides that "the sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived". There must be an unmistakable intention to form a partnership[.]

2. **ID.; ID.; CONTRACT OF SIMPLE LOAN; EXPLAINED. —** By a contract of simple loan, one of the parties delivers to another money upon the condition that the same amount of the same kind and quality shall be paid. A person who receives a loan of money acquires ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

3. **ID.; CONTRACTS; IN AN INVESTMENT CONTRACT IN A LENDING BUSINESS, THE PARTIES ARE FREE TO AGREE THAT THE INVESTMENT SHALL ENTAIL THE SHARING OF PROFITS AND LOSSES, OR OTHERWISE.** — The facts demonstrate that Edna was engaged in the business of lending and that she solicited funds from Merian which Edna then used to grant loans to other persons. The parties' contemporaneous and subsequent acts reveal their intent to enter into an investment contract in a lending business. x x x Having

established that the transaction between Merian and Edna is one of investment in a lending business, the question to be addressed is whether Edna is contractually bound to return Merian's capital. Investment is ordinarily defined as the placement of capital or lay out of money in a way intended to secure income or profit from its employment. As in all contractual relations, an investment contract is largely governed by the stipulations, clauses, terms, and conditions as the parties may deem convenient, which shall be respected as long as it is not contrary to law, morals, good customs, public order, or public policy. Thus, the parties are free to agree that the investment shall entail the sharing of profits and losses, or otherwise.

APPEARANCES OF COUNSEL

Chaves Hechanova & Lim Law Offices for petitioner.
H.E. Arceo & Associates Law Offices for respondents.

D E C I S I O N

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

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated January 26, 2016 and Resolution[3] dated November 11, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 101908. In dismissing petitioner's appeal, the CA ruled that the contractual relation between the parties is one of investment and, as such, entails risk on the part of the petitioner as investor. Finding petitioner to have invested her money, the CA ruled that she has no cause of action for the return of investment.

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[1] *Rollo*, pp. 3-23.

[2] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ricardo R. Rosario and Marie Christine Azcarraga Jacob, concurring; *id.* at 25-33.

[3] *Id.* at 35-37.

Facts

In November 2000, petitioner Merian B. Santiago (Merian) was enticed by respondent Edna L. Garcia (Edna) to invest money in the latter's lending business with a promise of a high return in terms of monthly interest ranging from 5% to 8%. The parties agreed that monthly interest shall be remitted by Edna to Merian and that the principal amount invested shall be returned to Merian upon demand.[4] Neither of the parties, however, presented evidence to show that such agreement was reduced in writing.

Merian began investing several amounts from November 15, 2000 to June 30, 2003, reaching an aggregate amount of ₱1,569,000.00.[5] Edna had remitted to Merian the amount of ₱877,000.00 as interest on said amounts. However, in December 2003, Edna defaulted in remitting to Merian the interest due from said investments. Despite demands, Edna failed to remit the interest to Merian.

Consequently, Merian, through her lawyer, sent a letter dated January 20, 2004 to Edna demanding for the return of Merian's total investment of ₱1,569,000.00.[6] Merian also went to Edna's house where the latter agreed to pay the principal amount invested on a "pay when able" basis. On the same day, Edna paid Merian ₱15,000.00 in cash and ₱5,000.00 in gift cheque, for a total of ₱20,000.00.[7] Merian then signed a receipt prepared by Edna wherein she acknowledged that the ₱20,000.00 constitutes partial payment for the principal amount of ₱1,569,000.00.[8] The acknowledgment receipt[9] reads as follows:

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[4] *Id*. at 5.

[5] *Id*. at 78.

[6] *Id*. at 47.

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

[8] *Id*. at 48.

[9] *Id*.

This is to acknowledge receipt from Edna L. Garcia **partial payment from [the] principal** this 18th day of January 2004 the amount of [₱]20,000 ([₱]15,000 cash and [₱]5,000 gift cheque)

Signed
Me-anne Bernardo

[T]otal Principal
[₱]1,569,000[10] (emphasis supplied)

Because Merian learned that several other persons were likewise taken advantage of by Edna, Merian filed the complaint *a quo* on February 12, 2004, for sum of money with prayer for the issuance of a writ of preliminary attachment against spouses Edna L. Garcia and Bayani Garcia (spouses Garcia). In their Answer, spouses Garcia admitted the facts that Merian was enticed by Edna to invest in her lending business that will yield a high return in terms of monthly interest ranging from 5% to 8%, and that under said investment proposal, it was agreed that the interest earned shall be remitted by Edna to Merian on a monthly basis, while the principal amount shall be returned upon Merian's demand.[11] Nevertheless, spouses Garcia sought for the dismissal of the complaint for lack of cause of action since the amounts given by Merian were investments, not loans.

The Regional Trial Court (RTC) rendered its decision finding that a partnership was formed between Merian and Edna – the former as capitalist partner and the latter as industrial partner. It ruled that a person who invested in a business which incurred losses cannot convert such investment into a loan.[12] As such, the RTC dismissed Merian's complaint, and further ordered the payment of moral damages, attorney's fees, and costs of suit in favor of spouses Garcia.

When Merian's motion for reconsideration was denied, she appealed to the CA.

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[10] *Id*.

[11] *Id*. at 60.

[12] *Id.* at 81.

The CA disagreed with the RTC in its finding that a partnership was formed between Merian and Edna. The CA found that the money was given not as Merian's contribution or share in Edna's capital in the lending business, but as an investment that will earn interest in case of profit. Nevertheless, the CA agreed with the RTC that the complaint lacked cause of action as Merian was without legal right to recover her investment in case of losses, as to what happened to Edna's lending business, since an investment entails business risk. The CA thus affirmed the dismissal of Merian's complaint but deleted the award for moral damages, attorney's fees, and costs of suit.

Merian's motion for partial reconsideration met similar denial from the CA. Thus, this petition.

Issue

The sole issue raised for resolution is whether the CA erred in finding that the contractual relation between Merian and Edna is one of investment which entails the assumption of business risk. Merian maintains that while she agreed to invest or place her money in Edna's lending business, it was their further agreement that the amount so invested will earn interest, and that the principal amount shall be returned to her upon demand.[13]

Ruling of the Court

There is merit in the petition.

There is no dispute that Merian invested the total amount of ₱1,569,000.00 as this much was admitted by spouses Garcia in their answer to the complaint.[14] The contention lies as to whether Edna is obligated to return the principal amount to Merian upon demand. In resolving the issue in the negative, the RTC held that a partnership was formed between Merian and Edna; while the CA held that the contractual relation between the parties was neither a partnership nor a contract of loan but was an investment that entailed business risk.

[13] *Id*. at 15.

[14] *Id*. at 26.

A partnership, a simple contract of loan, and an investment contract carry peculiar definitions and are governed by pertinent laws. The existence of a partnership, simple loan, or an investment contract should not, therefore, be inferred lightly, especially where any of its requisite elements are lacking.

The Court cannot subscribe to the view that Merian and Edna formed a partnership. By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[15] Partnership is essentially a result of an agreement or a contract, either express or implied, oral or in writing, between two or more persons. Here, there was neither allegation nor proof that Merian and Edna agreed to enter into a partnership for purposes of carrying out the lending business.

There was likewise no agreement for the sharing of profits, only that Merian expects to receive remittance of monthly interest from the amount she invested. At any rate, the receipt by a person of a share of the profits, or of a payment of a contingent amount in case of profits earned, is not a conclusive evidence of partnership. Article (Art.) 1769(3) of the Civil Code provides that "the sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived."[16] There must be an unmistakable

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[15] CIVIL CODE, Article 1767.

[16] Art. 1769. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by Article 1825, persons who are not partners as to each other are not partners as to third persons;

(2) Co-ownership or co-possession does not of itself establish a partnership, whether such-co-owners or co-possessors do or do not share any profits made by the use of the property;

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived:

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no

intention to form a partnership which is lacking in this case.[17] Most importantly, the facts do not disclose that there is mutual agency between Merian and Edna, that is, neither party alleged that she can bind by her acts the other, and can be bound by the acts of the other in the ordinary course of business.

The facts of the instant case do not support the conclusion that the parties entered into a contract of loan either. By a contract of simple loan, one of the parties delivers to another money upon the condition that the same amount of the same kind and quality shall be paid.[18] A person who receives a loan of money acquires ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.[19] Merian herself testified that Edna did not borrow money from her and Merian

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such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise;
(b) As wages of an employee or rent to a landlord;
(c) As an annuity to a widow or representative of a deceased partner;
(d) As interest, on a loan, though the amount of payment vary with the profits of the business;
(e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

[17] *Obillos, Jr. v. Commissioner of Internal Revenue*, 223 Phil. 650, 654 (1985).

[18] CIVIL CODE, Art. 1933 provides:

Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In *commodatum* the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.

[19] *Id.*, Art. 1953 provides:

Art. 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

consistently alleged that she invested money in Edna's lending business. This is consistent with the fact that Merian gave to Edna money in various amounts and on various dates, in a series of transactions beginning November 15, 2000 to June 30, 2003, for which she earned profits in the form of interest payments.

The facts therefore demonstrate that Edna was engaged in the business of lending and that she solicited funds from Merian which Edna then used to grant loans to other persons. The parties' contemporaneous and subsequent acts reveal their intent to enter into an investment contract in a lending business.[20] Parenthetically, the lending activity conducted by Edna is what the law under Republic Act (R.A.) No. 9474[21] or the Lending Company Act of 2007 presently seeks to regulate. Under R.A. 9474, only corporations with a validly subsisting authority from the Securities and Exchange Commission can engage in the business of granting loans sourced from its own capital funds or from funds coming from not more than nineteen (19) persons. Nevertheless, since R.A. No. 9474 was passed into law only on May 22, 2007, the lending activities of Edna conducted from 2000 to 2003 cannot be considered unlawful.

Having established that the transaction between Merian and Edna is one of investment in a lending business, the question to be addressed is whether Edna is contractually bound to return Merian's capital. Investment is ordinarily defined as the placement of capital or lay out of money in a way intended to secure income or profit from its employment. As in all contractual relations, an investment contract is largely governed by the stipulations, clauses, terms, and conditions as the parties may deem convenient, which shall be respected as long as it is not contrary to law, morals, good customs, public order, or public policy.[22] Thus, the parties are free to agree that the investment shall entail the sharing of profits and losses, or otherwise.

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[20] See, *id*. at Art. 1371.

[21] AN ACT GOVERNING THE ESTABLISHMENT, OPERATION AND REGULATION OF LENDING COMPANIES.

[22] CIVIL CODE, Art. 1306.

In this case, Merian alleged that she and Edna agreed that Merian will be investing capital on the lending business which shall earn a 5% monthly interest; that the capital will be revolving; and that the capital shall be returned upon demand. That Edna agreed to return the principal amount to Merian is further supported by the acknowledgment receipt which Edna herself had written. In said acknowledgment receipt, Edna paid the amount of ₱20,000.00 as "partial payment from the principal" – thus acknowledging her obligation to return the principal amount invested. Notably as well, Edna failed to present countervailing evidence to demonstrate the real agreement between the parties as her husband, who solely participated at the trial, merely denied knowledge of the agreement between Merian and Edna.

Even assuming that the agreement between the parties was that Merian shall bear the risk of losing the principal amount she invested, in case of business loss, there was no allegation nor proof presented that, indeed, Edna's lending business suffered business loss. The ruling, therefore, that the principal amount should no longer be returned because of Merian's assumption of risk lacks factual basis.

WHEREFORE, the petition is **GRANTED.** The Decision dated January 26, 2016 and the Resolution dated November 11, 2016 of the Court of Appeals are **REVERSED** and **SET ASIDE**. Spouses Edna L. Garcia and Bayani Garcia are **ORDERED** to **PAY** Merian B. Santiago the principal amount of One Million Five Hundred Forty-Nine Thousand Pesos (₱1,549,000.00) with interest at the rate of 12% per annum from January 20, 2004, the date of extrajudicial demand, until June 30, 2013, and at the rate of 6% per annum from July 1, 2013, until full payment.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 230626. March 9, 2020]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDWARD SUMAYOD *y* OSANO and ELISEO SUMAYOD *y* LAGUNZAD,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-RAPE LAW OF 1997; RAPE BY SEXUAL ASSAULT AND STATUTORY RAPE; ELEMENTS.— Article 266-A, paragraphs 1 and 2, of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provide the following elements for the crimes of statutory rape and rape by sexual assault: ARTICLE 266-A. *Rape: When and How Committed.* — Rape is committed: 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances: a. Through force, threat, or intimidation; b. When the offended party is deprived of reason or otherwise unconscious; c. By means of fraudulent machination or grave abuse of authority; and d. ***When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.*** 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

2. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED.— This Court has held time and again that the trial court's factual findings and the conclusions of law based on these are given the highest respect due to its unique opportunity to observe the demeanor, attitude, and conduct of the witnesses while on the stand. In turn, the appellate courts will not disturb the trial court's factual findings unless it is shown that certain facts or circumstances that would substantially affect the result of the case have been overlooked or misinterpreted. In this case, both the trial court and appellate

court found that the prosecution proved beyond reasonable doubt that accused-appellants had committed the crimes of statutory rape and rape by sexual assault.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY RAPE VICTIM'S FAILURE TO RESIST AN ATTACK. — It has long been established that a victim's failure to struggle or resist an attack on his or her person does not, in any way, deteriorate his or her credibility. This Court has ruled that physical resistance need not be established to prove the commission of a rape or sexual assault, as the very nature of the crime entails the use of intimidation and fear that may paralyze a victim and force him or her to submit to the assailant. Furthermore, different people have varying reactions during moments of trauma; more so, a six (6)-year-old child being attacked by people whom she believed to be her protectors.

4. ID.; ID.; ID.; NOT AFFECTED BY DELAY IN REPORTING THE RAPE CRIME CONSIDERING THE ACCUSED'S MORAL ASCENDANCY OVER THE VICTIM.— The fact that it took private complainant more than three (3) months to report the incidents of assault on her does not affect her credibility in the slightest. She was left under accused-appellant Eliseo's care, lived in his house for months, and depended on him for the basic necessities of life. The moral ascendancy accused-appellant Eliseo had over her is enough to explain why she neither resisted the abuse as it was happening nor reported it afterwards for fear of being deprived of food, water, or a roof over her head.

5. ID.; ID.; ALIBI; TO BE CREDIBLE, IT MUST SHOW THAT IT WAS PHYSICALLY IMPOSSIBLE FOR ACCUSED TO BE AT THE CRIME SCENE AT THE TIME OF THE CRIME. — [D]enial and alibi are not enough to overcome the victim's positive and categorical statements. For his defense of alibi to be credible, he must show that it was physically impossible for him to be at the crime scene when the crime was committed. This, he failed to do.

6. CRIMINAL LAW; STATUTORY RAPE; PENALTY AND DAMAGES.— [T]his Court affirms the conviction of accused-appellant Eliseo for one (1) count of statutory rape under Article

266-A, paragraph 1 of the Revised Penal Code and the imposition of *reclusion perpetua*. As to his civil liabilities for the crime of statutory rape, this Court reduces the award of damages to ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages in accordance with *People v. Jugueta*.

7. ID.; PROPER NOMENCLATURE AND PENALTY OF THE CRIME; SEXUAL ASSAULT UNDER ART. 266-A, PARAGRAPH 2 OF THE REVISED PENAL CODE, IN RELATION TO SECTION 5(B) OF RA 7610.— As to the charge of one (1) count of rape by sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, this Court affirms accused-appellant Eliseo's conviction subject to modification of its nomenclature to Sexual Assault under Article 266-A, paragraph 2 of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610 pursuant to the recent case of *People v. Tulagan*, where this Court took the opportunity to reconcile the provisions of Acts of Lasciviousness, Rape, and Sexual Assault under the Revised Penal Code, as amended by Republic Act No. 8353 *vis-à-vis* Sexual Intercourse and Lascivious Conduct under Section 5 (b) of Republic Act No. 7610 also known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

One cannot expect victims of rape to have a uniform reaction when such degrading acts and defilements are committed on their person. This is even truer for victims of a tender age who still do not understand the implications of rape on their development and are overcome by fear and intimidation from their assailants.

This resolves the Ordinary Appeal from the Court of Appeals Decision.[1] The Court of Appeals affirmed the Decision[2] of the Regional Trial Court, Branch 31, San Pedro, Laguna finding Edward Sumayod *y* Osano guilty beyond reasonable doubt of one (1) count of rape and one (1) count of rape by sexual assault in Criminal Cases No. 09-7188-SPL and 09-7189-SPL and Eliseo Sumayod *y* Lagunzad guilty beyond reasonable doubt of one (1) count of rape and one (1) count of rape by sexual assault in Criminal Cases No. 10-7202-SPL and 10-7203-SPL.

Three (3) Amended Informations[3] were filed before the Regional Trial Court, Branch 31 of San Pedro, Laguna against Edward Sumayod *y* Osano (Edward), charging him with one (1) count of rape and two (2) counts of rape by sexual assault, committed as follows:

CRIM. CASE NO. 09-7188-SPL

That from the period of May 26, 2008 to April 2008, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said "Child-in-conflict with the law" (CICL), seventeen years of age and who acted with discernment, being the uncle of minor of complainant [*AAA*], seven (7) years old, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge with the said minor, against her will and consent, which act is gravely detrimental to her normal growth and development and to her damage and prejudice.

That in the commission of the crime the aggravating/qualifying circumstance of relationship and minority are present.

CONTRARY TO LAW.

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[1] *Rollo*, pp. 2-27. The Decision dated September 20, 2016 in CA-G.R. CR-HC No. 07294 was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez of the Fifteenth Division of the Court of Appeals, Manila.

[2] CA *rollo*, pp. 64-80. The Consolidated Judgment dated January 31, 2015 was penned by Judge Sonia T. Yu-Casano of the Regional Trial Court of Laguna, Branch 31.

[3] *Rollo*, pp. 4-6.

CRIM. CASE NO. 09-7189-SPL

That on or about March 26, 2008, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said "Child-in-conflict with the law" (CICL), seventeen years of age and who acted with discernment, did then and there willfully, unlawfully and feloniously by means of force and intimidation, with lewd design commit sexual assault against [*AAA*], a minor, seven (7) years old, by inserting his penis into the mouth of [*AAA*], which act is gravely detrimental to her normal growth and development and to her damage and prejudice.

CONTRARY TO LAW.

CRIM. CASE NO. 09-7190-SPL

That on or about July 1, 2009, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said "Child-in-conflict with the law" (CICL), seventeen years of age and who acted with discernment, did then and there willfully, unlawfully and feloniously by means of force and intimidation with lewd design commit sexual assault against [*AAA*], a minor, seven (7) years old, by inserting his penis into the anal orifice of [*AAA*], which act is gravely detrimental to her normal growth and development and to her damage and prejudice.

CONTRARY TO LAW.[4]

On the other hand, two (2) Informations were filed before the Regional Trial Court, Branch 31 of San Pedro, Laguna against Eliseo Sumayod *y* Lagunzad (Eliseo) charging him with one (1) count of rape and one (1) count of rape by sexual assault.[5] The Informations read as follows:

CRIM. CASE NO. 10-7202-SPL

That on or about August 13, 2008, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said accused being the grandfather of minor complainant [*AAA*], seven (7) years old, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge with the said minor, against her will and consent,

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[4] *Id.*

which act is gravely detrimental to her normal growth and development and to her damage and prejudice.

That in the commission of the crime the aggravating/qualifying circumstances of a relationship and minority are present.

CONTRARY TO LAW.[5]

CRIM. CASE NO. 10-7203-SPL

That on or about August 13, 2008, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously by means of force and intimidation, with lewd design commit sexual assault against [*AAA*], a minor, seven (7) years old by inserting his penis into the anal orifice of [*AAA*], which act is gravely detrimental to her normal growth and development and to her damage and prejudice.

CONTRARY TO LAW.[6]

On arraignment, both Edward and Eliseo pleaded not guilty to the crimes charged.[7] Trial on the merits then ensued.

During trial, the prosecution presented complainant AAA, BBB, her grandmother, attending physician Dr. Cecial Senado (Dr. Senado), and child psychiatrist Dr. Maria Elena Del Mundo-Nepomuceno (Dr. Del Mundo-Nepomuceno).[8]

The facts as found by the lower courts are restated below:

AAA was born on March 25, 2002,[9] and was six (6) years old during the incidents subject of this case. Her mother, CCC, has a history of substance abuse; while her father, DDD, is nowhere to be found. Thus, AAA was left in the care of her maternal grandmother, BBB.[10]

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

[6] *Id.*

[7] *Id.* at 6.

[8] *Id.*

[9] *Id.* at 9.

[10] *Id.* at 6.

On December 2007, BBB temporarily left AAA with her other daughter.[11] Unbeknownst to BBB, her other daughter left AAA with accused appellant Eliseo, and his common-law wife, Teresita Catanjal (Teresita), at Pacita, San Pedro Laguna. BBB's sixteen-year-old nephew, Edward, resided with them.[12]

On March 26, 2008, a day after her sixth birthday, AAA was dragged by Edward, into his bedroom where he raped her. Edward removed her shorts and underwear and inserted his penis into her vagina. AAA screamed in pain and bit Edward, but he covered her mouth then proceeded to shove his penis into her mouth. Upon removing his penis from her mouth, a white substance spilled onto her chest.[13] Not contented, he also inserted his penis into her anal orifice.[14]

On the evening of August 13, 2008, Teresita was confined in the hospital. On the same night, Eliseo entered the room where AAA was sleeping, laid beside her, removed her red blouse and shorts, and went on top of her. He then inserted his penis into her vagina and then her mouth. Afterwards, Eliseo told her to lie on her belly and inserted his penis into her anal orifice.[15]

AAA never told anyone of how Edward and Eliseo raped her while she was in their care. As a threat, Edward told her that he will place her inside a sack and throw her into the garbage truck or to the river, while Eliseo threatened her by saying that she will not be given any food.[16]

Sometime in April 2009, BBB picked up AAA to bring her to Leyte where her half-siblings lived. At that time, Edward

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

[12] *Id.* at 7.

[13] *Id.*

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

[15] *Id.*

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

was also residing there to study college. One afternoon, Edward brought AAA to the river where he raped her and left her to drown with her head submerged in the water. Fortunately, her older cousin saw her drowning in the river and saved her.[17]

Sometime in June 2009, AAA started having difficulties sitting on the chair and suffered from a very high fever. She was then taken to the Eastern Visayas Medical Center in Tacloban City, where it was discovered that: (1) her sexual genitalia was infected; (2) her hymen had several lacerations; and (3) spermatozoa was found in the area."[18]

On July 1, 2009, Edward raped AAA once again, this time in BBB's house.[19] At this point, AAA revealed to BBB that she was raped by Edward and Eliseo multiple times. Enraged by what she had heard, BBB went to the Department of Social Welfare and Development, which referred her to the Philippine General Hospital Child Protection Unit where AAA underwent several sessions with child psychiatrist Dr. Del Mundo-Nepumoceno.[20]

In the multiple sessions AAA had with Dr. Del Mundo-Nepumoceno, she consistently described the separate occasions when she was raped by both Edward and Eliseo. Consequently, Dr. Del Mundo-Nepumoceno confirmed in her psychiatric report that AAA was sexually abused but did not show signs of any post-psychological trauma.[21]

BBB also brought the matter to the National Bureau of Investigation. Subsequently, Edward and Eliseo were charged with rape and rape by sexual assault.[22]

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[17] *Id.* at 67.

[18] *Rollo*, p. 8.

[19] CA *rollo*, p. 67.

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

[21] *Id.*

[22] *Id.* at 68.

For the defense, the witnesses presented were Edward and Eliseo, Ma. Annalee Sumayod Suarez (Annalee), Myrna Napaoit (Myrna) and Zenaida Suarez (Zenaida).[23]

Eliseo testified that while his common-law wife, Teresita, was confined at the hospital, he still brought AAA to his daughter, Annalee's residence. He further testified that he did not know why AAA would accuse him of raping her when he treated her like his own niece, and "more than a jewel[.]"[24] Annalee corroborated his testimony, stating that her father brought AAA to her house when Teresita was in the hospital, and that AAA did not exhibit any unusual behavior the entire two (2) weeks she was with Annalee.[25]

Myrna, Eliseo's neighbor, testified that she had no knowledge of AAA's alleged rape, but stated that she believed Eliseo to be incapable of doing such a thing. Zenaida, Annalee's mother-in-law, likewise testified that she had no knowledge of what happened, but testified that Eliseo was not capable of committing rape as he was a retired ship captain and given his reputation as a good person.[26]

Edward, on the other hand, denied raping AAA sometime from April 2008 to May 2008, since he was enrolled in the Eastern Visayas State University in Leyte. He also stated that he could not have raped her on March 2008 since he was living with his parents at Chrysanthemum Village, San Pedro, Laguna at that time, while AAA was living with Eliseo at Olympia Village, San Pedro, Laguna. He, however, admitted that the two (2) houses were only 500 meters apart and would only take 15 minutes to get from one house to another on foot.[27]

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[23] *Id.* at 69.

[24] *Id.* at 69.

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

[26] *Id.* at 70.

[27] *Id.* at 69.

After trial, the Regional Trial Court rendered a Decision[28] convicting both Edward and Eliseo of the crimes charged. The decretal portion of which reads:

WHEREFORE, a consolidated judgment is hereby rendered as follows:

1. In Criminal Case No. 09-7188-SPL; accused Edward Sumayod y Osano is hereby found GUILTY beyond reasonable doubt of rape under Article 266-A, par. 1 (d) of the Revised Penal Code, as amended, and is hereby sentenced to suffer penalty of *reclusion perpetua* without eligibility of parole. He is also ordered to pay the amounts of ₱75,000.00 as actual damages, ₱75,000.00 as moral damages, and ₱30,000 as exemplary damages to the minor victim [AAA].

2. In Criminal Case No. 09-7189-SPL, accused Edward Sumayod y Osano is hereby found GUILTY beyond reasonable [doubt] of the crime of rape under Article 266-A, par. 2 of the Revised Penal Code and is hereby sentenced to suffer the penalty of six years and one day of *prision correccional* as minimum to ten years, eight months and one day of *prision mayor* as maximum. He is also ordered to pay the amounts of ₱30,000.00 as actual damages, ₱30,000.00 as moral damages and ₱25,000.00 as exemplary damages to the minor victim [AAA].

3. In Criminal Case No. 09-7190-SPL, the case against Edward Sumayod *y* Osano is hereby DISMISSED for lack of jurisdiction.

4. In Criminal Case No. 10-7202-SPL, accused Eliseo Sumayod y Lagunzad is hereby found GUILTY beyond reasonable doubt of rape under Article 266-A, par. 1 (d) of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is also ordered to pay the amounts of ₱75,000.00 as actual damages, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages to the minor victim [AAA].

5. In Criminal Case No. 09-7203-SPL, accused Eliseo Sumayod y Lagunzad is hereby found GUILTY beyond reasonable doubt of rape under Article 266-A, par. 2 of the Revised Penal

[28] *Id.* at 64-80.

> Code and is hereby sentenced to suffer penalty of six years and one day of *prision correccional* as minimum to ten years, eight months and one day of *prision mayor* as maximum. He is also ordered to pay the amounts ₱30,000.00 as actual damages, ₱30,000.00 as moral damages and ₱25,000.00 as exemplary damages to the minor victim [AAA].

All damages awarded shall be subject to interest at 6% per annum from the date of finality of this judgment until they are fully paid.

SO ORDERED.[29]

In its ruling, the Regional Trial Court stated that the straightforward, candid and consistent testimony of AAA, who was only six (6) years old at the time of the incidents, and eight (8) years old when she testified in open court, deserved all credence.[30]

Moreover, the physical report submitted by Dr. Senado which showed lacerations and spermatozoa in her genitalia confirmed her allegations in her testimony.[31] Conversely, Edward and Eliseo's denial and alibi were not enough to overcome the pieces of evidence presented by the prosecution.[32] However, the Regional Trial Court rejected the prosecution's assertion that the aggravating circumstance of relationship was present since Edward was within the fifth degree of consanguinity while Eliseo was within the fourth degree of consanguinity.[33]

On appeal, the Court of Appeals[34] affirmed the Regional Trial Court's finding of guilt beyond reasonable doubt, but modified the penalties applying the Indeterminate Sentence Law. Moreover, it considered the privileged mitigating circumstance of minority for Edward thereby lowering the penalty sentenced

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

[30] *Id.* at 71.

[31] *Id.* at 70.

[32] *Id.* at 76.

[33] *Id.* at 78.

[34] *Rollo*, pp. 2-27.

him and increased the monetary awards pursuant to jurisprudence.[35] Lastly, it remanded the case against Edward to the Regional Trial Court in order to apply the pronouncements in *People of the Philippines v. Ancajas*[36] and *Hubilla v. People of the Philippines*,[37] wherein it was held that the Child-in-Conflict with the law is to serve out his or her sentence in an agricultural camp or any other training facility supervised and controlled by the Bureau of Corrections, in coordination with the Department of Social Welfare and Development.[38]

The dispositive portion of the Court of Appeals decision read:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Consolidated Judgment dated January 31, 2015 of the Regional Trial Court, Branch 31, San Pedro, Laguna is **AFFIRMED with MODIFICATION** in that the dispositive portion thereof to read as follows:

1. In Crim. Case No. 097188-SPL, accused-appellant Edward Sumayod y Osano is hereby held **GUILTY** beyond reasonable doubt for statutory rape and is hereby sentenced to suffer the penalty of imprisonment of ten (10) years and one day of *prision mayor* maximum, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, and ordered to pay private complainant AAA the amount of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity; One Hundred Thousand Pesos (₱100,000.00) as moral damages; and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages;

2. In Crim. Case No. 09-7189-SPL, accused-appellant Edward Sumayod *y* Osano is hereby held **GUILTY** beyond reasonable doubt of rape by sexual assault and is hereby sentenced to suffer the penalty of imprisonment of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*,

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[35] *Id.* at 24.

[36] 772 Phil. 166 (2015) [Per *J.* Peralta, Third Division].

[37] 748 Phil. 441 (2014) [Per *J.* Bersamin, First Division].

[38] *Rollo*, pp. 25-26.

as maximum, and ordered to pay private complainant AAA the amount of Thirty Thousand Pesos (₱30,000.00) as civil indemnity; Thirty Thousand Pesos (₱30,000.00) as moral damages; and Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages;

3. In Crim. Case No. 10-7202-SPL, accused-appellant Eliseo Sumayod y Lagunzad is hereby held **GUILTY** beyond reasonable doubt for statutory rape and is hereby sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay private complainant AAA One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages; and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages;

4. In Crim. Case No. [10-7203-SPL], accused-appellant Eliseo Sumayod y Lagunzad is hereby held **GUILTY** beyond reasonable doubt for rape by sexual assault and is hereby sentenced to suffer the penalty of imprisonment for six (6) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, and ordered to pay private complainant AAA Thirty Thousand Pesos (₱30,000.00) as civil indemnity; Thirty Thousand Pesos (₱30,000.00) as moral damages; and Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages; and

5. Accused-appellants are further ordered to pay private complainant AAA interest on all damages awarded at the legal rate of six percent (6%) per annum from date of finality of this judgment.

The case against appellant Edward Sumayod y Osano is **REMANDED** to the court *a quo* for appropriate disposition with regard to where he would be committed for the service of his sentence in an agricultural camp or other training facilities under the control of the Bureau of Corrections, in coordination with the Department of Social Welfare and Development.

SO ORDERED.[39] (Citation omitted, emphasis in the original)

The Court of Appeals agreed with the trial court in relying on AAA's testimony and held that other than the sincerity and

[39] CA *rollo*, pp. 187-189.

candor by which she testified, her statements were corroborated by the testimonies of Dr. Senado and Dr. Del Mundo-Nepomuceno. Furthermore, the Court of Appeals ruled that between the positive and categorical statements of AAA and the bare denial of Edward and Eliseo, the former prevailed.[40]

Aggrieved, Edward and Eliseo filed a Notice of Appeal[41] with the Court of Appeals.

On October 19, 2016,[42] the Court of Appeals gave due course to Edward and Eliseo's appeal and forwarded the records of the case to this Court.

On June 7, 2017, this Court required the parties to simultaneously file their respective supplemental briefs and directed the Superintendent of the New Bilibid Prison, Bureau of Corrections, Muntinlupa City to confirm the confinement of both accused-appellants.[43]

In a Letter dated July 20, 2017, the Superintendent of the New Bilibid Prison, Roberto R. Rabo, confirmed that accused-appellants were received in the institution for confinement on August 29, 2015.[44] Later, both parties manifested[45] that they would no longer file a supplemental brief and instead adopt the briefs they filed before the Court of Appeals.

On September 18, 2017, accused-appellant Edward withdrew his appeal. Consequently, in this Court's January 17, 2018 Resolution,[46] the case was considered closed and terminated as to him. An Entry of Judgment[47] was then issued certifying

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[40] *Id.* at 184.

[41] *Id.* at 191-192.

[42] *Id.* at 194.

[43] *Rollo*, p. 33.

[44] *Id.* at 44.

[45] *Id.* at 35-38; and 47-50.

[46] *Id.* at 61.

[47] *Id.* at 85.

that the Resolution had become final and executory on April 2, 2018.

In his Appellant's Brief,[48] accused-appellant Eliseo put private complainant AAA's credibility in question, contending that the Regional Trial Court erred in basing their conviction on her testimony given that her allegations were contrary to common experience. He asserted that private complainant's lack of struggle, resistance, or the fact that she did not cry during the rapes was unnatural. He also claimed that the finding that she did not develop psychiatric problems afterwards posed further doubt on her testimony.[49]

On the other hand, plaintiff-appellee, through the Office of the Solicitor General, argued in its Appellee's Brief[50] that the prosecution's evidence proved accused-appellants' guilt beyond reasonable doubt. It stressed that the candid and consistent testimony of private complainant, coupled with the physical examination report of Dr. Senado and psychiatric report of Dr. Del Mundo-Nepomuceno, prevails over the alibi and denial of accused-appellants.[51] Plaintiff-appellee emphasized that this Court has held that a victim's revelation of being raped, along with a voluntary submission for a medical examination, with the willingness to endure public trial where one's dignity would be attacked, is more likely to be true than a mere concoction[52] as accused-appellants would have it.

Considering accused-appellant Edward's withdrawal of his appeal and the subsequent finality of his case as to him, the only question for this Court's resolution is whether or not the Court of Appeals erred in affirming accused-appellant Eliseo's conviction for one (1) count of rape and one (1) count of sexual assault.

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[48] CA *rollo*, pp. 101-116.

[49] *Id.* at 111.

[50] *Id.* at 139-159.

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

[52] *Id.* at 151-152.

We affirm accused-appellant Eliseo's conviction with modification considering recent jurisprudence.

I

Article 266-A, paragraphs 1 and 2, of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provide the following elements for the crimes of statutory rape and rape by sexual assault:

ARTICLE 266-A. *Rape: When and How Committed.* — Rape is committed:

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

   a. Through force, threat, or intimidation;

   b. When the offended party is deprived of reason or otherwise unconscious;

   c. By means of fraudulent machination or grave abuse of authority; and

   d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (Emphasis supplied).

In *People v. Gutierez*,[53] this Court explained the elements of statutory rape:

Statutory rape is committed when (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.[54]

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[53] 731 Phil. 352 (2014) [Per *J.* Leonen, Third Division].

[54] *Id.* at 357.

In this case, private complainant's minority is not in debate. Her birth certificate was presented before the trial court to prove that she was six (6) years old at the time of the rape incidents, which was admitted by the trial court without any dispute from accused-appellants. Accordingly, the only issue at hand is whether accused-appellant Eliseo had carnal knowledge of the child.

This Court has held time and again that the trial court's factual findings and the conclusions of law based on these are given the highest respect due to its unique opportunity to observe the demeanor, attitude, and conduct of the witnesses while on the stand. In turn, the appellate courts will not disturb the trial court's factual findings unless it is shown that certain facts or circumstances that would substantially affect the result of the case have been overlooked or misinterpreted.[55] In this case, both the trial court and appellate court found that the prosecution proved beyond reasonable doubt that accused-appellants had committed the crimes of statutory rape and rape by sexual assault.

The defense would have this Court strike down private complainant's testimony for being doubtful and against common human experience, since there was no narration of any form of struggle or resistance on her part during the commission of the rapes. They question her credibility due to her inaction during and after the commission of the crimes as well as the long interval between the alleged criminal acts and the reporting to the authorities.

The defense's contention has no merit whatsoever.

It has long been established that a victim's failure to struggle or resist an attack on his or her person does not, in any way, deteriorate his or her credibility. This Court has ruled that physical resistance need not be established to prove the commission of a rape or sexual assault, as the very nature of the crime entails the use of intimidation and fear that may

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[55] *People v. Gahi*, 727 Phil. 642 (2014) [Per *J.* Leonardo De Castro, First Division].

paralyze a victim and force him or her to submit to the assailant.[56] Furthermore, different people have varying reactions during moments of trauma; more so, a six (6)-year-old child being attacked by people whom she believed to be her protectors. In *Perez v. People*,[57] this Court emphasized the reaction of a minor when faced with an event so traumatizing:

> Behavioral psychology teaches us that, even among adults, people react to similar situations differently, and there is no standard form of human behavioral response when one is confronted with a startling or frightful experience. Let it be underscored that these cases involve victims of tender years, and with their simple, unsophisticated minds, they must not have fully understood and realized at first the repercussions of the contemptible nature of the acts committed against them. This Court has repeatedly stated that no standard form of behavior could be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult.[58]

It must be emphasized that a six-year-old child cannot be expected to react similarly as an adult, given her limited understanding of the evils of this world and the desires of men who have no bounds. It is for the same reason that this Court cannot subscribe to the defense's assertion that private complainant's testimony should not be given weight. It is unfathomable that a six-year-old child would be able to describe in such detail how she was ravaged by men she considered protectors unless her statements were true. Her candid, straightforward, and consistent testimony must prevail over the self-serving allegations of the defense. Even when she was intimidated by the defense attorney, private complainant, who was then eight (8) years old, did not falter, proving the attorney's attempt to disparage her futile. Pertinent portions of private

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[56] *People v. Lomaque*, 710 Phil. 338 (2013) [Per *J.* Del Castillo, Second Division].

[57] G.R. No. 201414, April 18, 2018, 861 SCRA 626 [Per *J.* Leonen, Third Division].

[58] *Id.* at 642 citing *People v. Barcela*, 734 Phil. 332, 344 (2014) [Per *J.* Mendoza, Third Division].

complainant's cross-examination by the defense attorney read as follows:

Atty. Navarroza: [AAA], you said the last time you were raped by [Eli]?
A: Opo
Q: Particularly, tell us specifically what do you really mean that you were raped by [Eli]?
. . . . . .
A: Hiniga n[i]ya po ako sa kama.
Atty. Navarroza: Is that all that [Eli] did to you?
A: Hindi po.
Q: What do you mean by "hiniga n[i]ya po ako sa kama". Specifically what did he do[?]
A: Ginalaw niya po ako.
Q: When you said "ginalaw niya po ako", you mean [Eli] moved you?
A: Hindi po.
Q: What do you mean?
A: Nirape po.
Q: For the first time in your life [AAA], when did you hear the word rape?
A: Kay [Eli] po.
. . . . . .
Q: Is that the same complaint that you are now complaining before this Honorable Court against [Eli] the telling of you [Eli] about the word rape? [sic]
A: Hindi po.
Q: What is [it] that you are complaining about?
A: Kasi po nirape niya po ako.
Q: But do you not know what rape is all about.
A: Hindi po.
Q: So you merely do not understand the word rape?
A: Naiintindihan ko po.
Q: How do you understand, what do you mean by the word rape?
A: Ginalaw po.
Q: When you say "ginalaw" what do you mean by the word ginalaw?
A: Ni-rape po.

Court: Anong ginalaw ni [Eli] sa katawan mo?

A: Yong ano po.
Q: Sabi mo ginalaw ka ni [Eli], sinabi mo ba iyon?
A: Opo.
Q: Anong ginalaw ni [Eli]?

Court[:]
Ituro mo na lang, [AAA].
(Witness pointing to her private part)

Atty. Navarroza: For the record, I did not see the witness pointing her private part.

Court: Tumayo ka [AAA] at ituro mo [uli].
(Witness is pointing to the front portion of her private part)

Atty. Navarozza: By what part of the body of [Eli] you said was used to "ginalaw" your private part?
A: Yung ano po niya.
Q: What is that "ano" that you are referring to, Madam witness?
A: Yong titi niya po.

Q: When you said titi, what do you understand about it?
A: Yong ano po.

[Prosecutor] De Leon[:]
Maybe we can use the sketch from the record of this case, representing the boy and the girl.

. . . . . .

Court:
Q: Okay, [AAA] tingnan mo ang picture na ito asan diyan ang titi?
A: (witness is pointing to the genitalia in the photograph)

. . . . . .

Atty. Navarozza: The actual thing that you said "titi", Madam Witness, how does it [look] like?
A: Mahaba po.
Q: When you said mahaba, how long?
A: (Witness depicting a length of four (4) inches).

. . . . . .

Atty. Navarroza: What did [Eli] do with that four inches [diameter] long object?

A: Pinasok po sa ano ko.
Q: When you said "pinasok po sa ano ko", what exactly did [Eli] do with that?
A: Pinasok po sa pepe ko po.
Q: How many times?
A: Madami po.

. . . . . .

Atty. Navarroza: When was that?
A: Noong pagka ospital ni [Teresita]
Q: How many days?
A: Isa lang po.
Q: When you said thing, that titi that you said was inserted in your vagina that was inserted in its entirety? [sic]
A: Hindi po.
Q: What part of that thing was inserted to your vagina?
A: Unahan po.

. . . . . .

Q: Aside from inserting the same into your vagina, no other else was done to you?
A: Meron pa po.
Q: What is that?
A: Pinasok niya po sa bibig ko po.
Q: Aside from that, no more else?
A: Meron pa po.
Q: What is that?
A: Pinasok sa puwet ko.
Q: When you said it was inserted or placed inside your mouth, what portion of that thing that was actually accommodated by your mouth? [sic]
A: Kaunti l[a]ng po.

. . . . . .

Atty. Navarrozza: How were you able to say that it was inserted to your anus when as objected to and ruled upon by the court, you were not able to see the thing inserted?
A: Naramdaman ko [p]o.
Q: What did you feel when you said naramdaman?
A: Masakit po.
Q: So you presumed that it was the penis of the accused that was inserted to your anus?

A: Opo.
Q: How about when you said it was inserted to your vagina, did you see it?
A: Opo.
Q: What did you say to [Eli] about that?
A: Wala po.
Q: How about when you said it was inserted or placed into your mouth, did you also see it?
A: Opo.[59]

The excerpt of private complainant's testimony upon cross-examination shows her understanding of how she was touched and raped by accused-appellant Eliseo despite the defense's attempts to mislead and discredit her. Notwithstanding the many ways the questions were twisted, she remained consistent and categorical with her answers.

The fact that it took private complainant more than three (3) months to report the incidents of assault on her does not affect her credibility[60] in the slightest. She was left under accused-appellant Eliseo's care, lived in his house for months, and depended on him for the basic necessities of life. The moral ascendancy accused-appellant Eliseo had over her is enough to explain why she neither resisted the abuse as it was happening nor reported it afterwards for fear of being deprived of food, water, or a roof over her head.

Aside from private complainant's testimony, the prosecution also presented Dr. Senado, the medico-legal who conducted the physical examinations on private complainant and found that she sustained multiple injuries and lacerations in her hymen. In addition to this, Dr. Del Mundo-Nepomuceno, the child psychiatrist who interviewed private complainant, confirmed that her demeanor while recounting the events that transpired showed she was being truthful. Even BBB testified and initiated

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[59] CA *rollo*, pp. 73-75.

[60] *People v. Perez y Alavado*, 783 Phil. 187 (2016) [Per J. Peralta, Third Division].

the filing of the complaints against him. Surely, she would not allow accused-appellant Eliseo to be subjected to the rigors and humiliation of a rape trial if she believed that the child's stories were mere concoctions.

Here, accused-appellant Eliseo's assertions were insufficient to show that the trial court erred and misapprehended any fact or evidence. He testified that on the night in issue, he was sleeping at the hospital to accompany his common-law wife. Yet, he did not present any witnesses to confirm that he was indeed at the hospital during the commission of the rape. His entire case relied on the twin defenses of denial and alibi. However, it has long been established that denial and alibi are not enough to overcome the victim's positive and categorical statements. For his defense of alibi to be credible, he must show that it was physically impossible for him to be at the crime scene when the crime was committed.[61] This, he failed to do.

Given the concurrence of multiple circumstances which were attested to by a credible witness and corroborated by other evidence, this Court finds no reason to reverse the finding that accused-appellant Eliseo raped and sexually assaulted the victim.

Accordingly, this Court affirms the conviction of accused-appellant Eliseo for one (1) count of statutory rape under Article 266-A, paragraph 1 of the Revised Penal Code and the imposition of *reclusion perpetua*. As to his civil liabilities for the crime of statutory rape, this Court reduces the award of damages to ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages in accordance with *People v. Jugueta*.[62]

As to the charge of one (1) count of rape by sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, this Court affirms accused-appellant Eliseo's conviction subject

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[61] *People v. ZZZ*, G.R. No. 228828, July 24, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65446> [Per J. Leonen, Third Division].

[62] 783 Phil. 806 (2016) [Per J. Peralta, *En Banc*].

to modification of its nomenclature to Sexual Assault under Article 266-A, paragraph 2 of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610 pursuant to the recent case of *People v. Tulagan*,[63] where this Court took the opportunity to reconcile the provisions of Acts of Lasciviousness, Rape, and Sexual Assault under the Revised Penal Code, as amended by Republic Act No. 8353 *vis-à-vis* Sexual Intercourse and Lascivious Conduct under Section 5 (b) of Republic Act No. 7610 also known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act." It was held:

> Concededly, R.A. No. 8353 defined specific acts constituting acts of lasciviousness as a distinct crime of "sexual assault," and increased the penalty thereof from *prision correccional* to *prision mayor*. But it was never the intention of the legislature to redefine the traditional concept of rape. The Congress merely upgraded the same from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) as a matter of policy and public interest in order to allow prosecution of such cases even without the complaint of the offended party, and to prevent extinguishment of criminal liability in such cases through express pardon by the offended party. Thus, other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or kissing a young girl with malice, are still punished as acts of lasciviousness under Article 336 of the RPC in relation to R.A. No. 7610 or lascivious conduct under Section 5 of R.A. No. 7610.
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> . . . . . .
>
> Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoili*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5 (b) of R.A. No. 7610" and no longer '"Acts of Lasciviousness

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[63] G.R. No. 227363, March 12, 2019, <http:// library.judiciary.gov.ph/thebookshelf/showdocs/1/65020> [Per *C.J.* Peralta, *En Banc*].

under Article 336 of the RPC in relation to Section 5 (b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A (2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.[64] (Citations omitted)

The penalty imposed is likewise modified to *reclusion temporal* in its medium period instead of *prision mayor* as prescribed in Article 266-A, paragraph 2 of the Revised Penal Code pursuant to the aforequoted *People v. Tulagan* and *People v. Chingh y Parcia*[65] which applied the penalty under Article III, Section 5 (b) of Republic Act No. 7610. Accordingly, after applying the Indeterminate Sentence Law, accused-appellant Eliseo is thereby sentenced to suffer an indeterminate penalty of 12 years, 10 months and 21 days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. This Court also modifies the awards of civil indemnity, moral damages and exemplary damages to ₱50,000.00 pursuant to *People v. Tulagan*.

Finally, this Court affirms that all damages shall earn interest at the rate of 6% per annum from the date of the finality of judgment until fully paid.[66]

WHEREFORE, the guilt of accused-appellant ELISEO SUMAYOD *Y* LAGUNZAD having been proved beyond reasonable doubt, his conviction for statutory rape and rape by sexual assault by the court *a quo* is **AFFIRMED with MODIFICATION** as follows:

a. In Crim. Case No. 10-7202-SPL, accused-appellant Eliseo Sumayod *y* Lagunzad is hereby held **GUILTY** beyond reasonable doubt under Article 266-A(1)(d)

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[64] *Id.*

[65] 661 Phil. 208 (2011) [Per *J.* Peralta, Second Division].

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

and penalized in Article 266-B of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay private complainant AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages;

b. In Crim. Case No. 10-7203-SPL, accused-appellant Eliseo Sumayod *y* Lagunzad is hereby held **GUILTY** beyond reasonable doubt of Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the penalty of imprisonment for 12 years, 10 months and 21 days of *reclusion temporal*, as minimum, to 15 years, 6 months and 20 days of *reclusion temporal*, as maximum, and ordered to pay private complainant AAA ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages; and

c. Accused-appellant is further ordered to pay private complainant AAA interest on all damages awarded at the legal rate of six percent (6%) per annum from date of finality of this judgment.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Delos Santos,*[*] *JJ.*, concur.

[*] Additional Member per S.O. No. 2753.

SECOND DIVISION

[G.R. No. 240484. March 9, 2020]

ARVIN A. PASCUAL, *petitioner, vs*. **SITEL PHILIPPINES CORPORATION, MICHAEL LEE, ASWIN SUKUMAR, PHOEBE MONICA ARGANA, REMIL CANDA and AMOR REYES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CONSTRUCTIVE DISMISSAL; DEFINED AND EXPLAINED; THE TEST OF CONSTRUCTIVE DISMISSAL IS WHETHER A REASONABLE PERSON IN THE EMPLOYEE'S POSITION WOULD HAVE FELT COMPELLED TO GIVE UP HIS EMPLOYMENT UNDER THE CIRCUMSTANCES.— Constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances.

2. ID.; ID.; ID.; RESIGNATION, DEFINED AND DISTINGUISHED FROM CONSTRUCTIVE DISMISSAL; AS THE INTENT TO RELINQUISH MUST CONCUR WITH THE OVERT ACT OF RELINQUISHMENT, THE ACTS OF THE EMPLOYEE BEFORE AND AFTER THE ALLEGED RESIGNATION MUST BE CONSIDERED TO DETERMINE WHETHER EMPLOYEE REALLY INTENDED TO TERMINATE HIS EMPLOYMENT.— Resignation, on the other hand, is the voluntary act of an employee who is in a situation where one believes that personal reasons

cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to disassociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment. To emphasize, the intent to relinquish must concur with the overt act of relinquishment. The acts of the employee before and after the alleged resignation must be considered in determining whether the employee concerned, in fact, intended to terminate his employment. In illegal dismissal cases, it is a fundamental rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.

3. ID.; ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR REVEAL THAT RESPONDENT SITEL WAS ABLE TO SHOW THAT PETITIONER RESIGNED VOLUNTARILY. — [A] judicious review of the facts on record will show that Sitel was able to show that petitioner resigned voluntarily as shown by the following circumstances: *First*, the e-mail which petitioner sent to Lee, Sitel's COO, manifesting his intention to resign categorically and unequivocally expressed his intention to disassociate himself from the company. In the same e-mail, he even asked for: (1) the payment of his salaries, and (2) the issuance of his certificate of employment. x x x *Second*, petitioner e-mailed another copy of the resignation letter to Reyes on December 12, 2014 and reiterated his resignation. After that, he sent a hard copy of the resignation letter to the company *via* registered mail. *Third*, petitioner went back to Sitel on December 18, 2014 with a resignation letter of even date. The following day, Sitel formally accepted his resignation. x x x Here, contrary to petitioner's assertions, Sitel aptly established that petitioner's e-mails and resignation letter showed the voluntariness of his separation from the company. While the fact of filing a resignation letter alone does not shift the burden of proof, it is still incumbent upon the employer to prove that the employee voluntarily resigned. In petitioner's case, the facts show that the resignation letter is grounded in petitioner's desire to leave the company

as opposed to any deceitful machination or coercion on the part of Sitel. His subsequent and contemporaneous actions belie the claim that petitioner was subjected to harassment by Sitel. Interestingly, even when given the opportunity to explain his side regarding the Remion's case, petitioner conspicuously failed to do so. He consistently evaded the issue and did not attend the hearing on the matter.

4. ID.; ID.; ID.; ID.; ID.; THERE WAS NEITHER COERCION NOR INTIMIDATION WHEN PETITIONER RESIGNED. — Petitioner could not have been coerced as well. Coercion exists when there is a reasonable or well-grounded fear of an imminent evil upon a person or his property or upon the person or property of his spouse, descendants or ascendants. Neither petitioner's narration of facts prove that he was intimidated. In one case, the Court enumerated the requisites for intimidation to vitiate one's consent, including: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. Moreover, the alleged instances of badgering or harassment perpetrated by Sitel's representatives, namely: Sukumar, Reyes, and Argana are more apparent than real. Aside from the need to treat these accusations with caution for being self-serving due to lack of substantial documentary or testimonial evidence, the Court is not convinced that the purported "series of events," which compelled him to resign, even if true, are tantamount to constructive dismissal.

APPEARANCES OF COUNSEL

Amado S. Sandel, Jr. for petitioner.
Ines & Villacarlos Law Offices for respondents.

D E C I S I O N

INTING, *J.*:

The Court emphasizes that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. Indeed, the commitment to the cause of labor does not prevent us from sustaining the employer when it is right.[1]

Before the Court is a Petition for Review[2] on *Certiorari* under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision[3] dated January 15, 2018 and the Resolution[4] dated June 25, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 146445. The assailed Decision granted the petition for *certiorari* filed by Sitel Philippines Corporation (Sitel), Michael Lee (Lee), Amor Reyes (Reyes), Aswin Sukumar (Sukumar), Remil Canda (Canda), and Phoebe Monica Argana (Argana) (collectively, respondents) and dismissed Arvin A. Pascual's (petitioner) complaint for illegal dismissal.

The Antecedents

On October 27, 2006, Sitel hired petitioner as agent. In 2014, Sitel promoted him to the Comcast Customer Service Group (Comcast CSG) account as coach/supervisor with a monthly salary of ₱25,000.00.[5]

Subsequently, Sitel served a notice to explain[6] dated October 9, 2014 upon him for his failure to take the necessary action

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[1] See *Doehle-Philman Manning Agency Inc., et al. v. Haro*, 784 Phil. 840, 842 (2016), citing *Magsaysay Maritime Corporation v. NLRC*, 630 Phil. 352, 369 (2010).

[2] *Rollo*, pp. 3-25.

[3] *Id.* at 35-46; penned by Associate Justice Justice Victoria Isabel A. Paredes with Associate Justices Romeo F. Barza and Mario V. Lopez (now a member of the Court), concurring.

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

[5] *Id.* at 60.

[6] *Id.* at 181.

on the case of Diosdado Jayson Remion (Remion), an agent in Comcast CSG who has been inactive since May 2014. Sitel then served a second notice to explain upon him charging him with: (a) gross and habitual neglect of duties; (b) other analogous causes; and (c) acts of gross negligence or intentional acts of damage resulting in personal injury or damage to property of the company or third persons, or otherwise causing expenses to be incurred by the company.[7]

In his Reply,[8] petitioner requested that the charges against him be "particularized" to enable him to raise proper defenses.[9]

On November 4, 2014,[10] respondents specified the acts committed by Remion and reiterated petitioner's failure to take action on Remion's case which resulted in Sitel's losses.[11] Correspondingly, Sitel revised the charges against petitioner from gross and habitual neglect to serious misconduct or willful disobedience of employer's orders. An administrative hearing was set on November 10, 2014,[12] but petitioner failed to attend due to the alleged lack of details concerning the charges. Petitioner tried to submit his reply to the third notice to explain, but the guard refused to stamp "received" as the latter was supposedly instructed to accept any document from him, but not to acknowledge its receipt. Unstirred, he sent e-mails[13] to Argana concerning his situation.[14]

On November 21, 2014, Sitel served a Notice to Decision[15] upon petitioner suspending him for five days from November

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

[8] *Id.* at 182-184.

[9] *Id.* at 64.

[10] See Notice to Explain, *id.* at 188-189.

[11] *Id.* at 65.

[12] See Administrative Hearing Notice dated November 4, 2014, *id.* at 190 and Reply To Administrative Hearing, *id.* at p. 203.

[13] *Id.* at 191, 197.

[14] *Id.* at 65.

[15] *Id.* at 208-210.

26 to 30, 2014.[16] To his surprise, ₱6,896.58 was withheld from his salary. On December 2, 2014, another Notice to Explain[17] was served upon him requiring him to explain within 24 hours his absences without permission on November 10, 13, 17, and 22 to 24, 2014. In his response,[18] petitioner expressed his physical, emotional, and psychological predicament. He requested for clarification, but to no avail; thus, prompting him to send an e-mail[19] to the company manifesting his intention to resign, recover his unpaid salary, and the issuance of a certificate of employment. As what happened in the past, his manifestation was not given any proper attention.[20]

Petitioner personally met Reyes on December 11, 2014 and brought a copy of his letter of resignation[21] which he previously sent to Lee. He asked Reyes to read and acknowledge its receipt, but she refused. The next day, he found out that an amount of ₱7,842.11 was further withheld from his salary for the period covering November 21 to December 5, 2014. Thus, he pursued his claim for constructive dismissal asserting that: (a) he was pushed to a situation where the oppressive and demeaning acts/ omissions of respondents created an adverse working environment rendering it impossible for him to continue with his employment with Sitel; (b) his severance from employment was not voluntary, but was a result of forced resignation arising from harassment, humiliation, and the unlawful withholding of his salaries; (c) he was intentionally coerced into giving up his job; and (d) he was unjustly suspended after respondents ignored his pleas for a bill of particulars and the unjust withholding of his salaries.[22]

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[16] *Id.* at 67.

[17] *Id.* at 217-219.

[18] *Id.* at 220-221.

[19] *Id.* at 222-225. See another e-mail with the subject "NAKED IN SHAME," *id*. at 226-229.

[20] *Id.* at 68.

[21] *Id.* at 231-233. See also a letter dated December 8, 2014, *id.* at 340-343.

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

Respondents, on the other hand, asserted that when petitioner assumed his position as coach/supervisor for the Comcast CSG account, its operations manager instructed him to coordinate with the quality team to review the complaint against Remion and to consult with the Human Resource Department of Sitel for the appropriate action. Petitioner did not act on the instruction. On October 9, 2014, a notice to explain was served upon him regarding the charges of gross and habitual neglect and other analogous causes relating to his inaction. In response thereto, petitioner submitted a letter stating that the notice was insufficient in detail. Thenceforth, a second notice to explain was served upon him detailing the losses Sitel incurred for maintaining an agent who did not generate any revenue. Still, petitioner demanded for a written statement with sufficient particularity. On November 11, 2014, an administrative hearing was held wherein petitioner failed to attend. In a Notice to Decision served on November 21, 2014, Sitel suspended petitioner from November 26 to 30, 2014. Instead of terminating petitioner for his infraction, the company took note that he only inherited the Remion case from his predecessors. On December 18, 2014, however, petitioner tendered his resignation letter[23] which the management accepted the following day.[24]

With regard to petitioner's claim of illegal suspension, respondents insisted that it was for a just and valid cause, that is, petitioner's negligence or failure to report and act upon an unproductive agent under his supervision. Besides, he voluntarily resigned from his work contrary to his assertion of constructive dismissal.[25]

The Ruling of the Labor Arbiter (LA)

On September 8, 2015, the LA dismissed[26] petitioner's complaint for lack of merit and declared his suspension as legal.

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[23] *Id.* at 340-343.

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

[25] *Id.* at 72.

[26] *Id.* at 48-56; penned by Labor Arbiter Marcial Galahad T. Makasiar.

As a resigned employee, it held that petitioner cannot compel respondents to regain what he had forgone voluntarily by instituting a labor action for illegal dismissal.[27] lt disposed of the complaint as follows:

> ACCORDINGLY, the cause of action for illegal dismissal is DENIED for lack of merit.
>
> Respondent Sitel Philippines is ordered to release complainant's SALARY in the amount of Php14,738.69, subject to 5% withholding tax upon payment/execution.
>
> Complainant's suspension is declared LEGAL.
>
> All other claims are DENIED for lack of merit.
>
> Respondents Michael Lee, Amor Reyes, Aswin Sukumar, Remil [Canda] and Phoebe Monica Argana are EXONERATED from all liabilities.
>
> SO ORDERED.[28]

Aggrieved, petitioner appealed to the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

On appeal, the NLRC rendered a Decision[29] dated March 4, 2016 granting petitioner's appeal. The NLRC ruled that the LA erred in interpreting petitioner's letter and the circumstances surrounding his resignation.[30] The NLRC found it illogical for petitioner to resign and file a complaint for illegal dismissal.

Both filed their respective motions for reconsideration.

The NLRC partially granted the parties' respective motions for reconsideration in its Resolution[31] dated April 27, 2016. It

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[27] *Id.* at 54.

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

[29] *Id.* at 59-84; penned by Commissioner Bernardino B. Julve with Presiding Commissioner Grace M. Venus, concurring.

[30] *Id.* at 77.

[31] *Id.* at 88-95; penned by Commissioner Bernardino B. Julve with Presiding

reconsidered its ruling on the issue of liability of Sukumar and Reyes and exonerated them for petitioner's failure to present substantial evidence that they acted in bad faith or assented to the illegal acts of the corporation.[32] The NLRC, however, denied petitioner's plea for the recomputation of his monetary awards for his failure to prove that he is entitled to the monetization of medical and leave benefits. With respect to the claim of petitioner for monthly transportation allowance, the NLRC granted it considering that respondents had no objection.[33]

Aggrieved, respondents filed a petition for *certiorari* before the CA.

Ruling of the CA

On January 15, 2018, the CA reversed and set aside the NLRC's Decision and dismissed petitioner's complaint. It explained thus:

> In this case, the acts of respondent before and after the December 18, 2014 letter of resignation, clearly show that he intended to voluntarily resign from his job, to wit: (i) on December 8, 2014, respondent sent an email to Sitel's CEO, Phil Lee manifesting his intention to resign; (ii) on December 11, 2014, respondent brought a copy of the resignation e-mail he sent to Phil Lee to Reyes, asked her to read it and acknowledge its receipt; (iii) on December 12, 2014, respondent e-mailed a copy of the resignation letter to Reyes; (iv) on December 15, 2014, respondent sent a hard copy of the resignation letter via registered mail; and (v) on December 18, 2014, respondent went back to the petitioner's office with a resignation letter dated that same day.
>
> All these acts leading towards and subsequent to the December 18, 2014 resignation letter clearly show no other intention on the part of respondent, other than to relinquish his employment with the petitioner. **We do not find any other viable reason for him to submit numerous resignation letters on different dates if not to voluntarily**

Commissioner Grace M. Venus and Commissioner Leonard Vinz O. Ignacio, concurring.

[32] *Id.* at 89.

[33] *Id.* at 93.

sever his employment relationship with the petitioner. The harsh, hostile and unfavorable condition of the workplace was of respondent's own making. We reiterate that the records show respondent was afforded numerous opportunities to address the charges against him and yet he refused to do so and he antagonized his employer, his peers and superiors alike.[34] (Emphasis supplied; citations omitted.)

Hence, this petition.

Ruling of the Court

The petition is without merit.

Petitioner's resignation was voluntary and Sitel is not guilty of constructive dismissal.

It behooves the Court to take a look at the records of the case to determine whether or not petitioner's resignation was through his own volition or was necessarily effected by Sitel's supposed hostile treatment. While only errors of law are generally reviewable on *certiorari*, the Court may look into the factual issues in labor cases when the findings of the LA, the NLRC, and the CA are conflicting. In this case, the findings of the LA and CA, while in consonance with each other, conflict with the NLRC.[35]

Constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person

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

[35] *Panasonic v. Peckson*, G.R. No. 206316, March 20, 2019, citing *South East International Rattan, Inc., et al. v. Coming*, 729 Phil. 298, 305 (2014).

in the employee's position would have felt compelled to give up his employment/position under the circumstances.[36]

Resignation, on the other hand, is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to disassociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.[37]

To emphasize, the intent to relinquish must concur with the overt act of relinquishment. The acts of the employee before and after the alleged resignation must be considered in determining whether the employee concerned, in fact, intended to terminate his employment. In illegal dismissal cases, it is a fundamental rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.[38]

Guided by the foregoing legal precepts, a judicious review of the facts on record will show that Sitel was able to show that petitioner resigned voluntarily as shown by the following circumstances:

First, the e-mail[39] which petitioner sent to Lee, Sitel's COO, manifesting his intention to resign categorically and

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[36] *Id.*, citing *Gan v. Galderma Philippines, Inc., et al.*, 701 Phil. 612, 639 (2013).

[37] *Id.* at 639, citing *Nationwide Security and Allied Services, Inc. v. Valderama*, 659 Phil. 362, 371 (2011) and *BMG Records (Phils.), Inc. v. Aparecio*, 559 Phil. 80, 94 (2007).

[38] *Id.*, citing *Central Azucarera de Bais, Inc., et al. v. Siason*, 765 Phil. 399, 407 (2015).

[39] *Rollo*, pp. 222-225.

unequivocally expressed his intention to disassociate himself from the company.[40] In the same e-mail, he even asked for: (1) the payment of his salaries, and (2) the issuance of his certificate of employment.[41]

Petitioner wrote:

This is the most painful decision so far that I have ever made in my life. Farthest from the wildest of my imagination that I will ever have a rendezvous with a very dark chapter of a person's professional career - BEING LEFT WTH NO OTHER CHOICE BUT TO DISASSOCIATE MYSELF FROM EMPLOYMENT WITH SITEL.
x x x

x x x x x x x x x

Truly, I am now in a very discouraged, depressed, exhausted and dejected state emanating from the present inhumane working environment I am being made to suffer. Hence, it FORECLOSES ANY CHOICE BUT FOR ME TO FOREGO CONTINUED EMPLOYMENT WITH SITEL.

The conduct of the following persons toward me have become unbearable already. In consequence, I AM IMPELLED TO GIVE UP MY EIGHT YEARS OF EMPLOYMENT WITH SITEL:

x x x x x x x x x

Now that I belong to the ranks of the Filipino unemployed by force of circumstances, I humbly request for your intervention Sir for purposes of facilitating the:

1) Payment of my salaries withheld last 28 November 2014 payroll in contravention of Articles 113 and 116 of The Labor Code of the Philippines. I trust that Ms. Phoebe Monica Argana could release these withheld monies amounting to Php 6,896.58 on or before December 12, 2014 in order that the same could be used for my medical treatment.

2) Issuance of my certificate of employment in compliance with pertinent provisions of the Rules Implementing The Labor Code of the Philippines. I trust that Ms. Argana is most familiar with

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[40] *Id.* at 222.

[41] *Id.* at 224.

> this provision of law regarding the issuance of certificate of employment to someone whose cessation of employment is impelled by circumstances akin to what befell me. Trusting, that the same could also be released on or before December 12, 2014 in order that I could use it in seeking employment with another company.[42]

On December 11, 2014, petitioner brought a copy of his resignation letter to Sitel's operations manager, and asked her to read it and acknowledge its receipt.

Second, petitioner e-mailed another copy of the resignation letter to Reyes on December 12, 2014 and reiterated his resignation. After that, he sent a hard copy of the resignation letter to the company *via* registered mail.[43]

Third, petitioner went back to Sitel on December 18, 2014 with a resignation letter of even date. The following day, Sitel formally accepted his resignation.[44]

Since petitioner submitted his resignation letter on several occasions, it is incumbent upon him to prove with clear, positive, and convincing evidence that his resignation was not voluntary, but was actually a case of constructive dismissal or that it is a product of coercion or intimidation. He has to prove his allegations with particularity.[45]

In *Pascua v. Bank Wise, Inc.*,[46] the Court held that an unconditional and categorical letter of resignation cannot be considered indicative of constructive dismissal if it is submitted by an employee fully aware of its effects and implications.[47]

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[42] *Id.* at 222-224.

[43] *Id.* at 230.

[44] *Id.* at p. 347.

[45] *Gan v. Galderma Philippines, Inc. and Veneracion*, 701 Phil. 612, 640 (2013). Citation omitted.

[46] G.R. Nos. 191460 & 191464, January 31, 2018, 853 SCRA 446, 449.

[47] *Id.*

Similarly, *Panasonic v. Peckson*,[48] teaches that the Court does not sustain findings of fraud upon circumstances which, at most, create only suspicion; otherwise, it would be indulging in speculations and surmises.[49] Petitioner failed to show any substantial evidence that he was treated unfairly and, thus, he was forced to resign. He failed to show any tangible acts of harassment, insults, and any abuse that would warrant a possible finding of constructive dismissal.[50]

Here, contrary to petitioner's assertions, Sitel aptly established that petitioner's e-mails and resignation letter showed the voluntariness of his separation from the company. While the fact of filing a resignation letter alone does not shift the burden of proof, it is still incumbent upon the employer to prove that the employee voluntarily resigned. In petitioner's case, the facts show that the resignation letter is grounded in petitioner's desire to leave the company as opposed to any deceitful machination or coercion on the part of Sitel. His subsequent and contemporaneous actions belie the claim that petitioner was subjected to harassment by Sitel. Interestingly, even when given the opportunity to explain his side regarding the Remion's case, petitioner conspicuously failed to do so. He consistently evaded the issue and did not attend the hearing on the matter. Petitioner's letter[51] dated December 3, 2014 to Reyes reads in part:

> Why can we not sweep out of the rug the fact that we had a communication supported by electronic evidence x x x last 22 November that **the reason why I was not able to report for work is because my ego was totally deflated** after you brought me into a hot pit on the wee hour of morning on 21 November 2014 without the slightest of warning? Electronic evidence will further prove that I explained to you that **I could not muster the emotional strength to be in the**

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[48] G.R. No. 206316, March 20, 2019.

[49] *Id.*, citing *BMG Records (Phils.), Inc. v. Aparecio*, 559 Phil. 80, 92 (2007).

[50] *Id.*

[51] *Rollo*, pp. 220-221.

same workplace where my reputation was vilified.[52] (Emphasis supplied.)

Petitioner could not have been coerced as well. Coercion exists when there is a reasonable or well-grounded fear of an imminent evil upon a person or his property or upon the person or property of his spouse, descendants or ascendants. Neither petitioner's narration of facts prove that he was intimidated. In one case, the Court enumerated the requisites for intimidation to vitiate one's consent, including: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property.[53]

Moreover, the alleged instances of badgering or harassment perpetrated by Sitel's representatives, namely: Sukumar, Reyes, and Argana are more apparent than real. Aside from the need to treat these accusations with caution for being self-serving due to lack of substantial documentary or testimonial evidence, the Court is not convinced that the purported "series of events," which compelled him to resign, even if true, are tantamount to constructive dismissal.

The Court agrees with the LA that petitioner's claim of dismissal was also negated by the fact that he was simply suspended for five days, albeit the charges against him merit his dismissal. Verily, Sitel was attentive and considerate with petitioner's situation. It was petitioner who misinterpreted Sitel's decision. The November 26, 2014 letter of Sitel's representative addressed to petitioner states:

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[52] *Id.* at 221.

[53] *Id.*, citing *St. Michael Academy v. NLRC*, 354 Phil. 491, 509-510 (1998).

From: Aswin Sukumar
Sent: Wednesday, November 26, 2014 2:25 AM
To: Arvin Pascual
Subject: RE IN HARM'S WAY

Dear Arvin,

Thank you for writing in and expressing your thoughts. We appreciate your feedback.

We would like to confirm that the decision for the suspension was limited solely for the purpose of addressing the case and there was no personal intent in the decision (as you have indicated in your response). **We truly acknowledge your feelings, however we do feel that you are wrongly interpreting things.** As I clearly remember mentioning during our discussion , that **we are here to support you 100% and in the absence of your Operations Manager we shared our commitments in helping you build your career with Sitel**.

x x x x x x x x x[54] (Emphasis supplied.)

In the end, aside from petitioner's self-serving declarations, the Court cannot countenance his claims especially considering the legal dictum that he who asserts, not he who denies, must prove. In the absence of such, the Court must rely on the actual proof presented as evidence, that is, the resignation letter and e-mails of petitioner showing his intent to sever employment with Sitel, and not the mere allegations of harassment that have characterized petitioner's grievances.[55]

WHEREFORE, the instant petition is **DENIED**. The Decision dated January 15, 2018 and Resolution dated June 25, 2018 of the Court of Appeals in CA-G.R. SP No. 146445 are **AFFIRMED**.

SO ORDERED.

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

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[54] *Rollo,* p. 344.

[55] *Supra* note 48, citing *Portuguez v. GSIS Family Bank*, 546 Phil. 140, 156-157 (2007).

SECOND DIVISION

[G.R. No. 241152. March 9, 2020]

DON ANTONIO MARIE V. ABOGADO, *petitioner*, *vs.* **OFFICE OF THE OMBUDSMAN and TASK FORCE ABONO — FIELD INVESTIGATION OFFICE,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 43 PETITION; APPEAL FROM DECISIONS OF THE OFFICE OF THE OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES SHOULD BE TAKEN TO THE COURT OF APPEALS UNDER RULE 43 OF THE RULES OF COURT; ANY APPEAL BY WAY OF PETITION FOR REVIEW FROM A DECISION OR FINAL RESOLUTION OR ORDER OF THE OMBUDSMAN IN ADMINISTRATIVE CASES, OR SPECIAL CIVIL ACTION RELATIVE TO SUCH DECISION, RESOLUTION OR ORDER FILED WITH THE SUPREME COURT AFTER 15 MARCH 1999 SHALL NO LONGER BE REFERRED TO THE COURT OF APPEALS, BUT MUST BE FORTHWITH DENIED OR DISMISSED RESPECTIVELY PURSUANT TO ADMINISTRATIVE MATTER NO. 99-2-02-SC.— In the 1998 case of *Fabian v. Hon. Desierto* (*Fabian*), the Court declared that Section 27 of Republic Act No. (RA) 6770, which provides that all "*orders, directives, or decisions [in administrative cases] of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court*," was unconstitutional for it increased the appellate jurisdiction of the Court without its advice and concurrence. Thus, the Court ruled in *Fabian* case that "*appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43*." In the case before the Court, petitioner filed a Petition for *Certiorari* under Rule 65 of the Rules of Court which seeks

to reverse and set aside the Decision dated July 14, 2017 and Order dated May 25, 2018 of the Ombudsman after finding him guilty of administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and imposing upon him the penalty of dismissal from the service and its accessory penalties. Undeniably, the assailed Decision and Order of the Ombudsman constitute an administrative disciplinary action that is not "final and unappealable." Following *Fabian*, this case should have been appealed to the Court of Appeals *via* a petition for review under Rule 43 of the Rules of Court. Thus, pursuant to Administrative Matter No. 99-2-02-SC, any appeal by way of petition for review from a decision or final resolution or order of the Ombudsman in administrative cases, or special civil action relative to such decision, resolution or order *filed with the Court after 15 March 1999 shall no longer be referred to the Court of Appeals, but must be forthwith DENIED or DISMISSED respectively.*

2. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT REFORM ACT (REPUBLIC ACT NO. 9184); VOLUME 2 MANUAL OF PROCEDURES FOR THE PROCUREMENT OF GOODS AND SERVICES AND THE IMPLEMENTING RULES AND REGULATIONS PART A (IRR-A) OF RA 9184; NOT COMPLIED WITH IN THE PROCUREMENT OF THE FARM TRACTORS AND TRAILING HARROW IN CASE AT BAR.— Section 2 of the Volume 2 Manual of Procedures for the Procurement of Goods and Services (The Manual) talks, among others, about preparing for the procurement of goods and provides the factors to be considered in planning for the procurement of goods. It likewise includes what are the technical specifications to be considered in procuring goods as well as the procuring entity's requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. Also, under the same section, it discusses what is the approved budget for the contract or the ABC. In addition, Section 21 of the Implementing Rules and Regulations Part A (IRR-A) of RA 9184 provides for the advertising and contents of the invitation to bid. Records of the case, however, show that the respondents and the DA-RFU II did not present any project proposal to identify the standards

of the goods to be procured considering the function and performance, and its technical specifications. Likewise, there is no showing that they conducted a market survey of available products, industry developments, and product standards to enable the procuring entity to identify the mode of procurement to be employed and the budget needed for the project. With the irregularities mentioned, the Court affirms the findings of the Ombudsman that the choice of the Massey Ferguson farm tractors and ACT trailing harrow was made without basis.

3. ID.; ID.; ID.; NO PUBLIC BIDDING WAS CONDUCTED PURSUANT TO SECTIONS 3(B) AND 10 OF RA 9184.— Section 3(b) and 10 of RA 9184 read: *Section 3. Governing Principles on Government Procurement*.— All procurement of the national government, its departments, bureaus , offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by these principles: x x x (b) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. x x x Section 10. *Competitive Bidding*.—All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act. Using the provisions as guidelines, it is beyond question that the LGU-Isabela failed to conduct a public bidding. As aptly observed by the Ombudsman, the mere posting of the Invitation to Pre-Quality and to Bid in PDJ and the Certification of the PBAC of the conduct of bidding on March 18, 2004 were highly suspect as when the documents necessary to start the procurement process were only issued or signed after March 18, 2004. x x x Worth stressing is the fact the petitioner admitted that no public bidding occurred for the procurement; that the public bidding conducted by the LGU-Isabela on March 18, 2004 was for the Grains/Highway and Agricultural Modernization Project (Grains Highway Project) pursuant to *Sangguniang Panlalawigan* Resolution No. 0356 approved on November 18, 2003.

4. ID.; ID.; ID.; REFERENCE TO BRAND NAMES SHALL NOT BE ALLOWED, AS PROCURING SPECIFIC BRANDS PREVENTS POSSIBLE BIDS FROM OTHER SUPPLIERS; THE PROVINCIAL LEGAL OFFICER'S ADMISSION THAT THERE WAS NO PUBLIC BIDDING CONDUCTED

WILL NOT EXCUSE HIM FROM ANY LIABILITY WHERE HE FAILED TO EXERT EFFORTS TO QUESTION THE IRREGULAR PROCESS OF PROCURING THE GOODS.— Petitioner asserts that because of his admission that there was no public bidding conducted on the GMA Program, the evidence of the Ombudsman was strengthened; thus, he should not be held liable. Still, the Court affirms the Ombudsman when it ruled that it could not excuse petitioner of any liability just because of his admissions on the ground that he, being the provincial legal officer, failed to exert efforts to question the irregular process of procuring the farm tractors and trailing harrows. In the words of the Ombudsman, petitioner's inaction contributed to the consummation of the purchase contract with Equity Machineries. x x x. Section 18 of RA 9184 provides: Section 18. *Reference to Brand Names*. — Specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed. In this case, the specific brands, which are MF445 Massey Ferguson 4WD Farm Tractor and ACT model 20x24 Trailing Harrow prevented possible bids from other suppliers; thus depriving the public from having a qualitative benefit and service from a competitive bidding if only there was a strict compliance with the procedures laid down in IRR-A of RA 9184 or the Government Procurement Reform Act.

5. **ID.; ID.; ID.; THE PROVINCIAL LEGAL OFFICER'S ACT OF ISSUING CERTIFICATION DESPITE KNOWLEDGE OF THE ABSENCE OF PUBLIC BIDDING IN THE PROCUREMENT OF GOODS, CONTRIBUTED TO THE UNWARRANTED BENEFIT ADVANTAGE, AND PREFERENCE IN FAVOR OF A PRIVATE ENTITY, IN VIOLATION OF REPUBLIC ACT 9184 .—** The Ombudsman found several irregularities in the procurement documents. Most of the supporting documents for the procurement of the farm tractors and trailing harrows were undated and unnumbered, including Equity Machineries' undated sales invoice and delivery receipts which are in clear violation of the auditing and accounting rules and regulations. It is true that petitioner, being the provincial legal officer, together with the other respondents, as members of the PBAC, were not prevented from looking into the legality, regularity, and necessity of the procurement activities of the LGU-Isabela. As the Ombudsman ruled, had the respondents

acted under the ordinary diligence expected of them, they would have raised timely objections and might have ordered the suspension of the transactions instead of issuing certifications and relying on them. The fact that petitioner knew of the missing public bidding for the 2nd purchase of the farm tractors and trailing harrows should have cautioned and prevented him from issuing a certification. In conclusion, the acts of the respondents, including herein petitioner, when taken together contributed to the unwarranted benefit, advantage, and preference in favor of Equity Machineries. Specifically, when they failed to conduct a public bidding in the procurement of the farm tractors and trailing harrow.

6. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; PENALTY OF DISMISSAL FROM SERVICE IMPOSED UPON THE PETITIONER FOR DISHONESTY, GRAVE MISCONDUCT, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— The Court finds that indeed petitioner, together with all other respondents in the case, failed to observe due diligence expected of them in the discharge of their functions, and for intentionally distorting the truth in the procurement documents that shows their lack of interest and disposition to cheat to the serious damage of the government and the public in general. As to the penalty, the case calls for the application of two pertinent provisions under the Revised Rules on Administrative Cases in Civil Service (RRACCS) – Sections 49 and 50, which read in this wise: Section 49. *Manner of Imposition*. – When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below: a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present. b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present. d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; **and paragraph [c] shall be applied when there are more aggravating circumstances.** Section 50. *Penalty for the Most Serious Offense*. – If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding

to the most serious charge and the rest shall be considered as aggravating circumstances. Petitioner was found guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. Hence, applying the above provisions under RRACCS, petitioner was correctly imposed the penalty of dismissal from service with cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

APPEARANCES OF COUNSEL

Abogado Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

INTING, *J.*:

This is a Petition for *Certiorari* under Rule 65[1] of the Rules of Court assailing the Order[2] dated May 25, 2018 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-13-0031 which, among others, denied Don Antonio Marie V. Abogado's (petitioner) Consolidated Motion[3] filed on December 11, 2017.

The Consolidated Motion assailed the Decision[4] dated July 14, 2017 of the Ombudsman which found petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of dismissal from service with cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations.[5]

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[1] *Rollo*, pp. 3-15.

[2] *Id.* at 154-157.

[3] *Id.* at 141-152.

[4] *Id.* at 118-140.

[5] *Id.* at 137-138.

Antecedents

As culled from the Decision of the Ombudsman dated July 14, 2017:

This case stemmed from a Complaint[6] filed on February 8, 2013 by the Field Investigation Office (FIO) charging the following officials of the Province of Isabela with Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service: Danilo B. Tumamao (Tumamao), Pete Gerald L. Javier (Javier), William D. Nicolas (Nicolas), Dionisio E. Bala, Jr. (Bala), Alfredo B. Mendoza (Mendoza), Medardo B. Aggari (Aggari), Leticia Q. Mabbayad (Mabbayad), (collectively, respondents to the Complaint) and herein petitioner.

The charges arose from the alleged irregularities or anomalies committed in the implementation of the *Ginintuang Masaganang Ani* (GMA) *Program* of the Department of Agriculture (DA) under the Agriculture and Fisheries Modernization Act of 1997.[7]

Pursuant to the GMA Program, the Department of Budget and Management (DBM) issued a Special Allotment Release Order (SARO) No. E-04-00164 for ₱728,000,000.00 with Notice of Cash Allocation No. 222447-I for ₱291,200,000.00, in the DA's favor. The DA thereafter transferred the amount of ₱728,000,000.00 to its Regional Field Units (DA-RFUs) through the issuance of Advice of Sub-allotment (ASA) with the corresponding Notice of Transfer Allocation (NTA) for the implementation of the program. The amount released as Farm Input/Farm Implement Fund (FI/FI) was allocated to purchase farm inputs/farm implements for the identified proponents comprising of congressional districts or local government units (LGU).[8]

However, from the total amount of ₱728,000,000.00, the amount of ₱5,000,000.00 was deducted by the DBM for

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[6] *Id.* at 16-29.

[7] *Id.* at 119.

[8] *Id.* at 120.

realignment to the farm-to-market road project for the 3rd District of Bukidnon, upon the request of Juan Miguel Zubiri, who was then its representative. The amount was transferred to the Department of Public Works and Highways (DPWH). Only the amount of ₱723,000,000.00 was released for the GMA Program where the ₱23,000,000.00 was received by the Province of Isabela (LGU-Isabela).[9]

The Municipal Mayors of Alicia, Aurora, Echague, Gamu, Maconacon, Malig, Quirino, San Mateo and Tumauini, all of LGU-Isabela, through separate letters all dated February 12, 2004, requested then DA Undersecretary Jocelyn I. Bolante (Usec. Bolante) to let the Provincial Government, through the assistance of the Office of the Provincial Agriculturist, implement the GMA Program.[10]

Pursuant to the Memorandum dated March 17, 2004 issued by Usec. Bolante, the DA-RFU II Regional Executive Director, Gumersindo D. Lasam entered into an undated Memorandum of Agreement (MOA) with LGU-Isabela, represented by Governor Faustino S. Dy, Jr. (Governor Dy), that provided for the transfer of the ₱23,000,000.00 sub-allotment funds to LGU-Isabela in two tranches.[11]

On March 18, 2004, DA Assistant Secretary Belinda A. Gonzales approved the Advice Sub-Allotment No. 101-2004-129 dated March 18, 2004 for DA-RFU II, Tuguegarao, Cagayan.[12]

Through Land Bank of the Philippines (LBP) Check No. 960196 dated March 23, 2004, the DA-RFU II transferred to LGU-Isabela the amount of ₱14,950,000.00 or the 65% of the total allocation which was covered by Disbursement Voucher (DV) No. 2004-3-3766 dated March 23, 2004. As proof of receipt

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[9] *Id.*

[10] *Id.*

[11] *Id.* at 121.

[12] *Id.*

of the first tranche, the LGU-Isabela issued an Official Receipt (OR) No. 1805951[13] dated March 26, 2004.[14]

Subsequently, the second tranche was released by the DA-RFU II to LGU-Isabela through LBP Check No. 962910 dated May 7, 2004 amounting to ₱8,050,000.00 and supported by DV No. 2005-05-370.[15]

The Statement of Receipts and Disbursements as of September 30, 2004 issued by the Office of the Provincial Accountant of Isabela showed that the ₱23,000,000.00 fund allotted to LGU-Isabela was divided into seven transactions.[16]

The subject complaint pertained to the purchase of four units of Massey Ferguson Model 445 and four units of ACT Trailing Harrow Model 20x24 from Equity Machineries, Inc. (Equity Machineries).[17]

In the complaint, the FIO alleged that through the undated Purchase Request (PR) No. 121-04-03-008, Tumamao requested the purchase of (a) six units of 4WD Farm Tractor, 90HP-Massey Ferguson (farm tractors) at ₱1,800,000.00 per unit or a total of ₱11,340,000.00; and (b) six units of ACT 20x24.2 gang Trailing Harrow (trailing harrows) at ₱188,000.00 per unit or a total of ₱1,128,000.00. The grand total of the requested farm equipment amounted to ₱12,468,000.00. Nicolas certified the availability of funds. Governor Dy approved the undated PR and the corresponding Purchase Order (PO) No. 04-03-008[18] addressed to Equity Machineries.[19]

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[13] *Id.* at 47.

[14] *Id.*

[15] *Id.*

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

[17] *Id.* at 122.

[18] *Id.* at 55.

[19] *Id.* at 123.

The undated Equity Machineries Delivery Receipt (DR) No. 43283,[20] the Certificate of Acceptance[21] dated April 28, 2004 of Governor Dy, and the undated Certificate of Inspection[22] signed by Aggari, Mendoza, Tumamao, Nicolas and Nestor O. Salvador, Provincial Planning and Development Officer showed that only four units of farm tractors and four units of trailing harrows were delivered to and inspected by LGU-Isabela.[23]

Governor Dy certified and approved the May 7, 2004 DV No. 302-04-03-00187 which allowed the payment of ₱8,009,745.45, net of tax, for the equipment. While Javier and Nicolas, acting as provincial accountant and provincial treasurer, respectively, signed the DV. Governor Dy and Nicolas issued the May 7, 2004 LBP Check No. 0000233300[24] in the amount of ₱8,009,745.45, net of tax. As proof of receipt, Equity Machineries issued the undated Sales Invoice (SI) No. 66455[25] and OR No. 182268.[26]

Based on the Certification[27] dated March 30, 2004 issued by the Pre-Qualification, Bids and Awards Committee (PBAC), as approved by Governor Dy, the award for the procurement of land preparation equipment, which consisted of the six units of farm tractors and six units of trailing harrows was given to Equity Machineries based on the lowest bid during the public bidding conducted on March 18, 2004. The PBAC was composed of Bala as chairman, and Mendoza, Tumamao, Aggari, Mabbayad and petitioner as members.[28]

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[20] *Id.* at 56.

[21] *Id.* at 57.

[22] *Id.* at 58.

[23] *Id.*

[24] *Id.* at 60.

[25] *Id.* at 62.

[26] *Id.* at 63.

[27] *Id.* at 54.

[28] *Id.* at 124.

The FIO pointed out the irregularities attending the transaction between LGU-Isabela and Equity Machineries, citing the October 28, 2004 Commission on Audit (COA)-Audit Observation Memorandum (AOM) No. 2004-030[29] and the January 18, 2007 Sworn Statement[30] of Beatris A. Pataueg (Pataueg), COA State Auditor IV, to wit: (a) the four units of farm tractors and four units of trailing harrows were purchased through direct contracting with Equity Machineries instead of *via* public bidding; (b) the alleged public bidding was conducted on March 18, 2004 or prior to the execution of the MOA on March 19, 2004 between DA-RFU II and LGU-Isabela, and the receipt by the latter of the ₱14,950,000.00 initial fund on March 23, 2004; (c) no bidding documents duly authenticated by the PBAC was submitted; (d) the purchased farm tractors and trailing harrows were not among the farm inputs, farm implements and facilities enumerated in the Letter dated November 14, 2005 of Frisco M. Malabanan, National Coordinator, GMA Rice Program, DA; and (e) the memorandum receipts issued to four *barangay* captains of Cauayan, Isabela did not specify the purpose or reason for the distribution of the farm tractors and trailing harrows.[31]

Thus, the charge against the respondents to the Complaint, including petitioner, for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best interest of the Service.

For his defense, petitioner clarified that the bidding conducted on March 18, 2004 was for the Grains Highway Project of LGU-Isabela using the loan from the DBP. The corresponding publication for the bidding was published in February 6 and 13, 2004 issues of the *Philippine Daily Inquirer* (PDI).[32]

Petitioner asserted that no public bidding was conducted on March 18, 2004 for the implementation of the FI/FI Program

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

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

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

[32] *Id.* at 128.

with ASA No. 101-2004-129 as the fund was only transferred by the DA to LGU-Isabela on March 22, 2004; and that it was impossible for the PBAC to conduct a public bidding earlier than the receipt or availability of funds. In fact, as shown in LGU-Isabela's OR No. 1805951 dated March 26, 2004, the GMA fund was only transferred to LGU-Isabela on March 26, 2004.[33]

To bolster his claim, petitioner noted the following: (1) the differences in the engine and serial numbers for the delivered farm tractors and trailing harrows for the GMA Program and that for the Grains Highway Project; (2) the PO numbers, invoices and ORs of Equity Machineries for the two projects are different; (3) the words *General Fund-Loan/DBP* were stamped in all documents for the Grains Highway Projects, while for the GMA Program, the words *Trust Fund-NALGU* were stamped.[34]

Petitioner averred that he did not conspire with his co-respondents; that LGU-Isabela cleared him of any accountability when he left after Governor Dy lost in the 2004 elections; that he used the clearance issued by the office when he re-entered government service in 2005; and that the act complained of was more than eight years ago.[35]

Ruling of the Ombudsman

On July 14, 2017, the Ombudsman rendered the assailed Decision[36] finding all the respondents to the Complaint, including herein petitioner, guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. The Ombudsman found that respondents to the Complaint, in the discharge of their official administrative functions, exhibited evident bad faith, manifest partiality, and gross inexcusable negligence when they gave Equity Machineries unwarranted benefit, advantage, and preference because of their failure to

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[33] *Id.*

[34] *Id.*

[35] *Id.* at 129.

[36] *Id.* at 118-140.

conduct public bidding in the procurement of the farm tractors and trailing harrow. Consequently, the purchase of four units of MF445 Massey Ferguson 4WD Farm Tractor and four units of ACT 20x24 Trailing Harrow was not only irregular, but was a clear violation of the provisions of Section 10, Article IV of RA 9184, causing undue injury to the government.[37] Thus, the Ombudsman ruled:

> For failing to observe the due care and vigilance expected of them in the discharge of their respective duties, and for intentionally distorting the truth in the procurement documents which shows their lack of interests and disposition to cheat, respondents Tumamao, Javier, Nicolas, Bala, Mendoza, Aggari, Mabbayad, and [petitioner] committed a flagrant breach thereof, to the serious damage of the government and the public in general.[38] (Emphasis and italics omitted.)

In this regard, the Ombudsman imposed upon the respondents to the Complaint, including petitioner, the penalty of dismissal from the service with cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.[39]

On December 11, 2017, petitioner filed a Consolidated Motion[40] dated October 30, 2017 invoking a speedy disposition of his case and praying for the dismissal by the Court of similar cases due to inordinate delay; that, as a PBAC member, his function was only necessary when PBAC was called upon to convene. He alleged that PBAC faithfully and officiously dispensed its duty and nothing anomalous or irregular was uncovered, and that should there be irregularities in the project, he had no idea or knowledge or participation thereof. Hence, he prayed, among others, that the Decision dated July 14, 2017 be reconsidered and modified or set aside particularly reversing

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[37] *Id.* at 136.

[38] *Id.*

[39] *Id.* at 138.

[40] *Id.* at 141-152.

the adverse findings against him and to absolve him from any administrative or criminal liability.[41]

On May 25, 2018, the Ombudsman issued the assailed Order[42] denying, among others, the motion filed by petitioner and stating that the latter failed to submit a newly-discovered evidence which would materially alter the findings of the Ombudsman; and that petitioner failed to establish that grave errors of facts or laws or serious irregularities had been committed that are prejudicial to their interest.

Issue

Did the Ombudsman err in finding petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service in connection with the alleged irregularities/anomalies committed in the implementation of the GMA Program in the LGU-Isabela?

Petitioner maintains that, being the provincial legal officer of Isabela, he cannot be held liable.[43] His function was only necessary when the PBAC was called to convene upon request of the personnel in charge of the procurement.[44] Thus, as to the alleged irregularities in the GMA Program, he denies having any idea, knowledge, or participation therein. Consequently, petitioner alleges that to implicate or charge the members of the PBAC, including himself, with any administrative and criminal offense will be the height of injustice.[45]

Also, petitioner stresses that there is no *prima facie* case against him for dishonesty, gross misconduct, and conduct prejudicial to the best interest of the service.[46] He argues that the element of dishonesty is missing and not shown by the

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[41] *Id.* at 150.

[42] *Id.* at 154-157.

[43] *Id.* at 8.

[44] *Id.*

[45] *Id.*

[46] *Id.* at 9.

Ombudsman;[47] that he did not make false statements or deceitful report relative to the GMA Program;[48] and that because of his admission that there was no bidding conducted on the GMA Program, he claims that it even strengthened the evidence of the Ombudsman.[49]

Further, petitioner avers that he had adduced more than substantial evidence and legal arguments to prove his innocence to the charges filed against him saying that it is clear that there were two purchases that were undertaken by the LGU-Isabela in the year 2004 — first, that which pertains to the Isabela Grains Highway Project, which was a subject of the public bidding held on March 18, 2004 and to which petitioner participated as a PBAC member;[50] second, that which pertains to the purchase undertaken for the GMA Program to which petitioner denied having a participation as there was no public bidding conducted thereon.[51]

Our Ruling

As to the Procedural Aspect:

The Ombudsman's Decision and Order in administrative disciplinary cases shall be appealed to the Court of Appeals via Rule 43 of the Rules of Court.

In the 1998 case of *Fabian v. Hon. Desierto*[52] *(Fabian)*, the Court declared that Section 27 of Republic Act No. (RA) 6770, which provides that all "*orders, directives, or decisions [in administrative cases] of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari*

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[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.* at 10.

[51] *Id.*

[52] 356 Phil. 787 (1998).

within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court," was unconstitutional for it increased the appellate jurisdiction of the Court without its advice and concurrence.[53]

Thus, the Court ruled in *Fabian* case that "*appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43."*[54]

In the case before the Court, petitioner filed a Petition for *Certiorari* under Rule 65 of the Rules of Court which seeks to reverse and set aside the Decision dated July 14, 2017 and Order dated May 25, 2018 of the Ombudsman after finding him guilty of administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and imposing upon him the penalty of dismissal from the service and its accessory penalties.

Undeniably, the assailed Decision and Order of the Ombudsman constitute an administrative disciplinary action that is not "final and unappealable."

Following *Fabian*, this case should have been appealed to the Court of Appeals *via* a petition for review under Rule 43 of the Rules of Court.

Thus, pursuant to Administrative Matter No. 99-2-02-SC,[55] any appeal by way of petition for review from a decision or final resolution or order of the Ombudsman in administrative cases, or special civil action relative to such decision, resolution

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[53] *Id.* at 795.

[54] *Id.* at 808.

[55] In Re: Denial of Appeal from Any Decision or Final Resolution or Order of the Ombudsman in Administrative Cases and Dismissal of Special Civil Action Relative to Such Decision, Resolution or Order (Denial of Appeal from Any Decision or Final Resolution or Order of the Ombudsman in Administrative Cases and Dismissal of Special Civil Action Relative to Such Decision, Resolution or Order (February 9, 1999).

or order *filed with the Court after 15 March 1999 shall no longer be referred to the Court of Appeals, but must be forthwith DENIED or DISMISSED respectively*.

As to the Substantive Aspect:

However, even on the substantive aspect, the Court finds petitioner's assertions to be without merit. Emphatically, the petition must likewise fail.

There was noncompliance with Volume 2 Manual of Procedures for the Procurement of Goods and Services and with Implementing Rules and Regulations Part A (IRR-A) of RA 9184.

Section 2 of the Volume 2 Manual of Procedures for the Procurement of Goods and Services (The Manual) talks, among others, about preparing for the procurement of goods and provides the factors to be considered in planning for the procurement of goods. It likewise includes what are the technical specifications to be considered in procuring goods as well as the procuring entity's requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. Also, under the same section, it discusses what is the approved budget for the contract or the ABC.

In addition, Section 21 of the Implementing Rules and Regulations Part A (IRR-A) of RA 9184 provides for the advertising and contents of the invitation to bid.

Records of the case, however, show that the respondents and the DA-RFU II did not present any project proposal to identify the standards of the goods to be procured considering the function and performance, and its technical specifications.[56] Likewise, there is no showing that they conducted a market survey of available products, industry

[56] *Rollo,* p. 131.

developments, and product standards to enable the procuring entity to identify the mode of procurement to be employed and the budget needed for the project.

With the irregularities mentioned, the Court affirms the findings of the Ombudsman that the choice of the Massey Ferguson farm tractors and ACT trailing harrow was made without basis.[57]

There was no public bidding conducted pursuant to Sections 3 (b) and 10 of RA 9184 and there was a violation of Section 18 of RA 9184.

Sections 3 (b) and 10 of RA 9184 read:

Section 3. *Governing Principles on Government Procurement*. — All procurement of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government -owned and/or -controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by these principles:

x x x x x x x x x

(b) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.

x x x x x x x x x

Section 10. *Competitive Bidding*. — All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

Using the provisions as guidelines, it is beyond question that the LGU-Isabela failed to conduct a public bidding. As aptly observed by the Ombudsman, the mere posting of the Invitation to Pre-Qualify and to Bid in PDI and the Certification of the PBAC of the conduct of bidding on March 18, 2004 were highly suspect as when the documents necessary to start

[57] *Id.*

the procurement process were only issued or signed after March 18, 2004.[58]

Per records, the following circumstances show that it becomes highly doubtful that a public bidding for procurement was indeed earlier conducted on March 18, 2004, to wit: (1) the undated MOA entered into between DA-RFU II and Governor Dy was notarized on March 19, 2004; (2) the DV pertaining to the release of the 65% of the ₱23,000,000.00 or ₱14,950,000.00 to LGU-Isabela and the corresponding check were both dated March 23, 2004; and (3) a perusal of the OR No. 1805951 dated March 26, 2004 showed that LGU-Isabela actually received the ₱14,950,000.00 on March 26, 2004.[59]

Worth stressing is the fact the petitioner admitted that no public bidding occurred for the procurement;[60] that the public bidding conducted by the LGU-Isabela on March 18, 2004 was for the Grains/Highway and Agricultural Modernization Project (Grains Highway Project) pursuant to *Sangguniang Panlalawigan* Resolution No. 0356 approved on November 18, 2003.[61] To recall, the Grains Highway Project was funded under the General Fund-Loans[62] in the amount of ₱335,000,000.00 entered between the LGU-Isabela and the DBP as evidenced by the following documents supporting the purchase: (1) PBAC Certification that the bidding for the Grains Highway Project was conducted on March 18, 2004; (2) Recommendation dated March 24, 2004 of PBAC to Award the contract to Equity Machineries; (3) PO 04-00-004 dated March 24, 2004; (4) Undated Delivery Receipt No. 43281; (5) Sales Invoice No. 66453 dated April 3, 2004 of Equity Machineries; and (6) DV No. 121-04-06-00246 dated June 1, 2004.[63]

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

[59] *Id.* at 132.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

Also, there are other documents confirming petitioner's statement that the engine and serial numbers of the farm tractors and trailing harrows purchased for the Grains Highway Project under the General Fund-Loans and that for the GMA Program differ.[64]

In sum, the bidding that took place on March 18, 2004 was not conducted for the procurement under the GMA program, but clearly for the Grains Highway Project.[65]

Petitioner asserts that because of his admission that there was no public bidding conducted on the GMA Program, the evidence of the Ombudsman was strengthened; thus, he should not be held liable. Still, the Court affirms the Ombudsman when it ruled that it could not excuse petitioner of any liability just because of his admissions on the ground that he, being the provincial legal officer, failed to exert efforts to question the irregular process of procuring the farm tractors and trailing harrows.[66] In the words of the Ombudsman, petitioner's inaction contributed to the consummation of the purchase contract with Equity Machineries.[67]

Section 18 of RA 9184 provides:

> Section 18. *Reference to Brand Names*. — Specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

In this case, the specific brands, which are MF445 Massey Ferguson 4WD Farm Tractor and ACT model 20x24 Trailing Harrow[68] prevented possible bids from other suppliers; thus depriving the public from having a qualitative benefit and service from a competitive bidding if only there was a strict compliance

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[64] *Id.* at 133.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.* at 134.

with the procedures laid down in IRR-A of RA 9184 or the Government Procurement Reform Act.

Petitioner's act of issuing a certification despite the clear absence of a public bidding, as one of the material requirements, is in complete disregard of the policy of good governance mandated under Section 2 of RA 9184. Thus, it made him liable just like the other respondents in the case.

The Ombudsman found several irregularities in the procurement documents.

Most of the supporting documents for the procurement of the farm tractors and trailing harrows were undated and unnumbered, including Equity Machineries' undated sales invoice and delivery receipts which are in clear violation of the auditing and accounting rules and regulations.[69]

It is true that petitioner, being the provincial legal officer, together with the other respondents, as members of the PBAC, were not prevented from looking into the legality, regularity, and necessity of the procurement activities of the LGU-Isabela. As the Ombudsman ruled, had the respondents acted under the ordinary diligence expected of them, they would have raised timely objections and might have ordered the suspension of the transactions instead of issuing certifications and relying on them.[70]

The fact that petitioner knew of the missing public bidding for the 2nd purchase of the farm tractors and trailing harrows should have cautioned and prevented him from issuing a certification.

In conclusion, the acts of the respondents, including herein petitioner, when taken together contributed to the unwarranted

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[69] *Id.*

[70] *Id.* at 135.

benefit, advantage, and preference in favor of Equity Machineries. Specifically, when they failed to conduct a public bidding in the procurement of the farm tractors and trailing harrow. As aptly observed by the Ombudsman in its assailed Decision; thus:

> x x x respondents, in the discharge of their official administrative functions, exhibited evident bad faith, manifest partiality, and gross inexcusable negligence, when they gave Equity Machineries unwarranted benefit, advantage and preference, through their failure to conduct public bidding in the procurement of the farm tractors and trailing harrow. As a result, the purchase of 4 units of MF445 Massey Ferguson 4WD Tractor and 4 units of ACT 20x24 Trailing Harrow was not only irregular but also a clear violation of the provisions of RA 9184, foremost of which is Section 10, Article IV; to the undue injury of the government. Thus, the contract entered into is void as it is against the law and public policy:
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> > Government contracts shall be void, as against the law and public policy, where a statutory requirement of open competitive bidding has been ignored. As a corollary, agreements directly tending to prevent bidding for covered government contracts may violate public policy.[71] (Emphasis and italics omitted.)

All told, the Court finds that indeed petitioner, together with all other respondents in the case, failed to observe due diligence expected of them in the discharge of their functions, and for intentionally distorting the truth in the procurement documents that shows their lack of interest and disposition to cheat[72] to the serious damage of the government and the public in general.[73]

As to the penalty, the case calls for the application of two pertinent provisions under the Revised Rules on Administrative Cases in Civil Service[74] (RRACCS) — Sections 49 and 50, which read in this wise:

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[71] *Id.* at 136.

[72] *Id.*

[73] *Id.*

[74] Promulgated on November 8, 2011.

Section 49. *Manner of Imposition*. — When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; **and paragraph [c] shall be applied when there are more aggravating circumstances**. (Emphasis supplied.)

Section 50. *Penalty for the Most Serious Offense*. — If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

Petitioner was found guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. Hence, applying the above provisions under RRACCS, petitioner was correctly imposed the penalty of dismissal from service with cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.[75]

WHEREFORE, the petition is **DISMISSED.** The Order dated May 25, 2018 of the Office of the Ombudsman in OMB-C-A-13-0031 is **AFFIRMED**.

SO ORDERED.

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

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[75] *Id.* at 138.

EN BANC

[A.C. No. 12418. March 10, 2020]

AA TOTAL LEARNING CENTER FOR YOUNG ACHIEVERS, INC. represented by LOYDA L. REYES, *complainant, vs.* **ATTY. PATRICK A. CARONAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE PRACTICE OF LAW IS NOT A RIGHT BUT A PRIVILEGE BESTOWED BY THE STATE ONLY ON THOSE WHO POSSESS AND CONTINUE TO POSSESS, THE QUALIFICATIONS REQUIRED BY LAW FOR THE CONFERMENT OF SUCH PRIVILEGE; ELUCIDATED.— [I]t is only fitting to stress once again that the practice of law is not a right but a privilege bestowed by the State only on those who possess and continue to possess, the qualifications required by law for the conferment of such privilege. In *Heck v. Judge Santos*, this Court elucidated, *viz*.: The qualification of good character is a requirement which is not dispensed with upon admission to membership of the bar. This qualification is not only a condition precedent to admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession. It is a continuing requirement to the practice of law and therefore does not preclude a subsequent judicial inquiry, upon proper complaint, into any question concerning one's mental or moral fitness before he became a lawyer. This is because his admission to practice merely creates a rebuttable presumption that he has all the qualifications to become a lawyer. The rule is settled that a lawyer may be suspended or disbarred for *any* misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law.

2. ID.; ID.; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS ARE *SUI GENERIS*, WHICH IS NEITHER

PURELY CIVIL NOR PURELY CRIMINAL, AS THEY DO NOT INVOLVE A TRIAL OF AN ACTION OR A SUIT, BUT ARE RATHER INVESTIGATIONS BY THE COURT INTO THE CONDUCT OF ONE OF ITS OFFICERS; THERE IS NO PREJUDICIAL QUESTION NOR PROSCRIPTION THAT WILL PREVENT THE ADMINISTRATIVE CASES AGAINST LAWYERS FROM PROCEEDING; *DOUBLE JEOPARDY* OR *IN PARI DELICTO* ARE NOT AVAILABLE AS DEFENSES.— We also take this opportunity to reiterate that administrative cases against lawyers belong to a class of their own, distinct from and may proceed independently of civil and criminal cases. There is no prejudicial question nor proscription that will prevent it from proceeding. *Double jeopardy* or *In Pari Delicto* are also not available as defenses to bar the disciplinary proceedings against an erring lawyer. It should be noted that it can be initiated *motu proprio* by the Supreme Court or the IBP and even without a complaint and can proceed regardless of lack of interest of the complainants, if the facts proven so warrant. Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but are rather investigations by the Court into the conduct of one of its officers. Not being intended to inflict punishment, they are in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. Public interest is their primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. All told, the privilege to practice the legal profession is not a permanent right and may be taken away if one falls short of the requirements imposed by law.

APPEARANCES OF COUNSEL

Sy & Flores Law Firm for complainant.

D E C I S I O N

HERNANDO, *J.*:

Before this Court is a *Verified Complaint* for Disbarment[1] docketed as CBD Case No. 14-4396 filed by complainant AA Total Learning Center for Young Achievers, Inc. (AA), represented by Loyda L. Reyes (Reyes) against respondent Atty. Patrick A. Caronan (Caronan) for violation of the Code of Professional Responsibility.

The antecedent facts are as follows:

Sometime in 2012, respondent Caronan and Solly Cruz offered to sell to complainant Reyes a parcel of land located in J.P. Rizal St. Ususan, Taguig City (subject property) and claimed that they were representatives of Maricel A. Atanacio (Atanacio), the registered owner of the subject property.

Finding the property suitable for AA's future campus, Reyes became interested in the subject property and thus, went along with Caronan and conducted an ocular inspection of the same. Thereat, Caronan briefly introduced Reyes to Atanacio who thereafter immediately went off to another direction.[2]

On March 9, 2012, Caronan asked Reyes to meet him and Atanacio to discuss and finalize the final purchase price of the subject property. During the scheduled meeting, Caronan advised Reyes that Atanacio will no longer be joining them and that he authorized him to finalize the purchase price on her behalf.[3]

Relying on the representations of Caronan, Reyes agreed that the final purchase price of the subject property shall be at Fifteen Million Six Hundred Fifty Thousand Pesos (₱15,650,000.00),inclusive of transfer fees and capital gains tax. Reyes also agreed to pay Two Hundred Fifty Thousand

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[1] *Rollo*, pp. 2-11.

[2] *Id.* at 3.

[3] *Id.* at 4.

Pesos (₱250,000.00) as earnest money and paid the initial amount of One Hundred Thousand Pesos (₱100,000.00).[4]

On March 23, 2012, Caronan collected from Reyes the balance of the earnest money amounting to One Hundred Fifty Thousand Pesos (₱150,000.00). Reyes paid One Hundred Thousand Pesos (₱100,000.00) in cash and tendered another Fifty Thousand Pesos (₱50,000.00) in check. The payment was duly acknowledged by Caronan.[5]

Thereafter, another meeting was set by Caronan in Metrobank Fort Bonifacio for the signing of the *Deed of Absolute Sale*[6] and the payment of the initial 50% of the purchase price. When Reyes arrived at the meeting place, Caronan informed her that Atanacio will not be joining them and that she has already signed the *Deed of Absolute Sale*. When the deed was presented to Reyes, indeed a signature was already affixed above the name of Atanacio. Meanwhile, Caronan, in behalf of Atanacio, signed the *Memorandum of Agreement*[7] *(MOA)* which embodied the terms and conditions of the sale.[8]

Following the terms of the sale, Reyes issued a Metrobank Manager's check to the order of Atanacio in the amount of Seven Million Pesos (₱7,000,000.00) which was duly acknowledged by Caronan. It was agreed that the balance of the purchase price shall be paid upon transfer of the title to AA's name. The parties also agreed that the processing of the payment of appropriate taxes and fees, as well as registration of the sale in favor of AA, shall be undertaken by Caronan.[9]

Meanwhile, Reyes gave Caronan Four Hundred Fifty Thousand Pesos (₱450,000.00) to settle the Capital Gains Tax

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[4] *Id.* at 4.

[5] *Id.* at 4.

[6] *Id.* at 179-180.

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

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

[9] *Id.* at 4.

and the Transfer Fees by issuing another Metrobank check amounting to Three Hundred Thousand Pesos (₱300,000.00) and tendering the remaining One Hundred Fifty Thousand (₱150,000.00) in cash. On even date, the Three Hundred Thousand Pesos (₱300,000.00) Metrobank check was encashed by Caronan. The payment was again duly acknowledged by him.[10]

On April 13, 2012, Reyes was notified that the Metrobank Check amounting to Seven Million Pesos (₱7,000,000.00) was already negotiated by Atanacio at Metrobank Taytay Branch.[11]

Caronan, in the meantime, promised to deliver the title under AA's name by the first week of June 2012. He assured Reyes that the transfer will not be a problem since he is friends with the Registrar of Deeds of Taguig. In the ensuing weeks, Caronan gave updates and provided reasons for the delay in transfer. However, in July 2012, Caronan could no longer be reached.[12]

Thus, on July 19, 2012, Reyes requested a meeting with Atanacio. She inquired about the cause of the delay in the transfer of the title in AA's name considering that in the *Deed of Absolute Sale*, Atanacio committed to immediately transfer the title of the subject property in AA's name and especially since the payment of Seven Million Pesos (₱7,000,000.00) was already tendered to Caronan, her representative. Atanacio was shocked upon hearing what Reyes said and categorically denied any participation in the said sale transaction. She disowned signing any *Deed of Absolute Sale* and categorically denied authorizing Caronan to negotiate in her behalf the sale of her property. She maintained that she never received a single centavo from the transaction.[13]

Alarmed, Reyes in turn immediately sought advice from her legal counsel who prepared a letter demanding the return of

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[10] *Id.* at 4.

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

[12] *Id.* at 6.

[13] *Id.* at 6.

the monies that Reyes paid in the total amount of Seven Million Seven Hundred Thousand Pesos (₱7,700,000.00). The demand letter however remained unheeded.

Reyes eventually learned that aside from the misrepresentations employed by Caronan in the execution of the *Deed of Absolute Sal*e and *MOA*, he likewise employed fraudulent machinations in negotiating in his favor the Metrobank Manager's check amounting to Seven Million Pesos (₱7,000,000.00). Caronan, in cahoots with a certain Noraida Tanon (Tanon), introduced Tanon to the bank officials as Atanacio and the payee of the check. By presenting fake identification cards, Caronan and Tanon successfully facilitated the withdrawal of Two Million Pesos (₱2,000,000.00) and deposited the balance of Five Million Pesos (₱5,000,000.00) in the account of Caronan's wife, Rosana Caronan.[14]

In her *Sinumpaang Salaysay* dated August 22, 2012,[15] Tanon admitted that she impersonated Atanacio upon the instruction of Caronan. According to Tanon, she was reassured by Caronan that her pretending to be Atanacio was legal and that as a lawyer, he would never put her in harm's way. Tanon thus relied on Caronan's representations and acceded to his plan.[16]

Verily, Caronan, through fraud and deceit, successfully appropriated for himself the total amount of Seven Million Seven Hundred Thousand Pesos (₱7,700,000.00) to the detriment of AA. Thus, on November 22, 2012, complainant AA, as represented by Reyes, filed a case against Caronan for *estafa*.[17]

Later on, complainants likewise learned that Caronan's real name is "Richard A. Caronan" and that he assumed the identity of his brother, Patrick A. Caronan and used his school credentials to obtain a law degree. It was also later found out that the real

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

[15] *Id.* at 186-188.

[16] *Id.* at 8.

[17] *Id.* at 8.

Patrick A. Caronan filed a disbarment case against the respondent.[18] A criminal complaint for violation of the *Anti-Alias Law* was likewise filed by AA against Caronan and the same prospered into a full blown case.

Finally, Reyes, representing AA, filed before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD) the instant *Verified Complaint* against Caronan accusing him of gross misconduct. The complaint alleged that the actuations of Caronan constituted grave transgressions of the solemn oath of a lawyer and violation of the Code of Professional Responsibility warranting his permanent disbarment.[19] AA and Reyes thus prayed that Caronan be perpetually disbarred from the practice of law and his name permanently stricken off the Roll of Attorneys.

Respondent, on the other hand, denied all the accusations against him and averred that the same were only lies perpetrated by complainant Reyes and her husband, Brigadier General Joselito M. Reyes, to disparage his reputation.[20]

He maintained that the present administrative complaint against him was a mere retaliation on the part of Spouses Reyes for his filing of several criminal cases against them before the Office of the Ombudsman. It was just a strategy on their part to learn in advance his defense in the criminal cases he filed against them as well as to weaken him "economically" since his legal practice was his only source of income. He averred that apart from the present disbarment case, another one for the same cause of action was filed by the Spouses Reyes against him and docketed as CBD Case No. 14-4301.[21]

Respondent countered that the allegation against him regarding the negotiation of the Metrobank Manager's Check in the amount of Seven Million Pesos (₱7,000,000.00) was simply unbelievable

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[18] *Id.* at 9.

[19] *Id.* at 75-76.

[20] *Id.* at 76.

[21] *Id.* at 76.

considering the rigid banking requirements in encashing a Manager's check. Moreover, the same cannot be taken cognizance of by the CBD as the case is already a subject of a separate criminal case.[22]

Additionally, neither can the *Sinumpaang Salaysay* allegedly executed by Tanon be given weight considering that it was obtained through fraud and intimidation. The affidavit was notarized by Atty. Cherry Belmonte-Lim (Atty. Lim), the Chairman of the Bids and Awards Committee of the Armed Forces of the Philippines and a close colleague of the Spouses Reyes.[23]

Respondent alleged that sometime in 2012, he was detained in PNP CIDG-NCR Camp Crame for trumped up charges of illegal possession of firearms and explosives filed by the Spouses Reyes. He claimed that the Spouses Reyes confiscated five Transfer Certificates of Title covering properties in Nueva Ecija which were jointly owned by him and his wife. The amount of the properties involved is far more than the Seven Million Pesos (₱7,000,000.00) imputed against him. Also, when the police searched his home armed with a search warrant that was fraudulently obtained, several personal properties belonging to the respondent and his family were forcibly taken and ended up in the possession of the Spouses Reyes and the police.

Finally, anent the issue of his "identity," respondent maintained that the disbarment case filed by a certain Patrick A. Caronan and docketed as CBD Case No. 14-4301, was a mere reiteration of the complaint filed against him by Joseph G. Agtarap in 2009 in A.C. No. 10074 wherein the Supreme Court already exonerated him from the charges. Hence, the issue regarding his identity was already settled and cannot be re-litigated upon on the basis of *res judicata*.[24]

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[22] *Id.* at 77.

[23] *Id.* at 77-78.

[24] *Id.* at 76-77.

In sum, the respondent moved for the dismissal of the instant disbarment for lack of merit or in the alternative, for the proceedings to be held in abeyance pending resolution of the same issues in the criminal cases filed against him by complainant Reyes.[25]

Report and Recommendation of the Integrated Bar of the Philippines

In his Report and Recommendation dated July 14, 2017,[26] Investigating Commissioner Ferdinand I. Diño recommended the dismissal of the *Verified Complaint* for being moot and academic in light of Our pronouncement in A.C. No. 11316 dated July 12, 2016 captioned *"Patrick A. Coronan v. Richard A. Coronan a.k.a. Atty. Patrick A. Coronan"* where "Atty. Patrick A. Caronan" was ordered disbarred and stricken off the Roll of Attorneys. The Investigating Commissioner no longer passed upon the merits of the *Verified Complaint* and instead quoted *in toto* the ruling of this Court in the aforementioned case which highlighted the gross dishonesty and utter lack of moral fitness on the part of the respondent when he assumed the name, identity and school records of his brother.

In the *Resolution* dated February 22, 2018,[27] the Board of Governors (BOG) of the IBP resolved to adopt the findings of facts and recommendation of the Investigating Commissioner with modification that the ultimate penalty of disbarment be imposed upon respondent and his name stricken off the Roll of Attorneys. The Resolution states:

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, ***with modification****, and instead recommend the imposition upon the Respondent Atty. Patrick A. Corona (sic) of the ultimate penalty of* ***DISBARMENT****, and that his name stricken off from the Roll of Attorneys.*

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[25] *Id.* at 79.

[26] *Id.* at 257-270.

[27] *Id.* at 255.

The Issue Before this Court

Whether or not respondent Coronan should be disbarred and his name stricken off the Roll of Attorneys.

The Court's Ruling

This Court adopts the recommendation of the Investigating Commissioner to dismiss the *Verified Complaint* for being moot in light of this Court's pronouncement in A.C. No. 11316 promulgated on July 12, 2016.[28]

Herein respondent is the same respondent involved in A.C. No. 11316. We also note that respondent adopted the same defense he used in A.C. No. 11316 stating in essence that his identity can no longer be raised as an issue as it had already been resolved in CBD Case No. 09-2362 where the IBP BOG dismissed the administrative case filed against him, and which case had already been declared closed and terminated by this Court in A.C. No. 10074.[29]

The dispositive portion of the *Decision* in A.C. No. 11316 is as follows:

WHEREFORE, respondent Richard A. Caronan a.k.a. "Atty. Patrick A. Caronan" (respondent) is found **GUILTY** of falsely assuming the name, identity, and academic records of complainant Patrick A. Caronan (complainant) to obtain a law degree and take the Bar Examinations. Accordingly, without prejudice to the filing of appropriate civil and/or criminal cases, the Court hereby resolves that:

(1) the name "Patrick A. Caronan" with Roll of Attorneys No. 49069 is ordered **DROPPED** and **STRICKEN OFF** the Roll of Attorneys;

(2) respondent is **PROHIBITED** from engaging in the practice of law or making any representations as a lawyer;

(3) respondent is **BARRED** from being admitted as a member of the Philippine Bar in the future;

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[28] 789 Phil. 628 (2016).

[29] *Rollo*, pp. 76-77.

(4) the Identification Cards issued by the Integrated Bar of the Philippines to respondent under the name "Atty. Patrick A. Caronan" and the Mandatory Continuing Legal Education Certificates issued in such name are **CANCELLED** and/or **REVOKED**; and

(5) the Office of the Court Administrator is ordered to **CIRCULATE** notices and **POST** in the bulletin boards of all courts of the country a photograph of respondent with his real name, "Richard A. Caronan," with a warning that he is not a member of the Philippine Bar and a statement of his false assumption of the name and identity of "Patrick A. Caronan."

Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator.

SO ORDERED.[30]

Considering the foregoing, there is no need to resolve the merits of the case and determine whether or not "Atty. Patrick Caronan" is guilty of the violations imputed against him. After all, disciplinary proceedings conducted by the IBP are reserved only for those belonging in the legal profession. Clearly, respondent is not and was never a member of the bar. Hence, the penalty of disbarment is not available to him. Besides, AA and Reyes's prayer that respondent be forever barred from the law practice and his name stricken off the Roll of Attorneys was already imposed upon respondent as among his penalties in A.C. No. 11316.

Nonetheless, it is only fitting to stress once again that the practice of law is not a right but a privilege bestowed by the State only on those who possess and continue to possess, the qualifications required by law for the conferment of such privilege.[31]

In *Heck v. Judge Santos*,[32] this Court elucidated, *viz.*:

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[30] *Supra* note 28 at 639.

[31] *Libit v. Oliva*, 307 Phil. 388-392 (1994).

[32] 467 Phil. 798 (2004).

The qualification of good moral character is a requirement which is not dispensed with upon admission to membership of the bar. This qualification is not only a condition precedent to admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession. It is a continuing requirement to the practice of law and therefore does not preclude a subsequent judicial inquiry, upon proper complaint, into any question concerning one's mental or moral fitness before he became a lawyer. This is because his admission to practice merely creates a rebuttable presumption that he has all the qualifications to become a lawyer. The rule is settled that a lawyer may be suspended or disbarred for *any* misconduct; even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law.[33]

We also take this opportunity to reiterate that administrative cases against lawyers belong to a class of their own, distinct from and may proceed independently of civil and criminal cases.[34] There is no prejudicial question nor proscription that will prevent it from proceeding.[35] *Double jeopardy* or *In Pari Delicto*[36] are also not available as defenses as to bar the disciplinary proceedings against an erring lawyer. It should be noted that it can be initiated *motu proprio* by the Supreme Court or the IBP and even without a complaint and can proceed regardless of lack of interest of the complainants, if the facts proven so warrant.

> Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but are rather investigations by the Court into the conduct of one of its officers. Not being intended to inflict punishment, they are in no sense

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[33] *Id.* at 823.

[34] *Guevarra v. Atty. Eala*, 555 Phil. 713, 725 (2007).

[35] *Calo v. Degamo*, 20 SCRA 447, 450 (1967).

[36] *Samaniego v. Ferrer*, 578 Phil. 1, 5 (2008).

> a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. Public interest is their primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[37]

All told, the privilege to practice the legal profession is not a permanent right and may be taken away if one falls short of the requirements imposed by law.

WHEREFORE, the Court **NOTES** the Resolution of the Board of Governors of the Integrated Bar of the Philippines in CBD Case No. 14-4396 dated February 22, 2018. The Court **ADOPTS** the findings of fact of Investigating Commissioner Ferdinand I. Diño in his Report and Recommendation dated July 14, 2017 and **ACCEPTS** his recommendation to dismiss the complaint for being moot in view of Our pronouncement in A.C. No. 11316, without prejudice to pending or to be filed civil and criminal cases against respondent.

This case is **DECLARED CLOSED** and **TERMINATED**.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

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[37] *Gatchalian Promotions Talent Pool, Inc. v. Atty. Naldoza*, 374 Phil. 1, 10-11 (1999), citing: *In re Almacen*, 31 SCRA 562, 600 (1970).

EN BANC

[G.R. No. 217590. March 10, 2020]

PHILIPPINE CONTRACTORS ACCREDITATION BOARD, *petitioner*, *vs.* **MANILA WATER COMPANY, INC.,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CONTRACTORS' LICENSE LAW (RA 4566); THE PHILIPPINE CONTRACTORS ACCREDITATION BOARD (PCAB); POWER TO CLASSIFY AND LIMIT OPERATIONS; THE PCAB EXCEEDED THE CONFINES OF THE DELEGATING STATUTE WHEN IT CREATED THE NATIONALITY-BASED LICENSE TYPES UNDER SECTION 3.1 OF RULE 3 OF RA 4566'S IMPLEMENTING RULES AND REGULATIONS.— The crux of the controversy is the validity of Section 3.1 (License Types: Regular License and Special License), Rule 3 (Contractor's License) of the IRR of R.A. No. 4566 (Contractor's License Law). x x x Petitioner anchors its authority to issue the assailed IRR on Section 17 of R.A. No. 4566, which provides [for PCAB's power to classify and limit operations] x x x [Thus, the board] is authorized to adopt rules to effect classification of contractors as may be necessary. x x x [T]he phrase "to effect the classification of contractors" under Section 17 should be read in relation to Section 16 of R.A. No. 4566 which provides for an enumeration of the statutorily-mandated classifications for the contracting business, *viz*: Section 16. Classification. — For the purpose of classification, the contracting business includes any or all of the following branches. (a) General engineering contracting; (b) General building contracting; and (c) Specialty contracting. These terms are then correspondingly defined in subsections (c), (d), and (e), Section 9 of R.A. No. 4566. Pursuant to the directive under Section 17 of R.A. No. 4566 of Philippine Contractors Accreditation Board (PCAB) to "effect the classification of contractors," Section 5.1 of the IRR on "License Classification and Categorization" sub-classified the three (3) main contracting classifications as defined in Section 9 of R.A.

No. 4566 by areas of specialization. However, PCAB went beyond the prescribed classifications under Section 16 of R.A. No. 4566 and proceeded to create the nationality-based license types under Section 3.1. Additionally, while Section 5 of R.A. No. 4566 authorizes PCAB to "issue, suspend, and revoke licenses of contractors," this general authority to issue licenses must be read in conjunction with Sections 16 and 17 of R.A. No. 4566 if the licensing power of the PCAB is to be exercised to the extent that the PCAB would be effectively creating substantial classifications between certain types of contractors. In fine, PCAB exceeded the confines of the delegating statute when it created the nationality-based license types under Section 3.1. Basic is the rule that "the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation."

2. ID.; 1987 PHILIPPINE CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY (ARTICLE XII); SECTION 14 ON THE PRIVILEGE OF A NATURAL PERSON TO EXERCISE HIS PROFESSION IN THE PHILIPPINES; PROFESSIONALIZING THE CONSTRUCTION BUSINESS IS DIFFERENT FROM THE EXERCISE OF PROFESSION WHICH THE CONSTITUTION EXCLUSIVELY RESTRICTS TO FILIPINO CITIZENS.— Section 14, Article XII of the Constitution refers to the privilege of a natural person to exercise his profession in the Philippines. On the other hand, under Article IV of R.A. No. 4566, even partnerships, corporations and organizations can qualify for a contractor's license through its responsible officer. The "profession" under the aforesaid provision refers to the practice of natural persons of a certain field in which they are trained, certified, and licensed. Being a licensed contractor does not automatically qualify within the ambit of the Constitution as a "profession" *per se*. A contractor under R.A. No. 4566 does not refer to a specific practice of profession, *i.e.* architecture, engineering, medicine, accountancy and the like. x x x Suffice it to say that a corporation or juridical person, in this case a construction firm, cannot be considered a "professional" that is being exclusively restricted by the Constitution and our laws to Filipino citizens. The licensing of contractors is not to engage in the practice of a specific profession, but rather to engage in the business of contracting/construction. x x x Professionalizing the construction business is different from the exercise of

profession which the Constitution exclusively restricts to Filipino citizens. To reiterate, the license required under R.A. No. 4566 is for purposes of engaging in the business of contracting under the terms of the said act for a fiscal year or a certain period/ project, and not for the purpose of practicing a particular profession. The responsible officer who secures a license for contracting, for his own business or for the company, may already be a professional in his own field (*i.e.*, engineer, architect). Then again, the license acquired under R.A. No. 4566 does not make the licensed contractor a "professional" within the meaning contemplated under Section 14, Article XII of the 1987 Constitution. x x x [T]he construction industry is not one which the Constitution has reserved exclusively for Filipinos. Neither do the laws enacted by Congress show any indication that foreigners are proscribed from entering into the same projects as Filipinos in the field of construction. Thus, we find that setting the equity limit for a certain type of contractor's license has no basis.

PERLAS-BERNABE, *J., concurring opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; CONTRACTORS' LICENSE LAW (RA 4566); IMPLEMENTING RULES AND REGULATIONS (IRR); THE PHILIPPINE CONTRACTORS ACCREDITATION BOARD (PCAB) EXCEEDED THE CONFINES OF THE DELEGATING STATUTE WHEN IT CREATED THE NATIONALITY-BASED LICENSE TYPES UNDER SECTION 3.1 OF RULE 3.— "Fundamental is the precept in administrative law that **the rule-making power delegated to an administrative agency is limited and defined by the statute conferring the power**. For this reason, **valid objections to the exercise of this power lie where it conflicts with the authority granted by the legislature**." The Court has ruled that "administrative regulations that alter or amend the statute or enlarge or impair its scope are void, and courts not only may, but it is their obligation to strike down such regulations." In this case, PCAB anchors its authority to create the nationality-based classifications of licenses on **Sections 5 and 17 of RA 4566**, x x x However, a cursory examination of RA 4566's provisions shows that Section 17 thereof is not a proper basis

for PCAB to create license types based on nationality. The phrase "to effect the classification of contractors" under Section 17 should be read in relation to Section 16 of RA 4566 which provides for an enumeration of the statutorily-mandated classifications for the contracting business, x x x. These terms are then correspondingly defined in subsections (c), (d), and (e), Section 9 of RA 4566. Pursuant to the directive under Section 17 of RA 4566 for PCAB to "effect the classification of contractors," Section 5.1, Rule 5 of the IRR on "License Classification and Categorization" sub-classified the three (3) main contracting classifications as defined in Section 9 of RA 4566 by areas of specialization. However, PCAB went beyond the prescribed classifications under Section 16 of RA 4566 and proceeded to create the nationality-based license types under Section 3.1. Furthermore, while Section 5 of RA 4566 authorizes PCAB to "issue, suspend and revoke licenses of contractors," this general authority to issue licenses must be read in conjunction with Sections 16 and 17 of RA 4566 if the licensing power of PCAB is to be exercised to the extent that PCAB would be effectively creating substantial classifications between certain types of contractors. Indeed, "every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law." Accordingly, PCAB exceeded the confines of the delegating statute when it created the nationality-based license types under Section 3.1, rendering the same, as well as the correlative provisions mentioned in the *ponencia*, void.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; CONTRACTORS' LICENSE LAW (RA 4566); IMPLEMENTING RULES AND REGULATIONS (IRR); SECTION 3.1 OF RULE 3 CREATING NATIONALITY-BASED LICENSE TYPES; IT DOES NOT RUN AFOUL OF THE CONSTITUTION. — The assailed classification under Section 3.1 does not run afoul of the Constitution. x x x [T]he classification of licenses does not create a nationality requirement.

Section 3.1 is not an absolute restriction against foreign contractors, but is merely a licensing regulation. A reading of the provision, as well as the entirety of Republic Act No. 4566, will show that foreign contractors are not prohibited from engaging in the construction industry. Section 3.1 simply classifies two (2) types of licenses that may be applied for, which will then determine the documentary requirements, expiry of the license, and number of projects a licensee may undertake under a single license. It does not prohibit foreign contractors from applying for a license. Notably, there is no distinction between regular and special licenses as to the terms and conditions, qualifications for licensing, and license application processing. More important, Republic Act No. 4566 and its Implementing Rules and Regulations do not state restrictions against foreign contractors as to the type of projects they may apply for.

2. **ID.; ID.; ID.; ID.; ID.; IT DOES NOT EXCEED THE BOUNDS OF RA 4566.—** [T]he classification under Section 3.1 does not exceed the bounds of Republic Act No. 4566. It is settled that administrative agencies delegated with legislative power may enact implementing rules and regulations of a law. However, for these rules to be valid, they must be within the bounds of the statute's provisions. x x x To recall, Section 17 of Republic Act No. 4566 gives petitioner a wide discretion to adopt necessary rules to effect classifications, consistent with the established practice and procedure in the construction business. To effectively issue licenses, petitioner can demand various requirements as it deems fit. Additionally, it appears that the contractor's nationality only has an effect on licensing requirements, but it does not limit the operations a contractor may undertake. Nothing in Section 3.1 suggests that a foreign contractor's projects would be limited to general engineering contracting or specialty contracting only. Indeed, the text of Section 17 remains clear: a contractor may qualify for any or all categories of contracting business, regardless of the license type they hold.

3. **ID.; ID.; ID.; ID.; ID.; THE PHILIPPINE COMPETITION ACT DOES NOT APPLY IN CASE AT BAR.—** [T]he Philippine Competition Commission, as *amicus curiae*, opined that the supposed nationality-based restriction under Section 3.1 is an example of barriers to entry, which, it claimed, violate the constitutional policy against unfair competition. x x x The

> Philippine Competition Act, however, does not apply here. x x x Barriers to entry are factors that prevent firms from joining the market, and these may be structural, firm behavior, or government policy-induced. x x x Barriers to entry foil the competitive market because they give market power to incumbent entities, allowing them to control the supply and price. x x x However, competition policy and law only ensure that firms in the market play fair. x x x Prohibited acts under the Philippine Competition Act are laid out in its Chapter III. Particularly, Sections 14 and 15 flag anti-competitive agreements and entities that abuse their dominant position. Our competition law does not *per se* outlaw market imperfections. It only prohibits abusive behaviors that substantially prevent, restrict, or lessen competition. It does not preclude natural or structural market failures, such as barriers to entry and market dominance.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Molo Sia Dy Tuazon Ty & Coloma Law Offices for respondent.

D E C I S I O N

GESMUNDO, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, the Philippine Contractors Accreditation Board *(PCAB; hereinafter referred to as petitioner)* seeks the reversal of the February 24, 2014 Resolution[2] and the February 10, 2015 Order[3] of the Regional Trial Court, Quezon City, Branch 83 *(RTC)* which granted the petition for declaratory relief filed by Manila Water Company, Inc. *(respondent)* and declared Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the

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[1] *Rollo*, pp. 22-35.

[2] *Id.* at 39-41; penned by Presiding Judge Ralph S. Lee.

[3] *Id.* at 42; penned by Presiding Judge Ralph S. Lee.

Philippines or the Implementing Rules and Regulations (*IRR*) of Republic Act (*R.A.*) No. 4566[4] void.

The Court is asked to determine the validity of Section 3.1, Rule 3 of the IRR which provides:

Rule 3 CONTRACTOR'S LICENSE

Section 3.1. License Types. —

Two types of licenses are hereby instituted and designated as follows:

a) The Regular License

"Regular License" means a license of the type issued to a domestic construction firm which shall authorize the licensee to engage in construction contracting within the field and scope of his license classification(s) for as long as the license validity is maintained through annual renewal; unless renewal is denied or the license is suspended, cancelled or revoked for cause(s).

The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/ corporation with at least seventy percent (70)* Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

* Adjusted to 60% under Art. 48 of Chapter III, Book II of the Omnibus Investment Code of 1987.

b) The Special License

"Special License" means a license of the type issued to a joint venture, a consortium, a foreign constructor or a project owner which shall authorize the licensee to engage only in the construction of a single specific undertaking/project. In case the licensee is a foreign firm, the license authorization shall be further subject to condition(s) as may have been imposed by the proper Philippine government authority in the grant of the privilege for him to so engage in construction contracting in the Philippines. Annual renewal shall be required for as long as the undertaking/project is in progress,

[4] An Act Creating the Philippine Licensing Board for Contractors, Prescribing Its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes, otherwise known as the Contractors' License Law (1965).

but shall be restricted to only as many times as necessary for completion of the same.

The following can qualify only for the Special License:

ba) A joint venture, consortium or any such similar association organized for a single specific undertaking/ project;

bb) A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines.

bc) A project owner undertaking by himself, sans the service of a constructor, the construction of a project intended for sale, lease, commercial/industrial use or any other income generating purpose.[5]

Antecedents

On July 9, 2012, respondent wrote petitioner seeking accreditation of its foreign contractors to undertake its contracts for the construction of necessary facilities for its waterworks and sewerage system. On November 8, 2012, petitioner replied stating that under Section 3.1 of the IRR, regular licenses are reserved for, and issued only to, contractor-firms of Filipino sole proprietorship or partnership/corporation with at least 60% Filipino equity participation and duly organized and existing, under and by virtue of the laws of the Philippines. Petitioner also pointed out that since the purported construction contracts adverted to by respondent do not appear as Build-Operate-Transfer *(BOT)* contracts and are not foreign assisted/financed projects required to undergo international competitive biddings which are exempted under R.A. No. 7718, then the issuance of the contractor's license in the context of the said law is not warranted.[6]

Thereafter, respondent filed a Petition for Declaratory Relief[7] before the trial court which sought for the determination

[5] *Id.* at 91-92.

[6] *Id.* at 26.

[7] *Id.* at 43-74.

of the validity of Section 3.1, Rule 3 of the IRR issued by petitioner. Respondent claimed that the said provision is unconstitutional since it creates restrictions on foreign investments, a power exclusively vested on Congress by the Constitution. It also argued that the same provision adds restrictions to R.A. No. 4566 which the latter does not provide.[8]

Petitioner, represented by the Office of the Solicitor General *(OSG)*, countered that R.A. No. 4566 grants petitioner the authority to effect classification of contractors and limit the scope of each contractor to those in which he is classified to engage in. It is their position that the IRR does not discriminate since it does not totally prohibit foreign contractors but, instead, requires them to obtain a special license.[9]

The RTC ruled in favor of respondent and declared Section 3.1, Rule 3 of the IRR void. It held that the same does not merely interpret or implement the law but creates an entirely new restriction that is not found in the law. While Section 17 of R.A. No. 4566 allows the board to effect classifications, the same provision requires the qualification to be reasonable. The trial court believed that the classification effected by the IRR is unreasonable as it imposes additional burdens on foreign entities which are not found in the law or the Constitution.[10]

Petitioner's motion for reconsideration was denied.[11] Hence, this petition.

Petitioner PCAB's contentions

Petitioner contends that it is within its duty and authority to issue the assailed IRR. Section 5 of R.A. No. 4566 expressly confers upon petitioner the duty and power to issue the IRR of the same act. Section 17 of the same law also empowers petitioner to adopt the necessary rules and regulations to effect the

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

[9] *Id.* at 155-168.

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

[11] *Id.* at 42.

classification of contractors. Considering also that the construction business is a highly technical industry, R.A. No. 4566 cannot, by itself, thoroughly address all issues and factors in the issuance of licenses in such industry. Thus, the same can only be effectively regulated by petitioner pursuant to its powers and functions under R.A. No. 4566, which includes the authority to issue the assailed IRR.[12]

Further, the questioned provision of the IRR is consistent with the 1987 Constitution and existing laws, rules, regulations and policies. The IRR does not restrict the construction industry to Filipinos, but merely regulates the issuance of licenses to foreign contractors, subject to reasonable regulatory measures pertinent to their nature of being based outside the Philippines. The questioned provision of the IRR is consistent with the reasonable necessity of ensuring continuous and updated monitoring and regulation of foreign contractors, who are distinct from local contractors since they are not based in the Philippines and thus, may be situated beyond the reach of the government for possible enforcement of the contractor's liability/warranty such as Article 1723 of the Civil Code and Rule 62.2.3.1 of the revised IRR of R.A. No. 9184,[13] among others. Finally, the regulatory measures contained in the IRR are consistent with Section 14, Article XII of the 1987 Constitution, which mandates that practice of all professions in the Philippines be limited to Filipino citizens, save in cases prescribed by law, in relation to R.A. No. 465,[14] as amended by R.A. No. 6511,[15] which in turn considers construction as a profession by including contractors in its list of professionals. The IRR is consistent

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[12] *Id.* at 30-32.

[13] An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes, otherwise known as the Government Procurement Reform Act (2003).

[14] An Act to Standardize the Examination and Registration Fees Charged by the National Examining Boards, and for Other Purposes (1950).

[15] An Act Amending Republic Act Numbered Four Hundred Sixty-Five Entitled "An Act to Standardize the Examination and Registration Fees Charged by the National Examining Boards, and for Other Purposes" (1972).

with the aforesaid provision of the law in as much as the law itself recognizes the distinction between foreign and local contractors.[16]

Respondent Manila Water's arguments

In its Comment,[17] respondent avers that petitioner exceeded its jurisdiction by issuing Section 3.1, Rule 3 of the IRR, as the power to impose nationality requirements in areas of investment is exclusively vested on Congress under Section 10, Article XII of the Constitution and not to a mere administrative agency. The assailed provision of the IRR contradicts and pre-empts statutory provisions as nowhere in R.A. No. 4566 does the legislature authorize petitioner to impose nationality qualifications in order for an entity to obtain a license in the construction business. It is also the view of respondent that petitioner's stand contradicts the executive policy which already commits the removal of restrictions in the construction industry that are evident in the following:

1) The Department of Justice *(DOJ)* Memorandum dated September 21, 2011 addressed to the Department of Finance *(DOF)* opined that the assailed section of the IRR should be amended in order to align itself with the current policy of liberalizing and rationalizing investments as it has observed that: a) R.A. No. 4566 is silent as to the nationality requirement for constructors with regard to the 60% Filipino equity participation in case of issuance of a license; b) that the construction industry is not among the investment areas or activities which are specifically reserved to Philippine nationals; and c) the Filipino equity requirement is not consistent with the present policy of the state to rationalize investments.[18]

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[16] *Rollo*, pp. 32-34.

[17] *Id.* at 196-246.

[18] *Id.* at 213-215.

2) The Department of Trade and Industry *(DTI)* and the Construction Industry Authority of the Philippines *(CIAP)* have recognized, in an article posted in its website, that for the local construction industry to be globally competitive, there is a need to strengthen the Philippines' international participation through free trade agreements.[19]

3) The DTI, thru the Philippine Overseas Construction Board *(POCB)*, in a consultation meeting with stakeholders from the construction industry, requested for the removal of restrictions in order to establish better ties with the international trade community.[20]

There is also nothing in the Constitution or any law that imposes nationality or Filipino equity requirements with respect to the construction industry. Petitioner insists that contracting for construction is not a profession; rather, construction is an industry. It follows that it is not within the ambit of Section 14, Article XII of the 1987 Constitution in relation to R.A. No. 465, as amended by R.A. No. 6511, that covers individuals and not corporations or firms, which cannot be considered professionals.[21]

The assailed section of the IRR violates Executive Order (*E.O.*) No. 858[22] (now E.O. No. 98)[23] and R.A. No. 7718,[24] as it excludes waterworks and sewerages from the coverage of infrastructure projects. Petitioner likewise has no basis in changing the meaning of R.A. No. 7718 by excluding works that are, in fact, specifically mentioned by the said law and E.O.

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[19] *Id.* at 215-216.

[20] *Id.* at 216-217.

[21] *Id.* at 217-221.

[22] Promulgating the Eighth Regular Foreign Investment Negative List (2010).

[23] Promulgating the Ninth Regular Foreign Investment Negative List (2012).

[24] An Act Amending Certain Sections of Republic Act No. 6957, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes" (1994).

No. 98, by imposing a requirement that is not supported by any single word or phrase thereof.[25]

Amicus Curiae Brief of the Philippine Competition Commission[26]

The Philippine Competition Commission *(PCC)* moved to intervene as *amicus curiae* in this case, asserting that under the Philippine Competition Act *(PCA)* otherwise known as R.A. No. 10667, from which it owes its existence, it is mandated to issue advisory opinions and guidelines on competition matters and to advocate pro-competitive policies of the government.[27]

The PCC had a different view with the OSG and mainly argues that: 1) the nationality-based restriction imposed by the assailed regulation is a "barrier to entry," and 2) barriers to entry violate the constitutional state policy against unfair competition.[28]

The nationality requirement imposed under the assailed provision of the IRR erects a substantial barrier to the entry of foreign contractors in the construction industry. As a minority participant in the entity, a foreign firm is exposed to the risk of pursuing major management decisions over which it does not have full control. The assailed provision results in a scenario where foreign firms are deterred from investing in the Philippines as they do not have the comfort of having full control and management over their investments, unless they are able to find a reliable local partner.[29]

A survey of data also indicates the restrictiveness of the nationality requirement on foreign firms. Bearing in mind that ease of entry into an industry is a positive sign of competitiveness, the data from petitioner shows that statistics from 2013-2015 indicate that a large majority of the total licenses issued during

[25] *Id.* at 240-243.

[26] *Id.* at 410-441.

[27] *Id.* at 366.

[28] *Id.* at 423-438.

[29] *Id.* at 425-426.

the period did not automatically translate to the entry of new participants in the construction industry. The contractors undertake major infrastructure projects which facilitate the development of Filipino skills and bring in much needed investment and advanced technology; however, their potential to share these benefits to the entire industry is blunted by their very limited participation. Insofar as the rate of entry of new participants indicating the level of competition within the given industry, the consistently minuscule rate of entry of both foreign firms and new players in the construction industry is quite indicative of how competition in the industry remained relatively stagnant and inert throughout the years. Comparative data also shows that restrictive policies translate to lower levels of foreign direct investments *(FDI)* inflows. These FDI represent investment in production facilities and its significance for developing countries is considerably great. Not only can FDI add to investible resources and capital formation but, more importantly, they are means of transferring production technology, skills, innovative capacity, and organizational and managerial practices between locations, as well as of accessing international marketing networks.[30]

The advantages of lifting the nationality-based restriction in the assailed regulation cannot be overemphasized. Noting the infrastructure backlog in the Philippines, foreign contractors have expressed willingness to help address this concern. Foreign contractors expect to undertake large projects which would involve the application of the newest and most advanced technologies should the restrictions be lifted.[31]

The PCC also points out that the stricter and broader language of Section 19, Article XII of the Constitution provides the legal impetus for nullifying governmental acts that restrain competition. Such acts can range from laws passed by Congress, to rules and regulations issued by administrative agencies, and even contracts entered into by the government with a private party. A more comprehensive competition policy embodied in

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[30] *Id.* at 426-429.

[31] *Id.* at 430.

the present Constitution empowers the Court to nullify both public and private acts that restrain competition.[32]

Case in point is *Tatad v. Secretary of the Department of Energy*[33] *(Tatad)*, where the Court declared R.A. No. 8180[34] unconstitutional, because: 1) it gave more power to an already powerful oil oligopoly; 2) it blocked the entry of effective competitors; and 3) it would sire an even more powerful oligopoly, whose unchecked power would prejudice the interest of the consumers and compromise the general welfare. The Court found that the assailed provision had imposed substantial barriers to the entry of prospective players, thus, creating the clear danger that the deregulated market in the downstream oil industry would not operate under an atmosphere of free and fair competition. In this case, the nationality-based restriction imposed by petitioner effectively barred the entry of new players, particularly foreign firms, in the construction industry in violation of the constitutional policy against unfair competition.[35]

Section 19, Article XII of the Constitution is a directly enforceable constitutional principle (anti-trust principle), as demonstrated in *Tatad*. The express prohibition has two significant implications: 1) it has a nullifying function, such that any act which contravenes the state policy must necessarily be declared unconstitutional, and hence, void; and 2) it has a compulsive function, such that every government regulation must take into account, and be consistent with, the enunciated state policy. The prohibition imposes an obligation to incorporate the state policy in every government regulation.[36]

Since the assailed provision of the IRR is contrary to the anti-trust principle of the Constitution, petitioner has the burden to show that the nationality requirement seeks to fulfill an

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[32] *Id.* at 432-433.

[33] 346 Phil. 321 (1997).

[34] An Act Deregulating the Downstream Oil Industry, and for Other Purposes (1996).

[35] *Rollo*, pp. 433-436.

[36] *Id.* at 436-438.

important and substantial state interest, which cannot be achieved through other less restrictive means. However, PCC is of the opinion that petitioner failed to meet this burden. The reasons stated in its petition do not equate to an important and substantial state interest which cannot be achieved through other less restrictive means.[37]

The government's purported interest in applying contractors' warranty laws and regulating the practice of profession deserves no merit when weighed against the detrimental impact of the assailed regulation on the construction industry. The industry suffers from exorbitant costs of construction services due to limited supply of firms offering the same. Moreover, the government's interest in continuous and updated monitoring and regulation of foreign contractors can be achieved without denying foreign firms the same benefits given to domestic firms, as this can be addressed through other means under existing laws. Also, the supposed government interest in limiting the practice of a profession to Filipino citizens is inapplicable to construction considering that contracting for purposes of engaging in construction activities is not a profession, as it is not one regulated by the Professional Regulation Commission (PRC) and the term "professional" refers to an individual not a corporation or firm.[38]

Finally, the PCC said that to achieve the objectives of a national competition policy, the government should address public restraints as much as it enjoins private restraints, which means that it should ensure a level playing field for all industry players regardless of whether these players are controlled by the private sector or the state. Economically sound policies should not give incumbents competitive advantages for tenuous reasons such as nationality alone. Claims of protecting the interest of the public through regulatory action should be evaluated in terms of resulting incentive distortions that reduce competition and the countervailing efficiencies arising from said regulation. Discriminating in favor of certain market participants, without

[37] *Id.* at 437.

[38] *Id.* at 437-438.

valid economic basis or policy rationale, tends to reward poor performance, reduce competitive pressure, and distort incentives to innovate. In this case, the stated objectives of the assailed provision of the IRR can and should be achieved in other ways which do not necessarily favor certain players and lessen competition in the construction industry. Consumer welfare, which in this case refers to the welfare of both household and other businesses, is maximized when competition allows consumers to access and choose the most efficient producers, regardless of the service provider's nationality.[39]

In view of the above, the PCC is of the position that the Court is called upon to rule in favor of the economic rights of the people and declare the assailed regulation null and void.[40]

ISSUE

Petitioner asserts that:

THE REGIONAL TRIAL COURT GRAVELY ERRED IN DECLARING AS VOID RULE 3, SECTION 3.1 OF THE REVISED RULES AND REGULATIONS GOVERNING LICENSING AND ACCREDITATION OF CONSTRUCTORS IN THE PHILIPPINES BECAUSE:

a. The issuance of the assailed Rule is within the duty and authority of respondent PCAB.

b. The assailed Rule is consistent with the 1987 Constitution and existing laws, rules, regulations and policies.[41]

THE COURT'S RULING

The crux of the controversy is the validity of Section 3.1, Rule 3 of the IRR of R.A. No. 4566. To resolve this issue, the Court must answer whether the assailed provision is contrary to the Constitution and if the same constitutes unfair competition.

We find the petition without merit.

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[39] *Id.* at 438-439.

[40] *Id.* at 440.

[41] *Id.* at 28.

It can easily be discerned that the intention of petitioner in imposing the assailed section of the IRR is to protect the interests of the Filipino construction industry. However, the manner in which it was done raises constitutional issues on the validity of the IRR.

The Constitution provides safeguards to protect the Filipino industry against domination of foreigners; thus, laws were enacted to secure this state policy, particularly in areas where national economy and patrimony must be protected in our own jurisdiction.

Petitioner anchors its authority to issue the assailed IRR on Section 17 of R.A. No. 4566, which provides:

Section 17. *Power to classify and limit operations*. — The Board may adopt reasonably necessary rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, as respectively defined in section nine. A license may make application for classification and be thus classified in more than one classification if the licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications.

A reading of the above provision shows that petitioner is authorized to adopt rules to effect classification of contractors as may be necessary. However, as the RTC observed, Congress did not intend to discriminate against foreign contractors as there is no restriction that may be found in R.A. No. 4566.

As aptly pointed out by Justice Bernabe in her Concurring Opinion, We should emphasize the rule in statutory construction that "every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law

must not be read in truncated parts, its provisions must be read in relation to the whole law."[42]

In accordance thereto, the phrase "to effect the classification of contractors" under Section 17 should be read in relation to Section 16 of R.A. No. 4566 which provides for an enumeration of the statutorily-mandated classifications for the contracting business, *viz.*:

> Section 16. Classification. — For the purpose of classification, the contracting business includes any or all of the following branches.
> (a) General engineering contracting;
> (b) General building contracting; and
> (c) Specialty contracting.

These terms are then correspondingly defined in subsections (c), (d), and (e), Section 9 of R.A. No. 4566.

Pursuant to the directive under Section 17 of R.A. No. 4566 of PCAB to "effect the classification of contractors," Section 5.1 of the IRR on "License Classification and Categorization" sub-classified the three (3) main contracting classifications as defined in Section 9 of R.A. No. 4566 by areas of specialization. However, PCAB went beyond the prescribed classifications under Section 16 of R.A. No. 4566 and proceeded to create the nationality-based license types under Section 3.1. Additionally, while Section 5 of R.A. No. 4566 authorizes PCAB to "issue, suspend, and revoke licenses of contractors," this general authority to issue licenses must be read in conjunction with Sections 16 and 17 of R.A. No. 4566 if the licensing power of the PCAB is to be exercised to the extent that the PCAB would be effectively creating substantial classifications between certain types of contractors.

In fine, PCAB exceeded the confines of the delegating statute when it created the nationality-based license types under Section 3.1. Basic is the rule that "the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation."[43]

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[42] *Philippine International Trading Corporation v. Commission on Audit*, 635 Phil. 447, 454 (2010).

[43] *Lokin, Jr. v. Commission on Elections*, 635 Phil. 372, 392 (2010).

Moreover, the RTC also emphasized that while Section 17 of R.A. No. 4566 allows petitioner to effect classifications, the same should be reasonable. The approach on how it was justified by petitioner as a reasonable classification cannot be upheld by this Court.

Petitioner insists that the regulation was formed consistent with Section 14, Article XII of the 1987 Constitution,[44] which mandates the practice of all professions in the Philippines be limited to Filipino citizens. Petitioner considers construction as a profession by including contractors in the list of professionals under R.A. No. 465, as amended by R.A. No. 6511.

We do not agree.

The argument of petitioner is misplaced. Section 14, Article XII of the Constitution refers to the privilege of a natural person to exercise his profession in the Philippines.[45] On the other hand, under Article IV of R.A. No. 4566, even partnerships, corporations and organizations can qualify for a contractor's license through its responsible officer.[46] The "profession" under the aforesaid provision refers to the practice of natural persons of a certain field in which they are trained, certified, and licensed. Being a licensed contractor does not automatically qualify within the ambit of the Constitution as a "profession" *per se*.

A contractor under R.A. No. 4566 does not refer to a specific practice of profession, *i.e.*, architecture, engineering, medicine, accountancy and the like. In fact, Section 9 (a) and (b) of R.A. No. 4566 reads:

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[44] Section 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

[45] Bernas (intent of the 1986 Constitution), p. 687.

[46] Republic Act No. 4566 (1965), Section 20.

ARTICLE II
Application of the Act

Section 9. ***Definition of terms.*** — As used in this Act:

(a) "Persons" include an individual, firm, partnership, corporation, association or other organization, or any combination of any thereof.

(b) "Contractor" is deemed synonymous with the term "builder" and, hence, any person who undertakes or offers to undertake or purports to have the capacity to undertake or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof including the erection of scaffolding or other structures or works in connection therewith. The term contractor includes subcontractor and specialty contractor.

Suffice it to say that a corporation or juridical person, in this case a construction firm, cannot be considered a "professional" that is being exclusively restricted by the Constitution and our laws to Filipino citizens. The licensing of contractors is not to engage in the practice of a specific profession, but rather to engage in the business of contracting/ construction.

The basis for petitioner's argument, that construction is considered a profession, is also out of context. We emphasize that R.A. No. 6511 is an act which standardizes the examination and registration fees charged by the National Examining Board; thus, the list contains individual applicants for ***any*** of the licensure examinations conducted by any of the boards, under the Office of the Boards of Examiners, who shall pay examination fees. It covers applicants of any licensure examinations, but is not limited to licensing of professionals. In other words, licensed contractors are listed therein as they are required by law to undergo a licensure examination, which fee is regulated. It does not follow that just because a license is required under R.A. No. 4566, a licensed contractor is already considered a professional under the Constitution.

Professionalizing the construction business is different from the exercise of profession which the Constitution exclusively

restricts to Filipino citizens. To reiterate, the license required under R.A. No. 4566 is for purposes of engaging in the business of contracting under the terms of the said act for a fiscal year or a certain period/project, and not for the purpose of practicing a particular profession. The responsible officer who secures a license for contracting, for his own business or for the company, may already be a professional in his own field (*i.e.*, engineer, architect). Then again, the license acquired under R.A. No. 4566 does not make the licensed contractor a "professional" within the meaning contemplated under Section 14, Article XII of the 1987 Constitution.

More telling is the fact that applicants for contractor's licenses are not required to have Philippine citizenship unlike those who are considered as professionals in the country.[47] Contrary to petitioner's claim, the citizenship or equity requirement to qualify for a contractor's license is one of the basic qualifications which Congress would have prescribed, had it really intended to do so. Worthy to note that Congress also did not prescribe a minimum educational requirement for a contractor to be issued a license, as opposed to the professionals referred to under the Constitution. The law merely requires at least two years of experience in the construction industry, and knowledge of building, safety, health and lien laws of the Republic of the Philippines and the rudimentary administrative principles of the contracting business. Therefore, this Court cannot

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[47] Republic Act No. 4566, Article IV, Section 20 provides:

Section 20. *Qualifications of applicants for contractors' licenses.* — The Board shall require an applicant to show at least two years of experience in the construction industry, and knowledge of the building, safety, health and lien laws of the Republic of the Philippines and the rudimentary administrative principles of the contracting business as the Board deems necessary for the safety of the contracting business of the public.

For the purpose of this section, a partnership, corporation, or any other organization may qualify through its responsible managing officer appearing personally before the Board who shall prove that he is a *bona fide* responsible officer of such firm and that he exercises or is in a position to exercise authority over the contracting business of his principal or employer in the following manner: (1) to make technical and administrative decisions; and, (2) to hire, superintend, promote, transfer, lay off, discipline or discharge employees.

countenance the reason offered by petitioner as basis to set an equity requirement for the issuance of a regular license.

If R.A. No. 4566 and its IRR indeed viewed the construction industry as a profession and contractors as professionals whose practice may be limited to Filipino citizens, then the challenged provision runs contrary to such policy, as it would allow foreigners to operate with a regular license through a construction firm as long as their equity therein does not exceed 40%.

We agree with respondent that a scrutiny of R.A. No. 4566 reveals that there is nothing which would indicate that petitioner is authorized to set an equity limit for a contractor's license. As argued by respondent, it is Congress which has the power to determine certain areas of investments which must be reserved to Filipinos, upon recommendation of the National Economic Development Authority *(NEDA)*, and when national interest requires.[48] Again, we do not find any basis in any law enacted by Congress for the equity requirement set by petitioner in the assailed regulation. This power is not even impliedly delegated to petitioner under R.A. No. 4566 from which it anchors its existence and authority.

Accordingly, this Court finds that the construction industry is not one which the Constitution has reserved exclusively for Filipinos. Neither do the laws enacted by Congress show any indication that foreigners are proscribed from entering into the same projects as Filipinos in the field of construction. Thus, we find that setting the equity limit for a certain type of contractor's license has no basis.

Evidently, respondent's argument of alleged unfair competition does not apply in this case. Fundamentally, the Constitution was enacted for the protection of the Filipinos. As a consequence, the argument that foreigners are put in a disadvantageous position against Filipinos with the enactment of the assailed regulation will not stand against the genuine intent of petitioner to protect the Filipino construction industry.

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[48] See *Espina v. Zamora*, 645 Phil. 269, 280 (2010).

Nevertheless, the Court is not unaware of the economic benefits of opening the construction industry to foreigners.

In resolving the issue at hand, *Tañada v. Angara*[49] is instructive. The Court has ruled that "the constitutional policy of a 'self-reliant and independent national economy' does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither 'economic seclusion' nor 'mendicancy in the international community.'"[50] "The Constitution has not really shown any unbalanced bias in favor of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition."[51] It was further held that "while the Constitution indeed mandates a bias in favor of Filipino goods, services, labor and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair. In other words, the Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is *unfair*."[52]

This was further bolstered in *Espina v. Zamora, Jr.*[53] where the Court held:

> The Court further explained in *Tañada* that Article XII of the 1987 Constitution lays down the ideals of economic nationalism: (1) by expressing preference in favor of qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and

[49] 338 Phil. 546 (1997).

[50] *Id.* at 588.

[51] *Id.* at 589.

[52] *Id.* at 585; citation omitted.

[53] *Supra* note 48.

patrimony and in the use of Filipino labor, domestic materials and locally-produced goods; (2) by mandating the State to adopt measures that help make them competitive; and (3) by requiring the State to develop a self-reliant and independent national economy effectively controlled by Filipinos.

In other words, while Section 19, Article II of the 1987 Constitution requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development.

Indeed, the 1987 Constitution takes into account the realities of the outside world as it requires the pursuit of a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity; and speaks of industries which are competitive in both domestic and foreign markets as well as of the protection of Filipino enterprises against unfair foreign competition and trade practices. Thus, while the Constitution mandates a bias in favor of Filipino goods, services, labor and enterprises, it also recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair.

In other words, the 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services.

More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the national interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail

trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.[54]

As a consequence, this Court finds the assailed regulation inconsistent with the intent of the Constitution in no less than one aspect. The Constitution mandates this Court to be the guardian not only of the people's political rights but their economic rights as well.[55] The evil sought to be prevented by petitioner, that a contractor's warranty cannot be imposed as foreign contractors are beyond reach of the government and the genuine intent of protecting the Filipino consumers by ensuring continuous and updated monitoring and regulation of foreign contractors, may be addressed with some form of regulation other than restricting the contractor's license which leads to deprivation of economic growth and advancement of the construction industry.

For instance, it is a standard practice in the construction industry that contractors are required to post or put up a performance bond to ensure faithful compliance under their contract. In case of foreign construction companies engaging business in the Philippines, petitioner's apprehension that it would be difficult to go after them in case of contractual breach can be addressed by requiring them at all times to put up a performance bond issued by a domestic bonding company.

Absent any showing that the competition expected in the construction industry, should we open the same to foreigners, would be unfair to our citizens, the industry should not be restricted to Filipinos only. As opined by the PCC, it would encourage healthy competition among local and foreign contractors and the market will have alternative options depending on the needs of each construction project. This will also open opportunities for development and innovation that the foreign industry may introduce to our local contractors to make them more competitive in the world market.

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[54] *Id.* at 279-280; citations omitted.

[55] *Tatad v. Secretary of Department of Energy*, *supra* note 33, at 380.

On the assertion of petitioner that the assailed provision of the IRR merely regulates the license of foreign contractors and does not restrict the construction industry to Filipinos, We rule that these are contrary to the obvious consequence of the assailed regulation. The statistics shown by PCC, from petitioner's own data, reveal the apparent disparity of licenses granted to Filipinos and foreigners. In 2015, out of the 1,600 special licenses issued, only 20 were issued to foreign firms while 4 were issued to joint ventures with foreign participation.[56] PCC also showed that from 2013-2015, a large majority of the total licenses issued during this period did not translate to the entry of new participants in the construction industry.[57] Apart from these statistics, and considering the limited scope of the special license, the additional burden and expenses of securing the same scare away foreign investors.[58] Evidently, the assailed regulation is a deterrent to the entry of foreign players in the construction industry.

The opinion of the Secretary of Justice in a Memorandum[59] dated September 21, 2011, although not binding, is persuasive. It pointed out that one of the objectives of Presidential Decree (*P.D.*) No. 1746,[60] the law which amended R.A. No. 4566, is for CIAP to rationalize the investments in the construction industry in accordance with national investment priorities and development needs. It also stressed that the construction industry is not among the investment areas or activities specifically reserved to Philippine nationals under E.O. No. 858. In line with this, the Secretary opines that the assailed IRR, Rule 3.1 in particular, may be amended to be consistent with the policy under R.A. No. 4566, as amended, and the present policy of the state to rationalize investments.[61]

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[56] *Rollo*, p. 427.

[57] *Id.*

[58] *Id.* at 425-426.

[59] *Id.* at 323-328.

[60] Creating the Construction Industry Authority of the Philippines (CIAP) (1980).

[61] *Rollo*, pp. 327-328.

Worthy to note that the first[62] and second[63] Foreign Investments Negative List *(FINL)* included "private domestic construction contracts (RA No. 4566, Article XIV, Section 14 of the Constitution)." These FINLs were issued in 1994 and 1996, respectively. Noticeably, from the third FINL[64] in 1998 until the most recent 11th FINL (2018),[65] private construction contracts were no longer included in the list. This means that the restriction on foreign investments on private construction contracts was already lifted as early as 1998. The opening of investment areas to foreign investors is an indication of a developing economy to which our governing and implementing laws must also adapt to depending on the demands of the industry and economy. It follows that the assailed IRR which was last amended in 1989, or thirty (30) years ago, must also conform to these developments in order to be consistent with the current state policy.

In sum, this Court finds justifiable basis to strike down the assailed Section 3 of the IRR of R.A. No. 4566. Accordingly, the RTC is correct in declaring Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines void.

However, we deem it fit to modify the ruling of the RTC to specifically address the issue resolved in this case and limit the scope of nullity of the assailed rule. Thus, only the following portions of Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines are hereby declared void and are hereby struck down:

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[62] Executive Order No. 182 (First Regular Foreign Investment Negative List, June 22, 1994).

[63] Executive Order No. 362 (Second Regular Foreign Investment Negative List, August 20, 1996).

[64] Executive Order No. 11 (Approving the Third Regular Foreign Investments Negative List, August 11, 1998).

[65] Executive Order No. 65 (Promulgating the Eleventh Regular Foreign Investment Negative List, October 29, 2018).

RULE III

Contractor's License

SECTION 3.1. *License Types*. —

Two types of Licenses are hereby instituted and designated as follows:

a) The Regular License

The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/ corporation with at least seventy percent (70)* Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

b) The Special License

x x x x x x x x x

The following can qualify only for the Special License:

x x x x x x x x x

bb) A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines.

x x x x x x x x x.

Likewise, in order to fully harmonize the rest of the IRR, Rule 12, Section 12.7 thereof must also be nullified, to wit:

RULE XII

License Denial, and Cancellation

x x x x x x x x x

SECTION 12.7. *Introduction of Foreign Equity*. —

An introduction of thirty percent (30%)* or more of foreign equity into a construction firm holding a Regular License shall *ipso facto* invalidate the license. The constructor may apply for a Special License subject to stipulations in Sec. 3.1(b) hereof.

WHEREFORE, the petition is **DENIED.** Accordingly, the February 24, 2014 Resolution and the February 10, 2015 Order of the Regional Trial Court, Quezon City, Branch 83 *(RTC)* are

AFFIRMED with **MODIFICATION**, in so far as Rule 3, Section 3.1 (a) paragraph 2, Section 3.1 (b) subparagraph (bb), and Rule 12, Section 12.7 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors, implementing Republic Act No. 4566, otherwise known as the Contractors' License Law in the Philippines, are hereby declared **VOID**.

SO ORDERED.

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

Perlas-Bernabe, J., see concurring opinion.

Leonen, J., see dissenting opinion.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

This case calls upon the Court to determine the validity of Section 3.1, Rule 3 (Section 3.1) of the Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines or the Implementing Rules and Regulations of Republic Act No. (RA) 4566[1] (IRR) issued by petitioner Philippine Contractors Accreditation Board (PCAB) which created a classification of licenses based on nationality, to wit:

RULE 3 CONTRACTOR'S LICENSE

SECTION 3.1. License Types. —

Two types of licenses are hereby instituted and designated as follows:

a) The Regular License

"Regular License" means a license of the type issued to a domestic construction firm which shall authorize the licensee to engage in

[1] Entitled "An Act Creating the Philippine Licensing Board for Contractors, Prescribing Its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes," approved on June 19, 1965.

construction contracting within the field and scope of his license classification(s) for as long as the license validity is maintained through annual renewal; unless renewal is denied or the license is suspended, cancelled or revoked for cause(s).

The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/ corporation with at least seventy percent (70%)* Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

* Adjusted to 60% under Art. 48 of Chapter III, Book II of the Omnibus Investment Code of 1987.

b) The Special License

"Special License" means a license of the type issued to a joint venture, a consortium, a foreign constructor or a project owner which shall authorize the licensee to engage only in the construction of a single specific undertaking/project. In case the licensee is a foreign firm, the license authorization shall be further subject to condition(s) as may have been imposed by the proper Philippine government authority in the grant of the privilege for him to so engage in construction contracting in the Philippines. Annual renewal shall be required for as long as the undertaking/project is in progress, but shall be restricted to only as many times as necessary for completion of the same.

The following can qualify only for the Special License:

ba) A joint venture, consortium or any such similar association organized for a single specific undertaking/project.

bb) A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines.

bc) A project owner undertaking by himself, sans the service of a constructor, the construction of a project intended for sale, lease, commercial/industrial use or any other income generating purpose.[2]

This issue was brought to the fore through a petition for declaratory relief filed by respondent Manila Water Company,

[2] *Rollo,* p. 91; emphasis supplied.

Inc. (respondent). Essentially, it is respondent's position that PCAB usurped legislative powers vested in Congress under Section 10, Article XII of the 1987 Constitution (Section 10, Article XII) when it imposed a nationality requirement in the issuance of regular licenses.[3] It argues that by issuing the assailed provision, PCAB took it upon itself to "reserve to citizens of the Philippines" the issuance of a regular license. The constitutional provision reads:

> Section 10. The **Congress shall**, upon recommendation of the economic and planning agency, when the national interest dictates, **reserve to citizens** of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, **certain areas of investments**. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.
>
> x x x x x x x x x (Emphases supplied)

Respondent likewise asserts that the assailed provision is void for being a product of PCAB's improper exercise of rule-making power as it creates requirements not found in and contrary to RA 4566.[4]

For its part, PCAB counters that the assailed IRR provision is consistent with the Constitution because it does not prohibit foreign contractors in the Philippines but merely regulates the kind and extent of license given to them.[5] The regulation is necessary to ensure continuous and updated monitoring and regulation of foreign contractors, who are not based in the Philippines, and thus, situated beyond the government's reach for possible enforcement of the contractor's liability/warranty under existing laws.[6]

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[3] See *id.* at 204-205.

[4] See *id.* at 196-197.

[5] *Id.* at 32.

[6] *Id.* at 33.

PCAB further stresses that it is authorized under Section 5[7] of RA 4566 to "issue, suspend and revoke licenses of contractors" and under Section 17[8] to "adopt reasonably necessary rules and regulations to effect the classification of contractors."[9] PCAB insists that while RA 4566 does not explicitly mention a classification between local and foreign contractors, this does not necessarily mean that PCAB has no authority to establish such classifications.[10]

In striking down the assailed provision, the *ponencia* explains that while Section 17 of RA 4566 authorizes PCAB to adopt rules to effect classification, nothing in that law shows Congress' intent to discriminate against foreign contractors. It states that there is no basis in any law enacted by Congress for the equity requirement set by PCAB in the assailed regulation.[11]

I concur.

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[7] Section 5. *Powers and Duties of the Board*. — The Board is vested with **authority to issue, suspend and revoke licenses of contractors**, to investigate such violations of this Act and the regulations thereunder as may come to its knowledge and, for this purpose, issue *subpoena* and *subpoena duces tecum* to secure appearance of witnesses in connection with the charges presented to the Board, and to discharge such other powers and duties affecting the construction industry in the Philippines.

x x x x x x x x x (Emphasis supplied)

[8] Section 17. *Power to Classify and Limit Operations*. — The Board may adopt reasonably **necessary rules and regulations to effect the classification of contractors** in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, as respectively defined in section nine. A licensee may make application for classification and be thus classified in more than one classification if the licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications. (Emphasis supplied)

[9] See *rollo*, p. 30.

[10] *Id.* at 31.

[11] See *ponencia*, pp. 15-16.

At the onset, I deem it apt to clarify that that Section 3.1 did not violate Section 10, Article XII. The constitutional provision states that Congress shall reserve to Filipino citizens certain areas of development. In my view, when a nationality requirement is set for a particular industry in the Philippines, foreigners who exceed the threshold are *no longer allowed to engage* in the industry. This is not the case here. While Section 3.1 creates a barrier to entry for foreign contractors, it *does not prohibit* them from engaging in the Philippine construction industry. It merely imposes a *more stringent restriction* on them. Hence, no usurpation of Congress' power under Section 10, Article XII occurred.

On this score, it is relevant to mention that RA 7042,[12] or the "Foreign Investments Act of 1991," mandates the formulation of a Foreign Investment Negative List which specifies investment areas that are *reserved to Filipino nationals,* such that foreign players are *not allowed to engage* in those areas.[13] In contrast, the assailed IRR provision still allows foreign contractors to engage in the construction business *albeit* with a more restrictive license. As PCAB explains, the more stringent licensing regulation for foreign contractors is necessary to ensure "continuous and updated monitoring and regulation of foreign contractors — who are x x x situated beyond the reach of the x x x government for possible enforcement of the contractor's liability/warranty."[14] Hence, PCAB is correct in saying that Section 3.1 does not restrict the construction industry to Filipinos, but rather, regulates the issuance of licenses to foreign contractors based on its perceived considerations pertinent to these foreign contractors' nature of being based outside the Philippines.[15]

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[12] Entitled "AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES," approved on June 13, 1991.

[13] See Section 8 of RA 7042.

[14] *Rollo,* p. 33.

[15] See *id.* at 32. See also *ponencia,* pp. 4-5.

This notwithstanding, and as the *ponencia* holds,[16] PCAB has exceeded its delegated authority to make the foregoing license classification, which hence, renders Section 3.1 altogether null and void.

"Fundamental is the precept in administrative law that **the rule-making power delegated to an administrative agency is limited and defined by the statute conferring the power**. For this reason, **valid objections to the exercise of this power lie where it conflicts with the authority granted by the legislature**."[17] The Court has ruled that "administrative regulations that alter or amend the statute or enlarge or impair its scope are void, and courts not only may, but it is their obligation to strike down such regulations."[18]

In this case, PCAB anchors its authority to create the nationality-based classifications of licenses on **Sections 5 and 17 of RA 4566**, to wit:

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[16] See *ponencia*, p. 19.

[17] *Re: Entitlement to Hazard Pay of Supreme Court Medical and Dental Clinic Personnel*, 592 Phil. 389, 398 (2008); emphasis supplied.

[18] *Department of Agrarian Reform v. Carriedo*, 778 Phil. 656, 681 (2016). See also *Re: Entitlement to Hazard Pay of Supreme Court Medical and Dental Clinic Personnel*, *id.* at 399-400, which provides: "Indeed, when an administrative agency enters into the exercise of the specific power of implementing a statute, it is bound by what is provided for in the same legislative enactment inasmuch as its rule-making power is a delegated legislative power which may not be used either to abridge the authority given by the Congress or the Constitution or to enlarge the power beyond the scope intended. The power may not be validly extended by implication beyond what may be necessary for its just and reasonable execution. In other words, the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of a law, inasmuch as the power is confined to implementing the law or putting it into effect. Therefore, such rules and regulations must not be inconsistent with the provisions of existing laws, particularly the statute being administered and implemented by the agency concerned, that is to say, the statute to which the issuance relates. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it."

Section 5. ***Powers and Duties of the Board.*** — The Board is vested with authority to issue, suspend and revoke licenses of contractors, to investigate such violations of this Act and the regulations thereunder as may come to its knowledge x x x

x x x x x x x x x

Section 17. ***Power to Classify and Limit Operations.*** — The Board may adopt reasonably necessary rules and regulations **to effect the classification of contractors** in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, **as respectively defined in section nine**. A licensee may make application for classification and be thus classified in more than one classification if the licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications. (Emphases and underscoring supplied)

However, a cursory examination of RA 4566's provisions shows that Section 17 thereof is not a proper basis for PCAB to create license types based on nationality. The phrase "to effect the classification of contractors" under Section 17 should be read in relation to Section 16 of RA 4566 which provides for an enumeration of the statutorily-mandated classifications for the contracting business, *viz.*:

Section 16. *Classification*. — For the purpose of classification, the contracting business includes any or all of the following branches.

(a) General engineering contracting;

(b) General building contracting; and

(c) Specialty contracting.

These terms are then correspondingly defined in subsections (c), (d), and (e), Section 9[19] of RA 4566.

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[19] Section 9. *Definition of Terms.* — As used in this Act:

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(c) A "general engineering contractor" is a person whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects:

Pursuant to the directive under Section 17 of RA 4566 for PCAB to "effect the classification of contractors," Section 5.1, Rule 5 of the IRR on "License Classification and Categorization" sub-classified the three (3) main contracting classifications as defined in Section 9 of RA 4566 by areas of specialization. However, PCAB went beyond the prescribed classifications under Section 16 of RA 4566 and proceeded to create the nationality-based license types under Section 3.1. Furthermore, while Section 5 of RA 4566 authorizes PCAB to "issue, suspend and revoke licenses of contractors," this general authority to issue licenses must be read in conjunction with Sections 16 and 17 of RA 4566 if the licensing power of PCAB is to be exercised to the extent that PCAB would be effectively creating substantial classifications between certain types of contractors. Indeed, "every part of the statute must be interpreted with

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irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams, hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other system for the transmission of petroleum and other liquid or gaseous substances, land leveling and earth moving projects, excavating, grading, trenching, paving and surfacing work.

(d) A "general building contractor" is a person whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds and other recreational works, refineries, chemical plants, and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, cement and concrete works in connection with the abovementioned fixed works.

A person who merely furnishes materials or supplies under section eleven without fabricating them into, or consuming them in the performance of the work of the general building contractor does not necessarily fall within this definition.

(e) A "specialty contractor" is a person whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law."[20]

Accordingly, PCAB exceeded the confines of the delegating statute when it created the nationality-based license types under Section 3.1, rendering the same, as well as the correlative provisions mentioned in the *ponencia*, void.

DISSENTING OPINION

LEONEN, *J.*:

Central to the resolution of this case is the validity of Rule 3, Section 3.1 of the Implementing Rules and Regulations of Republic Act No. 4566, or the Contractors' License Law.

The Implementing Rules and Regulations were crafted by the Philippine Contractors Accreditation Board, which had been created to carry out the objectives of Republic Act No. 4566. Among its powers include the "authority to issue, suspend[,] and revoke"[1] contractors' licenses.

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[20] *Philippine International Trading Corporation v. Commission on Audit*, 635 Phil. 447, 454 (2010).

[1] Republic Act No. 4566 (1965), Sec. 5 provides:

SECTION 5. *Powers and Duties of the Board.* — The Board is vested with authority to issue, suspend and revoke licenses of contractors, to investigate such violations of this Act and the regulations thereunder as may come to its knowledge and, for this purpose, issue subpoena and subpoena *duces tecum* to secure appearance of witnesses in connection with the charges presented to the Board, and to discharge such other powers and duties affecting the construction industry in the Philippines.

The Board may, with the approval of the President of the Philippines, issue such rules and regulations as may be deemed necessary to carry out the provisions of this Act, to adopt a code of ethics for contractors and to have an official seal to authenticate its official documents.

Moreover, Section 17 of the law gives the Philippine Contractors Accreditation Board the power to classify contractors. The provision states:

> SECTION 17. *Power to classify and limit operations*. — The Board may adopt reasonably necessary rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, as respectively defined in section nine. A licensee may make application for classification and be thus classified in more than one classification if the licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications.

Pursuant to these provisions, the Philippine Contractors Accreditation Board, in crafting the Implementing Rules and Regulations, classified two (2) types of licenses that may be granted to contractors. In particular, Rule 3, Section 3.1 states:

> Rule 3
>
> CONTRACTOR'S LICENSE
>
> Section 3.1. License Types. —
>
> Two types of licenses are hereby instituted and designated as follows:
>
> a) The Regular License
>
> "Regular License" means a license of the type issued to a domestic construction firm which shall authorize the licensee to engage in construction contracting within the field and scope of his license classification(s) for as long as the license validity is maintained through annual renewal; unless renewal is denied or the license is suspended, cancelled or revoked for cause(s).
>
> The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/ corporation with at least 60% Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

b) The Special License

"Special License" means a license of the type issued to a joint venture, a consortium, a foreign constructor or a project owner which shall authorize the licensee to engage only in the construction of a single specific undertaking/project. In case the licensee is a foreign firm, the license authorization shall be further subject to condition(s) as may have been imposed by the proper Philippine government authority in the grant of the privilege for him to so engage in construction contracting in the Philippines. Annual renewal shall be required for as long as the undertaking/project is in progress, but shall be restricted to only as many times as necessary for completion of the same.

The following can qualify only for the Special License:

a) A joint venture, consortium or any such similar association organized for a single specific undertaking/ project;

b) A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines;

c) A project owner undertaking by himself, sans the service of a constructor, the construction of a project intended for sale, lease, commercial/industrial use or any other income generating purpose.[2]

In this case, Manila Water Company, Inc. (Manila Water) had initially applied for a regular license of its foreign contractors for the construction of waterworks and sewerage system. However, the Philippine Contractors Accreditation Board denied the application, reasoning that regular licenses were only granted to local contractors under Rule 3, Section 3.1.[3]

As such, Manila Water filed a Petition for Declaratory Relief before the Regional Trial Court, seeking a determination of whether Section 3.1 was valid. It claimed that the provision

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[2] Implementing Rules and Regulations of Republic Act No. 4566 (1965), Sec. 3.1.

[3] *Ponencia,* p. 3.

was unconstitutional for going beyond the law in that it imposed restrictions on foreign investments that are not found in Republic Act No. 4566 or the Constitution.[4]

In its ruling, the trial court agreed with Manila Water. It held that while Section 17 of the law allowed classifications, Section 3.1 was unreasonable for its added restrictions on foreign investments.[5]

The Philippine Contractors Accreditation Board moved for reconsideration, to no avail. Hence, it filed this Petition for Review.[6]

Before this Court, petitioner mainly contended that Section 3.1 was consistent with the Constitution and existing laws. It argued that the implementing rules did not impose a nationality requirement on construction investment, but merely regulated the issuance of licenses with respect to foreign contractors. Petitioner also maintained that it was within its duty and authority to adopt necessary rules to effect contractors' classifications.[7]

The majority denied the Petition. It ruled that Section 3.1 was void for unduly discriminating against foreign contractors.[8]

The majority held that the nationality-based restriction on professionals was not applicable to industries.[9] It also ruled that nothing in Republic Act No. 4566 authorized petitioner to set an equity limit for contractors.[10]

Moreover, the majority, citing *Tañada v. Angara*[11] and *Espina v. Zamora, Jr.*,[12] reasoned that allowing foreign contractors would

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[4] *Id.*

[5] *Id.* at 4. Filed under Rule 45 of the Rules of Court.

[6] *Id.*

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

[8] *Id.* at 11.

[9] *Id.* at 12-14.

[10] *Id.* at 15.

[11] 338 Phil. 546 (1997) [Per *J.* Panganiban, *En Banc*].

[12] 645 Phil. 269 (2010) [Per *J.* Abad, *En Banc*].

lead to economic benefits,[13] consistent with the constitutional protection of the people's economic rights.[14] For that, it relied on the Philippine Competition Commission's opinion that allowing foreign contractors would encourage healthy competition. The majority also cited statistics showing the minuscule number of foreign contractors due to the regulation's deterring effect.[15]

I register my dissent.

I

The assailed classification under Section 3.1 does not run afoul of the Constitution.

Respondent argued that petitioner exceeded its jurisdiction in making the classification, claiming that the power to impose nationality requirements in areas of investment is exclusively vested on Congress.[16] It cited Article XII, Section 10 of the Constitution, which reads:

> SECTION 10. *The Congress shall*, upon recommendation of the economic and planning agency, when the national interest dictates, *reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens*, or such higher percentage as Congress may prescribe, *certain areas of investments*. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.
>
> In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.
>
> The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities. (Emphasis supplied)

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[13] *Ponencia*, p. 16.

[14] *Id.* at 16-18.

[15] *Id.* at 18-19.

[16] *Id.* at 5.

Contrary to respondent's claim, the classification of licenses does not create a nationality requirement. Section 3.1 is not an absolute restriction against foreign contractors, but is merely a licensing regulation.

A reading of the provision, as well as the entirety of Republic Act No. 4566, will show that foreign contractors are not prohibited from engaging in the construction industry.

Section 3.1 simply classifies two (2) types of licenses that may be applied for, which will then determine the documentary requirements,[17] expiry of the license,[18] and number of projects

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[17] Implementing Rules and Regulations of Republic Act No. 4566 (1965), Secs. 4.5 and 4.6 provide:

SECTION 4.5. Regular License Application Documents. —

An application for a Regular License shall comprise of the following:

a) Duly accomplished application form as prescribed by the Board;

b) ORGANIZATION

ba) List of corporate directors and officers/partners (for Corporation/ Partnership only);

bb) List of stockholders/partners and their respective equity holdings in the applicant firm (for Corporation/Partnership only);

bc) Certificate of Registration with the Bureau of Domestic Trade (for sole proprietorship only);

bd) Certificate of Registration with the Securities and Exchange Commission and Articles of Incorporation and By-Laws (for corporation/ partnership only);

be) SSS Certificate of Membership of the Company;

bf) Nomination of Authorize Managing Officer;

bg) Curriculum Vitae of Authorized Managing Officer/Proprietor;

c) FINANCIAL

ca) Latest audited financial statements signed on each and every page by a Certified Public Accountant and properly stamped-received by the Bureau of Internal Revenue;

cb) Supplementary schedules of the latest audited financial statements of the applicant for the immediately preceding taxable year, except in case of a newly formed corporation or partnership;

cc) Income Tax Return of the applicant for the immediately preceding taxable year properly stamped-received by BIR and the official receipt covering income tax paid, except in case of a newly formed Corporation/Partnership;

cd) Authorization to depository bank to release information to PCAB;

ce) Bank Statement of Account for the last month of the immediately preceding taxable year certified by the Bank Manager;

a licensee may undertake under a single license.[19] It does not prohibit foreign contractors from applying for a license.

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cf) Transfer Certificate of Title, tax declaration, latest official receipt covering payment of realty tax of land and other real properties owned by the firm;

d) EQUIPMENT CAPACITY

da) List of equipment currently owned;

db) Deed of Sale or Invoice with complete address of vendor or official receipt issued by the vendor covering the equipment currently owned;

dc) Certificate of Registration with current official receipt of BLT registration fees paid covering transportation and delivery equipment owned by the firm;

e) EXPERIENCE OF SUSTAINING TECHNICAL EMPLOYEES

ea) List of technical personnel employed by the company;

eb) Affidavit of Sustaining Technical Employee(s);

ec) Curriculum vitae of Sustaining Technical Employee(s); and

ed) SSS Form R-1 to include the name of the Nominated Technical Employee(s).

The Board may require the submission of pertinent documents/information other than the above in order to fully determine the qualifications of an applicant.

SECTION 4.6. Special License Application Documents. —

An application for a Special License shall comprise, on a case to case basis, of the following:

x x x x x x x x x

e) A foreign Constructor

ea) Application properly accomplished on form as prescribed by the Board;

eb) General Information Sheet;

ec) Board Resolution authorizing its Resident Alien Representative in the Philippines to act for and in behalf of the company. The Board Resolution must define the scope and/or limitations of the powers of the Resident Alien Representative;

ed) Board Resolution appointing and authorizing the Filipino Resident Agent to accept summons and other legal process in behalf of the applicant;

ee) Copy of Contractors License/Permit/Authority issued by the appropriate government agency in the home country of the applicant foreign contractor, if required by the home government;

ef) Certification from the appropriate Tendering Agency (Ministry, Bureau, Office) that the project is foreign financed/internationally-funded and that international bidding is required, or the participation of foreign contractors is allowed under Bilateral Agreement entered into by and between the Philippine Government and the foreign/International Financing Institution;

eg) Certificate issued by the Board of Investments allowing the foreign contractor to undertake construction project in the Philippines;

Notably, there is no distinction between regular and special licenses as to the terms and conditions,[20] qualifications for

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eh) Copy of "Invitation to Bid" or "Instruction to Bidders" or "Notice to Bidders" showing the date of bidding;

ei) List of completed construction project(s) in the Philippines undertaken by the company during the last three (3) years showing the following: Title of Projects, Location, Tendering Agency (DPWH, MWSS, NIA, etc.) Lending Institution (IBRD, ADB, OECF), Date contract was signed, Date of completion, Loan Agreement No.;

ej) List of on-going construction project(s) in the Philippines being undertaken by the company showing the following: Title of Projects, Location, tendering Agency, Lending Institution, Date Contract was signed, scheduled date of completion, Loan Agreement No.;

ek) Audited Financial Statements during the preceding year; and

el) Philippine Income Tax Return during the preceding year, if applicable.

f) A Project Owner

fa) All documents required in Sec. 4.5 hereof;

fb) Identification of the project by title owned and location.

[18] Implementing Rules and Regulations of Republic Act No. 4566 (1965), Sec. 3.2 provides:

SECTION 3.2. *License Validity*. —

a) Regular License

A Regular License shall be valid for one fiscal year, from the 1st of July to the 30th of June of the ensuing year, unless suspended, invalidated, cancelled or revoked earlier by the Board, and shall be renewed annually. A license issued after the 1st of July shall be valid for the remaining part of the fiscal year.

b) Special License

A Special License, shall be cancelled by the Board upon completion of the single specific undertaking/project authorized by the license and to which it is, therefore, restricted, even though before expiry of the fiscal year.

[19] Implementing Rules and Regulations of Republic Act No. 4566 (1965), Secs. 10.1 and 10.2 provide:

SECTION 10.1. Regular License Authorization. —

A licensed constructor, issued a Regular License as defined in Sec. 3.1 (a) thereof, is authorized to engage in construction contracting in the Philippines, within the field and scope of his classification(s) in accordance with the provisions of Sec. 5.4 hereof. In case of a provisionally renewed License, however, such authorization shall be subject to any restriction as may be imposed by the Board.

SECTION 10.2. Special License Authorization. —

A licensed constructor, issued a Special License as defined in Sec. 3.1 (b) is authorized to engage only in one single specific construction undertaking/ project in the Philippines. In case of a provisionally renewed License, each

licensing,[21] and license application processing.[22] More important, Republic Act No. 4566 and its Implementing Rules

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authorization shall be further subject to any restriction as may be imposed by the Board.

[20] Implementing Rules and Regulations of Republic Act No. 4566 (1965), Sec. 3.3 provides:

SECTION 3.3. Terms and Conditions of a Contractor's License. —

a) The License is non-transferable.

b) The License is valid during the contracting fiscal year (July 1 to June 30) for which it was issued provided it has not been suspended, cancelled or revoked by the Board.

c) The License is to be renewed annually on or before the expiration of its validity.

d) The Licensee must not submit any bid, or enter into any construction contract after the License has expired and before the same is renewed otherwise the constructor shall be deemed to be operating without a contractor's License and shall be liable to appropriate disciplinary action and payment of additional License fee.

e) The Licensee must not undertake/implement any construction project which is not within the scope of his License classification otherwise he shall be liable to appropriate disciplinary action and payment of additional licensing fee.

f) The Licensee's qualification is subject to review at any time to ascertain the constructor's eligibility to the present classification and category of his License.

g) License category may be upgraded and other classifications may be added to the license upon formal application by the Licensee together with all the necessary supporting documents.

h) The Licensee must notify the Board in writing of resignation or disassociation of any of its Sustaining Technical Employee and must replace the said employee within a period of ninety days from the date of resignation or disassociation.

i) The Licensee must submit to the Board monitoring reports that may be required from time to time.

j) The Licensee must observe and abide by the provisions of Republic Act No. 4566, as amended by Presidential Decree No. 1746, its Implementing Rules and Regulations, and other orders or instructions which the Board may issue from time to time pursuant to its power and authority under the Law.

k) The Licensee must at all times observe and adhere to the letters and spirit of the code of ethics for constructors.

l) Any misrepresentation or false information submitted to the Board shall subject the Licensee to administrative disciplinary action without prejudice to the imposition of penal sanctions provided by law.

and Regulations do not state restrictions against foreign contractors as to the type of projects they may apply for.

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m) A Licensee who is retiring from the construction business must advise the Board in writing and must immediately surrender the license to the Board for cancellation.

[21] Implementing Rules and Regulations of Republic Act No. 4566 (1965), Sec. 4.1 provides:

SECTION 4.1. Qualifications for Licensing. —

To be eligible as a candidate for licensing, an applicant shall have the following minimum qualifications deemed by the board to be necessary for the safety of the public and the interest of both the public and the construction industry;

a) He must, by virtue of his Sustaining Technical Employee or by himself, if sole-proprietor-applicant, have at least two (2) years * of construction implementation experience, and knowledge of Philippine construction-building codes and ordinances, labor safety codes and other laws applicable to construction operation, subject to the nomination requirement as provided for under Section 4.2 hereof;

b) He must, by virtue of his Authorized Managing Officer or by himself, if a sole-proprietor-applicant, have at least two (2) years of experience in construction contracting, business management and contract administration, and knowledge of Philippine laws on contracts, liens, taxation labor and other construction business matters, subject to the nomination requirement as provided for under Section 4.3 hereof;

c) He must have a stockholders'/owner's equity or networth of at least the amount required to qualify for the lowest constructor category; and

d) If a partnership or corporation, the applicant firm shall have, in its Articles of Partnership/Incorporation, construction as a primary purpose, or as a division or department separate and distinguishable from the overall organization of the firm.

The foregoing notwithstanding, the eligibility of an applicant shall be further contingent upon his non-possession of any of the disqualifications for or impediments to licensing as stipulated in Sec. 11.1 hereof.

[22] Implementing Rules and Regulations of Republic Act No. 4566 (1965), Sec. 4.7 provides:

SECTION 4.7. License Application Processing. —

The processing of License applications shall be made on a monthly batch basis. The Board shall either approve or disapprove each application subject to subsequent approval of the Authority. The Board's decision shall be communicated in writing to each applicant within ten (10) days from the date of such decision and, accordingly, the license certificates shall be prepared for and issued to those whose applications were duly approved.

The classification appears to have only been meant to facilitate the grant of licenses. The documentary requirements for a special license, it would seem, aid petitioner in processing a foreign contractor's application. For example, the special license requires a board resolution authorizing a resident alien representative in the country and a certification that the project is foreign-financed. These requirements set special licenses apart from regular licenses, and are necessary given that foreign contractors may at times be beyond the government's reach.[23]

Clearly, Section 3.1 neither precludes foreign entities from applying for a license, nor does it impose an equity requirement.

I agree with the opinion of Justice Estela Perlas-Bernabe that Section 3.1 does not prohibit foreign entities from engaging in the Philippine construction industry, but only imposes a more stringent regulation. In no way does it usurp the legislative power to create nationality requirements under Article XII, Section 10 of the Constitution.[24]

Similarly, the classification under Section 3.1 does not contradict the doctrines laid down in *Tañada* and *Espina*.

In *Tañada*, this Court held that the World Trade Organization Agreement signed by then President Fidel V. Ramos does not run against the constitutional provisions on economic nationalism.[25] It ruled that our economic policy is not isolationist in character. While the Constitution mandates a bias in favor of the domestic market, this should be balanced with the growing need for business integration with the rest of the world. Thus,

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Any applicant who was not satisfied with the Board's decision on its application nay file a written request for reconsideration and to present appropriate documents to the Board in support of such request within thirty (30) days from receipt of notice thereof. Failure to do so shall be a ground for the Board not to entertain such request if filed beyond the prescribed thirty (30)-day period.

[23] Implementing Rules and Regulations of Republic Act No. 4566 (1965), Sec. 4.6.

[24] *J.* Perlas-Bernabe, Concurring Opinion, pp. 3-4.

[25] *See* CONST., Art. II, Sec. 19, and Art. XII, Secs. 10 and 12.

the limit placed is only intended to protect Filipino enterprises against unfair foreign competition and trade practices.[26] This Court held:

> Furthermore, the constitutional policy of a "self-reliant and independent national economy" does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither "economic seclusion" nor "mendicancy in the international community."
> x x x
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> x x x x x x x x x
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> The WTO reliance on "most favored nation," "national treatment," and "trade without discrimination" cannot be struck down as unconstitutional as in fact they are rules of equality and reciprocity that apply to all WTO members. Aside from envisioning a trade policy based on "equality and reciprocity," the fundamental law encourages industries that are "competitive in both domestic and foreign markets," thereby demonstrating a clear policy against a sheltered domestic trade environment, but one in favor of the gradual development of robust industries that can compete with the best in the foreign markets. Indeed, Filipino managers and Filipino enterprises have shown capability and tenacity to compete internationally. And given a free trade environment, Filipino entrepreneurs and managers in Hongkong have demonstrated the Filipino capacity to grow and to prosper against the best offered under a policy of *laissez faire*.[27] (Citations omitted)

Meanwhile, in *Espina*, this Court ruled on the constitutionality of the Retail Trade Liberalization Act of 2000. The law had expressly repealed Republic Act No. 1180, "which absolutely prohibited foreign nationals from engaging in the retail trade business."[28]

In upholding the law's constitutionality, this Court reiterated the doctrine in *Tañada*:

> The Court further explained in *Tañada* that Article XII of the 1987 Constitution lays down the ideals of economic nationalism: (1) by

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[26] *Tañada v. Angara*, 338 Phil. 546 (1997) [Per *J.* Panganiban, *En Banc*].

[27] *Id.* at 588-589.

[28] *Espina v. Zamora, Jr.*, 645 Phil. 269, 273 (2010) [Per *J.* Abad, *En Banc*].

expressing preference in favor of qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony and in the use of Filipino labor, domestic materials and locally-produced goods; (2) by mandating the State to adopt measures that help make them competitive; and (3) by requiring the State to develop a self-reliant and independent national economy effectively controlled by Filipinos.

In other words, while Section 19, Article II of the 1987 Constitution requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development.[29] (Citation omitted)

Furthermore, this Court held that allowing foreigners to engage in business is not tantamount to a denial of Filipinos' right to property and due process of law. It found nothing that showed that the law would eventually lead to alien control of the retail trade business.[30]

Section 3.1 does not run counter to the rulings in these cases. In no way does the license classification restrict foreign contractors from doing business and obtaining licenses in the Philippines. The license types — regular and special — only differ as to the documentary requirements and expiry of licenses. Section 3.1 neither prohibits nor limits the number of foreign contractors that want to engage in construction in the country. It is consistent with the policy of global integration and openness to foreign investment.

The classification of licenses does not restrict, but only regulates the contractors' application. By imposing additional requirements on foreign contractors, petitioner can address licensing concerns. As it had explained, foreign contractors are treated differently from local ones in that those additional requirements are imposed for monitoring and regulation.

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[29] *Id.* at 279.

[30] *Id.*

II

Furthermore, the classification under Section 3.1 does not exceed the bounds of Republic Act No. 4566.

It is settled that administrative agencies delegated with legislative power may enact implementing rules and regulations of a law. However, for these rules to be valid, they must be within the bounds of the statute's provisions. In *Conte v. Commission on Audit*:[31]

> A rule or regulation must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by the Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.[32] (Citations omitted)

To recall, Section 17 of Republic Act No. 4566 gives petitioner a wide discretion to adopt necessary rules to effect classifications, consistent with the established practice and procedure in the construction business.

To effectively issue licenses, petitioner can demand various requirements as it deems fit. Additionally, it appears that the contractor's nationality only has an effect on licensing requirements, but it does not limit the operations a contractor may undertake. Nothing in Section 3.1 suggests that a foreign contractor's projects would be limited to general engineering contracting or specialty contracting only.[33]

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[31] 332 Phil. 20 (1996) [Per *J.* Panganiban, *En Banc*].

[32] *Id.* at 36.

[33] Republic Act No. 4566 (1965), Sec. 16 provides:

Indeed, the text of Section 17 remains clear: a contractor may qualify for any or all categories of contracting business, regardless of the license type they hold.

III

Finally, the Philippine Competition Commission, as *amicus curiae*, opined that the supposed nationality-based restriction under Section 3.1 is an example of barriers to entry, which, it claimed, violate the constitutional policy against unfair competition. With this, the majority agreed, ruling that "the assailed regulation is a deterrent on entry of foreign players in the construction industry."[34]

The Philippine Competition Act, however, does not apply here.

The Philippine Competition Act has a universal objective: to "[e]nhance economic efficiency and promote free and fair competition in trade, industry[,] and all commercial economic activities[.]"[35] It seeks to reinforce measures that "safeguard competitive conditions"[36] in the market.

SECTION 16. Classification. — For the purpose of classification, the contracting business includes any or all of the following branches.

(a) General engineering contracting;

(b) General building contracting; and

(c) Specialty contracting.

[34] *Ponencia*, p. 19.

[35] Republic Act No. 10667 (2015), Sec. 2.

[36] Republic Act No. 10667 (2015), Sec. 2 provides:

SECTION 2. *Declaration of Policy*. — The efficiency of market competition as a mechanism for allocating goods and services is a generally accepted precept. The State recognizes that past measures undertaken to liberalize key sectors in the economy need to be reinforced by measures that safeguard competitive conditions. The State also recognizes that the provision of equal opportunities to all promotes entrepreneurial spirit, encourages private investments, facilitates technology development and transfer and enhances resource productivity. Unencumbered market competition also serves the interest of consumers by allowing them to exercise their right of choice over goods and services offered in the market.

A competitive market is fostered when individual entities "try to outdo each other in terms of price and/or the quality of their product."[37] This translates to market players producing the best quality of products at the least price; otherwise, consumers will go to competitors who offer better products at a lower price.[38] Thus, in a competitive market, individual entities have no market power — that is, the ability to dictate a product or service's price. To facilitate this, however, there must be an open entry and exit of entities to make room for a sufficient number of competing players.[39]

Barriers to entry are factors that prevent firms from joining the market, and these may be structural, firm behavior, or government policy-induced.[40] Among them, structural barriers

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Pursuant to the constitutional goals for the national economy to attain a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged and the constitutional mandate that the State shall regulate or prohibit monopolies when the public interest so requires and that no combinations in restraint of trade or unfair competition shall be allowed, the State shall:

(a) Enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities, as well as establish a National Competition Policy to be implemented by the Government of the Republic of the Philippines and all of its political agencies as a whole;

(b) Prevent economic concentration which will control the production, distribution, trade, or industry that will unduly stifle competition, lessen, manipulate or constrict the discipline of free markets; and

(c) Penalize all forms of anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.

[37] Erlinda M. Medalla, *Understanding the New Philippine Competition Act*, Philippine Institute for Development Studies Discussion Paper Series No. 2017-14, 3 (2017).

[38] *Id.*

[39] *Id.*

[40] *Id.* at 5.

to entry are natural barriers in entering the market. For example, an entity that wishes to enter an industry must consider sunk costs, or investments that cannot be recuperated. Should the entity fail, they increase losses and make the entry to the market less attractive.[41] Sunk costs may be in the form of physical and human investments, startup losses, and advertising costs. Large capital requirements, such as investment in equipment, are other examples of a natural barrier to entry.[42]

Barriers to entry foil the competitive market because they give market power to incumbent entities, allowing them to control the supply and price.[43] For instance, in a monopoly, only one (1) supplier persists because "there are barriers to entry that make it impossible for competing firms to appear."[44] Monopolies can be found in public utilities such as local water, telecommunications, cable, and power companies, where structural barriers such as large investment costs for building a facility or obtaining access to natural resources are present.[45]

However, competition policy and law only ensure that firms in the market play fair. Fair, in this context, means that an entity becomes dominant in the market because it is more efficient than its competitors, such that it is able to produce goods or services at the lowest cost.[46]

Prohibited acts under the Philippine Competition Act are laid out in its Chapter III. Particularly, Sections 14 and 15 flag

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[41] R. Preston MacAfee, *et al*., *What is a Barrier to Entry*, The American Economic Review, 94 American Economic Association, 463 (2004).

[42] Erlinda M. Medalla, *Understanding the New Philippine Competition Act*, Philippine Institute for Development Studies Discussion Paper Series No. 2017-14, 8 (2017).

[43] *Id*.

[44] 1 Robert Cooter, *Law and Economics*, 35 (4th ed., 2003).

[45] *Id*.

[46] Erlinda M. Medalla, *Understanding the New Philippine Competition Act*, Philippine Institute for Development Studies Discussion Paper Series No. 2017-14, 7 (2017).

anti-competitive agreements and entities that abuse their dominant position.[47]

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[47] Republic Act No. 10667 (2015), Secs. 14 and 15 provide:

SECTION 14. Anti-Competitive Agreements. —

(a) The following agreements, between or among competitors, are *per se* prohibited:

(1) Restricting competition as to price, or components thereof, or other terms of trade;

(2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;

(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:

(1) Setting, limiting, or controlling production, markets, technical development, or investment;

(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means;

(c) Agreements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: Provided, Those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this section.

SECTION 15. *Abuse of Dominant Position*. — It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition:

(a) Selling goods or services below cost with the object of driving competition out of the relevant market: *Provided*, That in the Commission's evaluation of this fact, it shall consider whether the entity or entities have no such object and the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality;

(b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

(c) Making a transaction subject to acceptance by the other parties of

Our competition law does not *per se* outlaw market imperfections. It only prohibits abusive behaviors that

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other obligations which, by their nature or according to commercial usage, have no connection with the transaction;

(d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially: Provided, That the following shall be considered permissible price differentials:

(1) Socialized pricing for the less fortunate sector of the economy;

(2) Price differential which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;

(3) Price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor; and

(4) Price changes in response to changing market conditions, marketability of goods or services, or volume;

(e) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially: Provided, That nothing contained in this Act shall prohibit or render unlawful:

(1) Permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements such as those which give each party the right to unilaterally terminate the agreement; or

(2) Agreements protecting intellectual property rights, confidential information, or trade secrets;

(f) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

(g) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;

(h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and

substantially prevent, restrict, or lessen competition.[48] It does not preclude natural or structural market failures, such as barriers to entry and market dominance.

In *Gios-Samar, Inc. v. Department of Transportation and Communications*,[49] this Court clarified that under the Philippine Competition Act, "an entity is not prohibited from, or held liable for prosecution and punishment for, simply securing a dominant position in the relevant market in which it operates. It is only when that entity engages in conduct in abuse of its dominant position that it will be exposed to prosecution and possible punishment."[50]

Similarly, Section 15 (b) of the Philippine Competition Act makes an important distinction: entities that impose barriers to entry or commit acts "that prevent competitors from growing within the market in an anti-competitive manner" are deemed as abusing their dominant position; however, if the barriers imposed "develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws[,]" they are not proscribed.

(i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of this Act:

Provided, That nothing in this Act shall be construed or interpreted as a prohibition on having a dominant position in a relevant market or on acquiring, maintaining and increasing market share through legitimate means that do not substantially prevent, restrict or lessen competition:

Provided, further, That any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position:

Provided, finally, That the foregoing shall not constrain the Commission or the relevant regulator from pursuing measures that would promote fair competition or more competition as provided in this Act.

[48] Republic Act No. 10667 (2015), Secs. 14 and 15.

[49] G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J*. Jardeleza, *En Banc*].

[50] *Id*.

Structural barriers to entry are common in construction industries. The amount of investment needed in place and the sunk costs it will entail are structural barriers to entry on new contractors. In this context, foreign contractors are expected to be burdened with additional requirements and more stringent conditions given their substantial difference from domestic contractors. Certainly, this does not constitute an unfair entity behavior that competition law guards against.

Thus, to conclude that all barriers to entry are illegal is inaccurate. The Philippine Competition Act will only operate in instances of unfair abusive behavior that are intended to substantially prevent, restrict, or lessen competition.

Besides, while the majority pointed out that the classification under Section 3.1 results in adverse market consequences such as fewer foreign contractors, this is a policy issue that is not within the province of this Court. This should be addressed to our lawmakers, in whose hands rest determining the best policy for our economy.

ACCORDINGLY, I vote to **GRANT** the Petition.

EN BANC

[G.R. No. 227926. March 10, 2020]

PROVINCE OF CAMARINES SUR, represented by GOVERNOR MIGUEL LUIS R. VILLAFUERTE, *petitioner*, *vs.* **THE COMMISSION ON AUDIT,** *respondent*.

SYLLABUS

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; POWERS OF THE PRESIDENT; EXERCISE OF GENERAL

SUPERVISION OVER LOCAL GOVERNMENTS; SUPERVISION AND CONTROL, DISTINGUISHED.— Under Section 4, Article X of the Constitution: SEC. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. The Court, in *Pimentel v. Aguirre*, further delineated the scope of Executive supervision over local government units as exclusive of control, or the power to restrain local government action. This provision [Sec. 4, Art. X of the 1987 Constitution] has been interpreted to exclude the power of control. In *Mondano v. Silvosa*, the Court contrasted the President's power of supervision over local government officials with that of his power of control over executive officials of the national government. It was emphasized that the two terms – **supervision and control** – differed in meaning and extent. The Court distinguished them as follows: In administrative law, **supervision** means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. **Control**, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter. In *Taule v. Santos*, we further stated that the Chief Executive wielded no more authority than that of checking whether local governments or their officials were performing their duties as provided by the fundamental law and by statutes. He cannot interfere with local governments, so long as they act within the scope of their authority. **"Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body,"** we said. In a more recent case, *Drilon v. Lim*, the difference between control and supervision was further delineated. Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it

that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.

2. ID.; ADMINISTRATIVE LAW; CONSTITUTIONALITY OF DECS-DBM-DILG JC NO. 01-A; ADMINISTRATIVE REGULATIONS THAT ARE ENACTED BY ADMINISTRATIVE AGENCIES HAVE THE FORCE OF LAW AND CANNOT BE COLLATERALLY ATTACKED. — [T]he [COA] correctly pointed out that administrative regulations, which were enacted by administrative agencies to interpret and implement the law they were entrusted to enforce, have the force of law. Thus, they cannot be collaterally attacked as there is a legal presumption of validity of these rules.

3. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES; QUESTIONS INVOLVING THE CONSTITUTIONALITY OR VALIDITY OF AN ADMINISTRATIVE REGULATION MUST BE RAISED AT THE EARLIEST OPPORTUNITY.— The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, *i.e.*, (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case. Seeking judicial review at the earliest opportunity does not mean direct recourse to this Court. Rather, it is questioning the constitutionality of the act in question immediately in the proceedings below. In this case, petitioners failed to question the validity of the subject circular at the earliest opportunity. It was only before this Court, that they are now raising the circular's validity *vis-à-vis* the principle of local autonomy.

4. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; IN LIGHT OF THE PRINCIPLES OF

***QUANTUM MERUIT* AND UNJUST ENRICHMENT, FAILURE OF THE APPROVING OFFICERS TO COMPLY WITH THE DECS-DBM-DILG JCS CAUSING THE RETURN OF THE HONORARIA AND ALLOWANCES WOULD BE INEQUITABLE TO THE PERSONNEL WHO RENDERED ACTUAL SERVICES FOR IT; IT WOULD BE INEQUITABLE FOR APPROVING OFFICERS TO SHOULDER THE DISALLOWED FUNDS.—** Under the principle of *quantum meruit*, a person may recover a reasonable value for the thing he delivered or the service that he rendered. Literally meaning "as much as he deserves," this principle acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. Here, there is no question that the Provincial Human Resource Management Officer (PHRMO) and the Schools Division Superintendent (SDS) of Camarines Sur certified that locally-funded teachers actually rendered their services for calendar year 2008. x x x It is apparent, based on the rulings of the COA, COA-RO V, Auditor and ATL that, the disallowance was made not because no service was rendered by the concerned recipients. Rather, it was due to the failure of petitioners to comply with the mandatory requirements of DECS-DBM-DILG JCs particularly as to: (1) the prior approval of DECS (now DepEd) Secretary of the extension classes; and (2) the recommendation of the DECS Regional Director. It is only the third requirement, certification by the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs, which petitioners were able to meet. In light of the principle of *quantum meruit* and unjust enrichment, we find that it would be the height of injustice if the personnel who rendered services for the period in question would be asked to return the honoraria and allowances they actually worked for, simply because the approving officers failed to comply with certain procedural requirements. By necessary implication, it would also be inequitable if the approving officers would be required to shoulder the return of the disallowed funds, even though such were given for actual service rendered.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CONSTRUCTION & INTERPRETATION OF THE LAW; CREATION OF THE SPECIAL EDUCATION FUND (R.A. 5447); THE

AUTHORITY TO EXPEND THE SEF FOR THE OPERATION AND MAINTENANCE OF EXTENSION CLASSES OF PUBLIC SCHOOLS CARRIES WITH IT THE AUTHORITY TO UTILIZE THE SEF NOT ONLY FOR THE SALARIES AND ALLOWANCES OF THE TEACHING PERSONNEL BUT THOSE OF THE NON-TEACHING PERSONNEL ALIKE WHO WERE HIRED AS A NECESSARY AND INDISPENSABLE AUXILIARY TO THE TEACHING STAFF.— [T]he Court agrees with the petitioner that the authority to expend the SEF for the operation and maintenance of extension classes of public schools carries with it the authority to utilize the SEF not only for the salaries and allowances of the teaching personnel, but those of the non-teaching personnel alike who were hired as a necessary and indispensable auxiliary to the teaching staff. It is beyond question that the services of these non-teaching personnel are essential to the sound and efficient operation and maintenance of these extension classes. Without them, it would be impossible to hold these extension classes as teachers would have to concern themselves not only with their duty to teach, but also the maintenance of classrooms and other logistical needs pertaining to the holding of these extension classes. The Court does not agree with the COA that Section 1(a) of R.A. No. 5447 limited the use of the SEF only for the creation of position of classroom teachers, head teachers and principals for such extension classes. x x x The phrase which states that the SEF shall be expended for *the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade 1* shows that the salaries and allowances of non-teaching personnel which, as previously discussed, are indispensable to the organization and operation of extension classes, are also included in the list for which the SEF may be utilized. This must be so in light of the doctrine of necessary implication which states that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. x x x To construe the law otherwise would result in absurdity because the hiring of non-teaching personnel is but a necessary consequence to the maintenance, operation and organization of the extension classes.

LEONEN*, J., separate concurring opinion*:

1. **POLITICAL LAW; LOCAL GOVERNMENT; LOCAL AUTONOMY; DECENTRALIZATION OF ADMINISTRATION AND DECENTRALIZATION OF POWER; DISTINGUISHED.—** Article X, Section 2 of the 1987 Constitution specifically provides for the grant of local autonomy to "territorial and political subdivisions." *Mandanas v. Ochoa, Jr.* discussed the scope of this local autonomy. The *constitutional mandate to ensure local autonomy refers to decentralization.* In its broad or general sense, decentralization has two forms in the Philippine setting, namely: the decentralization of power and the decentralization of administration. The *decentralization of power involves the abdication of political power in favor of the autonomous LGUs* as to grant them the freedom to chart their own destinies and to shape their futures with minimum intervention from the central government. This amounts to self-immolation because the autonomous LGUs thereby become accountable not to the central authorities but to their constituencies. *On the other hand,* the *decentralization of administration occurs when the central government delegates administrative powers to the LGUs as the means of broadening the base of governmental powers and of making the LGUs more responsive and accountable in the process, and thereby ensure their fullest development as self-reliant communities and more effective partners in the pursuit of the goals of national development and social progress.* This form of decentralization further relieves the central government of the burden of managing local affairs so that it can concentrate on national concerns.

2. **ID.; ID.; ID.; CONSTRUED.—** [T]he Constitutional grant of local autonomy "does not make local governments sovereign within the state[,]" but reiterates the interdependence between central and local government agencies. But while regulations may validly be imposed on the exercise of local autonomy, such regulations are ultimately geared toward enhancing self-governance. Consequently, the devolution of administrative powers and functions inherent in local autonomy should not be rendered inutile by the need to seek prior approval from central government agencies. Rather, an autonomous local government should be able to promptly address matters in the exigencies of public service without undue restriction.

3. ID.; ID.; ID.; EXECUTIVE SUPERVISION OVER LOCAL GOVERNMENT UNITS SHOULD NOT RESULT IN CENTRAL AGENCIES SUBSTITUTING THE FINDINGS OF A LOCAL GOVERNMENT UNIT WITH THEIR OWN. — [E]xecutive supervision over local government units should not result in central agencies substituting the findings of a local government unit with their own. x x x Thus, if the Constitutional guarantee of local autonomy is to be given effect, it should amount to effective authority for local government units to decide matters concerning local affairs. While this autonomy is not absolute, the criteria limiting its exercise must be reasonable and should not give central government agencies the power to restrict the actions of a local government unit, or to substitute it with their own.

4. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT; LOCAL AUTONOMY; DECS-DBM-DILG JC NO. 01-A IMPOSES UNDUE RESTRICTIONS ON THE ABILITY OF A LOCAL GOVERNMENT UNIT TO ACT ON ITS OWN FINDINGS.— While the requirements imposed by administrative issuances may not have been intended to supplant local government judgment, the issue of whether supervision has lapsed into control should not be a question of intent but of effect. The *ponencia* recognized a valid issue regarding the validity of Joint Circular No. 01-A, but opted to forego a ruling thereon based on procedural grounds. However, a perusal of the questioned circular reveals that it effectively prohibits the provincial government from holding or creating extension classes without prior approval and recommendation by the concerned central government agencies. In fact, the Commission on Audit disallowed the disbursements precisely because certain approvals from central government agencies were not procured. Thus, these requirements are more than mere guidelines. They effectively control local government action because they allow central government agencies to override the findings made by local government units as to the urgency, need, and propriety of holding extension classes. Being in the best position to determine these matters, the local government units should have been left with this decision. While both the Local Government Code and Republic Act No. 5447 provide that the Local School Boards' discretion in using the Special Education Fund is not absolute, the criteria to be imposed upon Local School Boards should

still be consistent with the greater purpose of administrative decentralization. The approval requirements in Joint Circular No. 01-A should not be allowed to effectively hamstring local government operations. Joint Circular No. 01-A imposes undue restrictions on a local government unit's ability to act on its own findings. This takes the initiative away from local government units and negates the alacrity and responsiveness which it would have had under a more permissive view of local autonomy. Not only does Joint Circular No. 01-A run contrary to the purpose for which the Special Education Fund was created, it also contradicts the very purpose of local autonomy. It essentially denies local authorities the capacity to promptly and effectively address the exigencies of service.

5. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; PURSUANT TO THE STATE'S POLICY AGAINST UNJUST ENRICHMENT, THE APPROVING AUTHORITIES MUST REIMBURSE AMOUNTS THEY RECEIVED AFTER DISALLOWANCE BY THE COA OF THE DISBURSEMENT; GOOD FAITH, NOT A DEFENSE. — Notwithstanding my concurrence with absolving the provincial government from refunding the disallowed disbursement, I must point out this Court's pronouncement in *Rotoras v. Commission on Audit*: *The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit.* Neither would the defense be available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations. Furthermore, the rank and file's obligation to return shall be limited only to what they have actually received. They may, subject to Commission on Audit approval, agree to the terms of payment for the return of the disallowed funds. *For the approving board members or officers, however, the nature of the obligation to return—whether it be solidary or not—depends on the circumstances. Rotoras* discussed the liability of members of the approving board to reimburse the amounts they disbursed, and subsequently received, after such disbursement were disallowed by the Commission on Audit. There, this Court did away with the defense of good faith and ordered the approving authorities to reimburse the amounts they received pursuant to the State's policy against unjust enrichment.

APPEARANCES OF COUNSEL

Office of the Provincial Legal Officer for petitioner.
The Solicitor General for respondent.

D E C I S I O N

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

The Facts and the Case

Before the Court is a Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court seeking to nullify and set aside the December 29, 2014 Decision[1] and the September 26, 2016 Resolution[2] of respondent Commission on Audit (COA). The assailed Resolution denied the motion for reconsideration filed by petitioner Province of Camarines Sur, represented by Governor Miguel Luis R. Villafuerte (Gov. Villafuerte), for lack of merit, and affirmed with finality COA Regional Office V (COA-RO V) Decision No. 2013-L-016[3] which sustained the validity of Notice of Disallowance No. 2011-200-010 (08)[4] on the payment of allowances to locally funded teaching and non-teaching personnel of the Department of Education (DepEd)-Division of Camarines Sur in the total amount of ₱5,820,843.30.

To accommodate the growing number of enrollees in public schools, petitioner started hiring in 1999 temporary teaching personnel to handle extension classes of existing public schools, as well as non-teaching personnel in connection with the establishment and maintenance of these extension classes. The salaries of the personnel hired were charged to the Special Education Fund (SEF).[5]

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[1] *Rollo*, pp. 23-25.

[2] *Id.* at 26-36.

[3] *Id.* at 51-55.

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

[5] *Id.* at 6, 156.

On March 5, 2009, Atty. Eleanor V. Echano, Audit Team Leader (ATL) assigned to the province of Camarines Sur issued Audit Observation Memorandum (AOM) No. 2009-19 (2008) dated February 18, 2009 stating that the payments made by the petitioner for the allowances/honoraria of locally funded teaching and non-teaching personnel of the DepEd-Division of Camarines Sur from July 2008 to October 2008 in the total amount of ₱5,820,843.30 that were charged to the SEF contravene the provisions of Section 272 of Republic Act (R.A.) No. 7160 or The Local Government Code of 1991 (LGC) and the Department of Education, Culture and Sports, Department of Budget and Management, and Department of the Interior and Local Government Joint Circular (DECS-DBM-DILG JC) No. 1, Series of 1998 dated April 15, 1998 on the utilization of the SEF for the operation and maintenance of elementary and secondary public schools.[6]

In their Comment dated June 23, 2010 to the AOM, the Officer-In-Charge (OIC)-Provincial Accountant; OIC-Provincial Treasurer and OIC-Provincial Budget Officer of the petitioner contended that the payments made did not violate Section 272 of the LGC and other pertinent circulars as the payments were well within the purpose and intent for which the SEF may be utilized.[7]

On December 23, 2011, the ATL and Supervising Auditor-in-Charge issued Notice of Disallowance No. 2011-200-010 (08)[8] dated November 15, 2011 disallowing the payments of allowances/honoraria to locally funded teaching and non-teaching personnel of DepEd-Division of Camarines Sur which were charged to the 2008 SEF for the following violations:

1. The payments for the allowances of locally funded teachers were in violation of the provisions of Section 272 of RA 7160 which explicitly provide that the proceeds of Special Education Fund shall be allocated for the operation and

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[6] *Id.* at 7, 37.

[7] *Id.* at 7, 101.

[8] *Supra* note 4.

maintenance of public schools and DECS-DBM-DILG Joint Circular No. 01, s. of 1998 dated April 14, 1998, clarified under JC No. 01-A dated March 14, 2000 and JC No. 01-B dated June 25, 2001 which state that payments of salaries, authorized allowances and personnel-related benefits are only for hired teachers that handle new classes as extension of existing public elementary [or] secondary schools established and approved by DepEd;

2. The allowances was taken up in the Special Education Fund (SEF) books as "Donations" (878) instead of taking it up to the General Fund books[;]

3. No Memorandum of Agreement and Accomplishment Report attached[;]

4. The payments of payrolls on JEV Nos. 200-08-10-185(1-5) and 200-08-10-188 were not approved by the Provincial Governor[;]

5. The Journal Entry of Payrolls on JEV Nos. 200-08-09-165(12), 200-08-185(1-5) and 200-08-10-188 were not approved by the Provincial Accountant[;]

6. The OBR on JEV No. 200-08-09-165(12) was not approved by the Provincial Budget Officer (PBO)[;]

7. There were no certifications coming from the Head Teachers that the rec[i]pient-teacher indeed served in a particular school at a given time[;]

8. There was no certification from the HRMO of the [p]rovince regarding the authenticity of each claim.[9]

Under the said Notice of Disallowance, the following persons were found liable for the disbursements:

Name	Position/ Designation	Nature of Participation in the Transaction
Nora Cariño	OIC-HRMO	For approving the transaction
Lizerna Molave, Ma. Teresa Genova, Ruby Estefani	Provincial Accountant	For certifying that the supporting documents are complete

[9] *Rollo*, p. 37.

Susan Laquindanum	Assistant Provincial HRMO	For certifying that charges to appropriation/allotment were necessary, lawful and under your direct supervision and that supporting documents were valid, proper and legal[10]

On June 19, 2012, petitioner, through the Provincial Legal Officer, appealed the Notice of Disallowance to the Office of the Regional Director of COA-ROV insisting that the payments of allowances and honoraria to locally funded teaching and non-teaching personnel were properly charged to the SEF in light of the pronouncement of the Court in *Commission on Audit v. Province of Cebu*[11] and that the locally funded teachers actually rendered their services for calendar year 2008 as certified by the Provincial Human Resource Management Officer (PHRMO) and the Schools Division Superintendent (SDS) of Camarines Sur.[12]

In their Answer dated July 11, 2012, the ATL and the Supervising Auditor (SA) maintained that the payments of allowances/honoraria to locally funded teachers were rightfully disallowed for failure to comply with the mandatory requirements of law and joint circulars on the utilization of SEF, particularly the establishment of extension classes wherein the approval of the DECS Secretary, upon the recommendation of the DECS Regional Director is necessary, as well as the certification of the division superintendent concerned of the necessity or urgency of establishing such extension classes.[13]

Furthermore, the ATL and SA averred that the province failed to submit certifications of school heads/head teachers attesting to the actual periods of the services rendered by the personnel in their respective schools. While they agree with the provincial

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[10] *Id.*

[11] 422 Phil. 519 (2001).

[12] *Rollo*, pp. 42-50.

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

legal officer's contention that payments of salaries, allowances and personnel-related benefits of public school teachers are authorized expenditures of the SEF as enunciated in *COA v. Province of Cebu*, they noted that there were also mandatory requirements that should be complied with before a lawful disbursement of the SEF may be made, which the province failed to submit.[14]

On July 29, 2013, COA-ROV rendered Decision No. 2013-L-016[15] denying the appeal and affirming the subject disallowance on the ground that DepEd-Division of Camarines Sur did not comply with the mandatory conditions for the establishment of extension classes before the payment of allowances/honoraria to locally funded teachers hired to handle extension classes could be validly charged to the SEF pursuant to Section 2.1 of DECS-DBM-DILG JC No. 01-A dated March 14, 2000 and Section 2.1 of DECS-DBM-DILG JC No. 01-B dated June 25, 2001. COA-ROV also ruled that the payment of allowances to non-teaching personnel violated Section 272 of the LGC and DECS-DBM-DILG JC Nos. 01, 01-A and 01-B because only salaries and allowances of public school teachers who handle extension classes are chargeable to the SEF.

Not accepting defeat, petitioner elevated the matter before respondent COA proper (COA) *via* a petition for review. However, the petition was denied by the COA in Decision No. 2014-454[16] dated December 29, 2014 for being filed out of time. Petitioner moved for reconsideration.

In its Resolution,[17] docketed as Decision No. 2016-268 and dated September 26, 2016, the COA found the petition for review to have been timely filed but resolved to deny the motion for reconsideration for lack of merit. The dispositive portion of the Resolution reads:

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[14] *Id.* at 29.

[15] *Supra* note 3.

[16] *Supra* note 1.

[17] *Supra* note 2.

WHEREFORE, premises considered, the motion for reconsideration is hereby DENIED for lack of merit. Accordingly, Commission on Audit Regional Office V Decision No. 2013-L-016 dated July 29, 2013 sustaining the Notice of Disallowance No. 2011-200-010(08) dated November 15, 2011, on the payment of allowances/honoraria to locally hired temporary teachers and personnel of the Department of Education-Division of Camarines Sur in the total amount of ₱5,820,843.30, is AFFIRMED with FINALITY.[18]

In finding the disallowance of the subject allowances/honoraria to be proper, the COA gave the same reasons as the COA-ROV when it affirmed the subject Notice of Disallowance. It held:

The afore-quoted DECS-DBM-DILG JCs provide that the salaries and allowances of teachers hired to handle extension classes are among the priority expenses chargeable to SEF. In this regard, such extension classes should be approved by the DECS (now DepEd) secretary upon the recommendation of the DepEd regional director and certified by the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs and the number of pupils/students therein shall at least be 15.

This Commission finds nothing in the records that the mandatory requirements for the establishment of extension classes were complied with, much less, were the teachers hired for the purpose of handling extension classes. Only the certification dated November 5, 2009 issued by Schools Division Superintendent Emma I. Cornejo attesting to the necessity and urgency of establishing extension classes in the elementary was presented.

With respect to the payment of allowances to the non-teaching personnel employed in the extension classes established by the DepEd-Division of Camarines Sur, the same is irregular since in the DECS-DBM-DILG JC No. 01-B dated June 25, 2001, only the salaries and authorized allowances of teachers hired to handle extension classes are chargeable against the SEF.[19]

Undaunted, petitioner is now before this Court *via* the present Petition for *Certiorari*.

[18] *Rollo*, p. 35.

[19] *Id.* at 34.

The Issues Presented

Petitioner raised the following issues for this Court's consideration:

A.

THE COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO CONSIDER PETITIONER'S COMPLIANCE WITH THE LOCAL GOVERNMENT CODE.

B.

THE COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO CONSIDER THAT THE APPROVAL, RECOMMENDATION, AND CERTIFICATION REQUIREMENTS IN THE DECS-DBM-DILG JOINT CIRCULAR NO. 01-A CONSTITUTES AN INVALID EXERCISE OF THE ADMINISTRATIVE RULE-MAKING POWER, AND VIOLATES THE PRINCIPLE OF LOCAL AUTONOMY GRANTED TO LGUs BY THE LOCAL GOVERNMENT CODE.

C.

THE COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO CONSIDER THAT THE JOINT CERTIFICATION BY THE ACTING HRMO AND SCHOOLS DIVISION SUPERINTENDENT SUFFICIENTLY MET THE CERTIFICATION REQUIREMENTS STATED IN THE AOM AND THE ND.[20]

The Arguments of the Parties

Petitioner contended that the COA acted in an oppressive, whimsical, capricious and arbitrary manner when, in 2009, it suddenly assailed the hiring of temporary personnel to teach and handle extension classes, and the giving of allowances to them when it did not question the same for almost a decade, or from 1999 to 2008.[21] At any rate, it insisted that it complied

[20] *Id.* at 12.

[21] *Id.* at 156-157.

with all the requirements laid down by the LGC before it utilized the SEF for the payment of the allowances and honoraria of locally-funded teaching and non-teaching personnel. Consonant with Sections 100, 235, 272 of the LGC, the High Court, in *COA v. Province of Cebu*, ruled that SEF may be used to answer for the compensation of teachers handling extension classes. While the decision therein is silent as to whether the SEF may be used for the salaries of non-teaching personnel, its silence must not be taken to mean that the Local Government Units (LGUs), like the petitioner, through the Local School Board (LSB), has no discretion to decide on how its budget may be utilized. The power to use the SEF for the operation and maintenance of public schools necessarily implies that it may be used for the payment of salaries of non-teaching personnel applying the doctrine of necessary implication inasmuch as non-teaching personnel are as necessary and as indispensable to the operation and maintenance of public schools and the establishment of and handling of extension classes as the teaching personnel. To say that an LGU has the power to use its funds to pay for the salaries of teachers hired to handle extension classes and at the same time say that it has no power to pay for the salary of extra non-teaching personnel hired due to the increase in the number of classes will result in absurdity.[22]

Petitioner also asseverated that DECS-DBM-DILG JC No. 01-A which was made the basis of the AOM and ND is null and void for being an invalid exercise of the rule-making power of the DepEd, DBM and DILG. Before the issuance of the said circular, the LGC has long authorized the use of SEF, and has in fact mandated the LSB to prioritize the maintenance and operation of extension classes in the elementary and secondary public schools when needed. For another, the authority granted to the LSB to decide how the SEF should be allocated for the operation and maintenance of extension classes under Section 100 of the LGC did not come with a condition. For the departments of the national government to require compliance

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

to certain conditions, such as administrative approval, recommendation and certification, when the law itself did not require the same amounted to an invalid exercise of administrative rule-making authority. Such requirement is also a violation of the principle of local autonomy guaranteed by the LGC to the LGUs because it unduly interferes with the policy judgment of the petitioner for it gives the national government agencies the power to substitute their judgment for that of the LGUs.[23] Petitioner added that consistent with the fundamental precept of checks and balances, the Court has the power to pass upon the validity of the subject joint circular.[24]

Furthermore, petitioner averred that the joint certification issued by petitioner's acting PHRMO and SDS which attested to the authenticity of the claims of the locally-funded teachers sufficiently addressed the deficiency noted by the AOM and ND as to the lack of certification by the Provincial HRMO regarding authenticity of the claim. The joint certification must also be considered to have met the certification requirements stated in the AOM and ND given that it did not only contain the names of the personnel hired to handle extension classes, but also the name and signature of the school head, as well as the name of the specific school where the extension classes were held.[25]

Even assuming that the COA correctly disallowed the said allowances/honoraria, those who took part in the disbursement cannot *ipso facto* be held personally liable therefor since they did not fail to exercise the diligence of a good father of a family and have processed the disbursements in consonance with laws and procedures which they have been following since 1999. Also, the long practice of hiring teachers to handle extension classes, as well as the hiring of non-teaching personnel which is necessary and indispensable to the operation of extension classes, and the payment of their allowances/honoraria which

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

[24] *Id.* at 158-159.

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

have never been questioned by the COA, more than sufficiently show that the disbursement of 2008 SEF therefor which they have been doing for almost a decade was made in good faith and under color of law.[26]

For its part, COA maintained that it did not commit grave abuse of discretion when it affirmed the disallowance of the payments made by the petitioner for the allowances/honoraria of locally-funded teaching personnel of DepEd-Division of Camarines Sur that was charged against petitioner's 2008 SEF for the reason that although under Section 272 of the LGC, SEF may be used for the operation and maintenance of schools which includes the establishment of extension classes, the same must first comply with the requirements set forth in DECS-DBM-DILG JC No. 01-A, specifically the prior approval of the DepEd Secretary upon the recommendation of the DepEd Regional Director and certification from the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs provided that the number of pupils therein shall at least be 15, must first be obtained. Of the mandatory requirements, only the Certification attesting to the necessity and urgency of establishing extension classes in elementary school was presented.[27]

As regards the payment of allowances to non-teaching personnel employed in the extension classes, COA insisted that the same was irregular in light of DECS-DBM-DILG JC No. 01-B which provides that only the salaries and authorized allowances of teaching personnel hired to handle extension classes may be charged against the SEF. The argument of the petitioner that the power to use the SEF for the operation and maintenance of public schools necessarily carried with it the power to use the same to pay the salaries of non-teaching personnel is gravely erroneous considering that R.A. No. 5447,[28] the law which created the SEF, specifically stated that

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[26] *Id.* at 159-161.

[27] *Id.* at 105-107.

[28] AN ACT CREATING A SPECIAL EDUCATION FUND TO BE CONSTITUTED

the same shall be used for the organization and operation of extension classes including the creation of positions of classroom teachers, head teachers and principals for such extension classes. It did not include non-teaching personnel who were hired to handle extension classes. Contrary to the view of the petitioner, the Court had been explicit in *COA v. Province of Cebu* that only salaries of public school teachers who handle extension classes may be charged to the SEF.[29]

The COA likewise insisted on the validity of the subject joint circulars. It contended that administrative regulations, such as the subject joint circulars, which were enacted by the administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. They cannot be collaterally attacked as there is a legal presumption of the validity of these rules. Moreover, the COA contended that it is beyond the scope of a *certiorari* petition to determine whether a particular issuance by an administrative agency is valid or not. *Certiorari* petition is also not the proper avenue to declare the subject joint circulars illegal because petitions for *certiorari* seek solely to correct defects in jurisdiction. Even if the Court were to rule on their validity, the joint circulars must still be declared as valid because they were issued in the proper exercise of the concerned government agencies' quasi-legislative powers. Contrary to petitioner's view, the joint circulars did not expand the provisions of the LGC, but merely filled in the details of the law which Congress may not have the opportunity or competence to provide.[30]

FROM THE PROCEEDS OF AN ADDITIONAL REAL PROPERTY TAX AND A CERTAIN PORTION OF THE TAXES ON VIRGINIA-TYPE CIGARETTES AND DUTIES ON IMPORTED LEAF TOBACCO, DEFINING THE ACTIVITIES TO BE FINANCED, CREATING SCHOOL BOARDS FOR THE PURPOSE, AND APPROPRIATING FUNDS THEREFROM.

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

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

Lastly, the COA claimed that the joint certification issued by the acting HRMO and SDS was properly rejected as basis for the payments indicated in the payroll due to the impossibility that they have personally witnessed the daily attendance of all the personnel listed in the payroll. The absence of the certification by the head teachers cast doubt on the validity, propriety and authenticity of those who claim payment for their services.[31]

The Ruling of the Court

We find merit in the petition.

At the core of the present petition is the question of whether petitioner, through the approving officers, is liable to refund the disallowed fund subject of ND No. 2011-200-101 (08) in the total amount of ₱5,820,843.30.

In asserting non-culpability, the petitioner attacks the validity of DECS-DBM-DILG Joint Circular No. 1-A, alleging that it constitutes an invalid exercise of the administrative rule-making power of the concerned agencies and violates the principle of local autonomy granted to LGUs.

Under Section 4, Article X of the Constitution:

> SEC. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

The Court, in *Pimentel v. Aguirre*,[32] further delineated the scope of Executive supervision over local government units as exclusive of control, or the power to restrain local government action.

> This provision [Sec. 4, Art. X of the 1987 Constitution] has been interpreted to exclude the power of control. In *Mondano v. Silvosa*, the Court contrasted the President's power of supervision over local

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

[32] *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000).

government officials with that of his power of control over executive officials of the national government. It was emphasized that the two terms — **supervision and control** — differed in meaning and extent. The Court distinguished them as follows:

> In administrative law, **supervision** means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. **Control**, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.

In *Taule v. Santos*, we further stated that the Chief Executive wielded no more authority than that of checking whether local governments or their officials were performing their duties as provided by the fundamental law and by statutes. He cannot interfere with local governments, so long as they act within the scope of their authority. "**Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body**," we said.

In a more recent case, *Drilon v. Lim*, the difference between control and supervision was further delineated. Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.[33] (Emphases supplied and citations omitted)

While there may a valid issue with regard to the validity of the circular involved in this case in terms of how it impinges on the principle of local autonomy, the respondent correctly

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[33] *Id.* at 98-100.

pointed out that administrative regulations, which were enacted by administrative agencies to interpret and implement the law they were entrusted to enforce, have the force of law. Thus, they cannot be collaterally attacked as there is a legal presumption of validity of these rules.

We find respondent's position on this score to be well-taken.

The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, *i.e.*, (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case.[34]

Seeking judicial review at the earliest opportunity does not mean direct recourse to this Court. Rather, it is questioning the constitutionality of the act in question immediately in the proceedings below.[35]

In this case, petitioners failed to question the validity of the subject circular at the earliest opportunity. It was only before this Court, that they are now raising the circular's validity *vis-a-vis* the principle of local autonomy.

Our concurrence with respondent on this point, notwithstanding, still we find that petitioner is ***not liable*** to pay for the disallowed funds.

Under the principle of *quantum meruit*, a person may recover a reasonable value for the thing he delivered or the service that he rendered. Literally meaning "as much as he deserves," this principle acts as a device to prevent undue enrichment

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[34] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, 815 Phil. 1067, 1089-1090 (2017).

[35] *Arceta v. Judge Mangrobang*, 476 Phil. 106, 114-115 (2004).

based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.[36]

Here, there is no question that the Provincial Human Resource Management Officer (PHRMO) and the Schools Division Superintendent (SDS) of Camarines Sur certified that locally-funded teachers actually rendered their services for calendar year 2008.[37]

While COA argues that the joint certification of the PHRMO and SDS should be rejected, as it was impossible that they personally witnessed the daily attendance of all the personnel listed in the payroll, we find such imputation of malfeasance on the part of the concerned government officials to be warrantless, baseless and contrary to the presumption of regularity in the performance of official duties. We, therefore, give weight to the certification that the concerned personnel who received the questioned allowances actually rendered services for the period stated.

It is apparent, based on the rulings of the COA, COA-ROV, Auditor and ATL that, the disallowance was made not because no service was rendered by the concerned recipients. Rather, it was due to the failure of petitioners to comply with the mandatory requirements of DECS-DBM-DILG JCs particularly as to: (1) the prior approval of DECS (now DepEd) Secretary of the extension classes; and (2) the recommendation of the DECS Regional Director. It is only the third requirement, certification by the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs, which petitioners were able to meet.

In light of the principles of *quantum meruit* and unjust enrichment, we find that it would be the height of injustice if the personnel who rendered services for the period in question would be asked to return the honoraria and allowances they

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[36] *Geronimo v. Commission on Audit*, G.R. No. 224163, December 4, 2018.

[37] *Rollo*, pp. 42-50.

actually worked for, simply because the approving officers failed to comply with certain procedural requirements. By necessary implication, it would also be inequitable if the approving officers would be required to shoulder the return of the disallowed funds, even though such were given for actual service rendered.

Indeed, it cannot be said that the approving officers acted in bad faith as the COA did not question the subject allowances/honoraria from 1999 to 2008. Thus, there were no *indicia* that would have alerted them that there was something remiss or irregular with the questioned allowance.

As for the non-teaching personnel, the Court agrees with the petitioner that the authority to expend the SEF for the operation and maintenance of extension classes of public schools carries with it the authority to utilize the SEF not only for the salaries and allowances of the teaching personnel, but those of the non-teaching personnel alike who were hired as a necessary and indispensable auxiliary to the teaching staff. It is beyond question that the services of these non-teaching personnel are essential to the sound and efficient operation and maintenance of these extension classes. Without them, it would be impossible to hold these extension classes as teachers would have to concern themselves not only with their duty to teach, but also the maintenance of classrooms and other logistical needs pertaining to the holding of these extension classes.

The Court does not agree with the COA that Section 1 (a) of R.A. No. 5447 limited the use of the SEF only for the creation of position of classroom teachers, head teachers and principals for such extension classes. For ease of reference, the Court recapitulates the said provision. Thus:

SEC. 1. *Declaration of policy; creation of Special Education Fund.* — It is hereby declared to be the policy of the government to contribute to the financial support of the goals of education as provided by the Constitution. For this purpose, there is hereby created a Special Education Fund, hereinafter referred to as the Fund, to be derived from the additional tax on real property and from a certain portion of the taxes on Virginia-type cigarettes and duties on imported leaf

tobacco, hereinafter provided for, which shall be expended exclusively for the following activities of the Department of Education:

> (a) the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade I, including the creation of positions of classroom teachers, head teachers and principals for such extension classes, which shall not exceed the standard requirements of the Bureau of Public Schools: Provided, That under equal circumstances, in the opening of such extension classes, priority shall be given to the needs of barrios;

The phrase which states that the SEF shall be expended for *the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade 1* shows that the salaries and allowances of non-teaching personnel which, as previously discussed, are indispensable to the organization and operation of extension classes, are also included in the list for which the SEF may be utilized. This must be so in light of the doctrine of necessary implication which states that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. In *Department of Environment and Natural Resources v. United Planners Consultants, Inc.*,[38] the doctrine was explained, thus:

> No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding of events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. **Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such**

[38] 754 Phil. 513, 530, citing *Atienza v. Villarosa*, 497 Phil. 689, 702-703 (2005).

collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, simper inest et minus*.

To construe the law otherwise would result in absurdity because the hiring of non-teaching personnel is but a necessary consequence to the maintenance, operation and organization of the extension classes.

Contrary to the position of the COA, JC No. 01-B did not restrict the disbursement of the SEF for the payment of the salaries and allowances only of teaching personnel hired to handle extension classes. A plain reading of JC No. 01-B will show that it merely clarified JC No. 01-A by including among the priority items chargeable to SEF the payment of salaries and allowances of teachers hired to handle new classes as extensions of existing public elementary or secondary schools. Moreover, JC No. 01-B did not supersede or amend the broad provision of JC No. 01 which made the expenses for the operation and maintenance of public schools, including the organization of extension classes chargeable against the SEF. Thus, it stands to reason that the joint circulars encompass the payment of the salaries and allowances of both the teaching and non-teaching personnel hired to handle extension classes.

The Court also cannot agree with the asseveration of the COA that this Court had already explicitly ruled in *COA v. Province of Cebu* that only salaries of public school teachers who handle extension classes are chargeable against the SEF, thereby impliedly suggesting that allowances/honoraria of non-teaching personnel cannot be taken from the SEF. First, the issues raised in the said case were confined only to whether the salaries and personnel-related benefits of *public school teachers* appointed by the local chief executives in connection with the establishment and maintenance of extension classes, as well as the expenses for college scholarship grants may be

charged to the SEF of the local government unit concerned.[39] The question of whether the allowances/honoraria of *non-teaching personnel* that were hired in connection with the establishment of these additional classes was never passed upon. Second, the clarification made by the Court in the said case where it stated:

> Indeed, the operation and maintenance of public schools is lodged principally with the DECS. This is the reason why only salaries of public school teachers appointed in connection with the establishment and maintenance of extension classes, *inter alia*, pertain to the supplementary budget of the local school boards. Thus, it should be made clear that not every kind of personnel-related benefits of public school teachers may be charged to the SEF. The SEF may be expended only for the salaries and personnel-related benefits of teachers appointed by the local school board in connection with the establishment and maintenance of extension classes.[40]

should not be taken to mean that the allowances/honoraria of non-teaching are not chargeable against the SEF because, as earlier pointed out, the allowances/honoraria of non-teaching personnel was not the issue in the said case.

In summary, we find that a reversal of the COA Decision and Resolution is in Order as petitioner, through its approving officers, is not liable to refund the same. Actual services were rendered by the concerned recipients, teaching and non-teaching personnel alike, and no bad faith may be imputed on the approving officers.

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed Decision No. 2014-454 dated December 29, 2014 and the Resolution docketed as Decision No. 2016-268 dated September 26, 2016 are **REVERSED and SET ASIDE**. The Notice of Disallowance No. 2011-200-010 (08) which found Nora Cariño, Lizerna Molave, Ma. Teresa Genova, Rubi Estefani and Susan Laquindanum liable to refund the disallowed amount is **DISMISSED**.

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[39] *Commission on Audit v. Province of Cebu*, *supra* note 11.

[40] *Id.* at 530.

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result. While the *ponente* eruditely discussed the ultimate issue of liability for refunding the disallowed disbursements, this Court should take this opportunity to clarify the nature of local autonomy and the allowable scope of Executive supervision over local government units.

The grant of local autonomy is Constitutionally mandated and allows local government units to make independent administrative determinations subject only to the Executive branch's general supervision. Thus, any regulations imposed on the exercise of local autonomy should not, in any way, amount to control.

Here, petitioner province of Camarines Sur questioned the Commission on Audit's disallowance of the honoraria and allowances paid by the provincial government to teaching and non-teaching personnel assigned to extension classes from July 2008 to October 2008. As basis for the disallowance, the Commission on Audit cited petitioner's failure to comply with the joint circulars issued by the Department of Education, Culture and Sports (now the "Department of Education"), the Department of Budget and Management, and the Department of the Interior and Local Government pursuant to their administrative rule-making powers.[1] These joint circulars imposed several prerequisites for the establishment of extension classes, particularly: (1) the prior recommendation of the Department

[1] *Ponencia,* p. 2.

of Education; Culture and Sports Regional Director; (2) the approval of the proposed extension classes issued by the Department of Education, Culture and Sports Secretary; and (3) the certification by the Division Superintendent that extension classes were necessary and urgent.[2]

The joint circulars cited by the Commission on Audit impose conditions that contradict the concept of local autonomy, amounting to an exercise of control by the issuing agencies.

I

Article X, Section 2 of the 1987 Constitution specifically provides for the grant of local autonomy to "territorial and political subdivisions." *Mandanas v. Ochoa, Jr.*[3] discussed the scope of this local autonomy.

> The *constitutional mandate to ensure local autonomy refers to decentralization*. In its broad or general sense, decentralization has two forms in the Philippine setting, namely: the decentralization of power and the decentralization of administration. The *decentralization of power involves the abdication of political power in favor of the autonomous LGUs* as to grant them the freedom to chart their own destinies and to shape their futures with minimum intervention from the central government. This amounts to self-immolation because the autonomous LGUs thereby become accountable not to the central authorities but to their constituencies. *On the other hand*, the *decentralization of administration occurs when the central government delegates administrative powers to the LGUs as the means of broadening the base of governmental powers and of making the LGUs more responsive and accountable in the process, and thereby ensure their fullest development as self-reliant communities and more effective partners in the pursuit of the goals of national development and social progress*. This form of decentralization further relieves the central government of the burden of managing local affairs so

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[2] *Id.* at 4.

[3] *Mandanas v. Ochoa, Jr.*, G.R. Nos. 199802 & 208488 (Decision), July 3, 2018, 869 SCRA 440 [Per *J.* Bersamin, *En Banc*].

that it can concentrate on national concerns.[4] (Citations omitted, emphasis supplied)

Likewise, *Pimentel, Jr. v. Aguirre*[5] clarified the reason for granting local autonomy, and qualified that this grant should remain bounded by national policy objectives.

> Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. *The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal.* Thus, policy-setting for the entire country still lies in the President and Congress. As we stated in *Magtajas v. Pryce Properties Corp., Inc.*, municipal governments are still agents of the national government.[6] (Citations omitted; Emphasis supplied)

Thus, the Constitutional grant of local autonomy "does not make local governments sovereign within the state[,]"[7] but reiterates the interdependence between central and local government agencies.[8] But while regulations may validly be imposed on the exercise of local autonomy, such regulations are ultimately geared toward enhancing self-governance.[9] Consequently, the devolution of administrative powers and functions inherent in local autonomy should not be rendered inutile by the need to seek prior approval from central government

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[4] *Id.* at 485.

[5] *Pimentel v. Aguirre*, 391 Phil. 84 (2000) [Per *J.* Panganiban, *En Banc*].

[6] *Id.* at 102.

[7] *Villafuerte v. Robredo*, 749 Phil. 841, 865 (2014) [Per *J.* Reyes, *En Banc*].

[8] *Id.* citing *Ganzon v. Court of Appeals*, 277 Phil. 311 (1991) [Per *J.* Sarmiento, *En Banc*].

[9] *Id.*

agencies. Rather, an autonomous local government should be able to promptly address matters in the exigencies of public service without undue restriction.

Article X, Section 4 of the Constitution clarifies the scope of restrictions imposable by the Executive branch upon a local government unit.

> SECTION 4. The President of the Philippines shall *exercise general supervision over local governments*. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. (Emphasis supplied)

Pimentel v. Aguirre[10] further delineated the scope of Executive Supervision over local government units as exclusive of control or the power to restrain local government action.

> This provision has been interpreted to *exclude the power of control*. In *Mondano v. Silvosa*, the Court contrasted the President's power of supervision over local government officials with that of his power of control over executive officials of the national government. It was emphasized that the two terms — control and supervision — differed in meaning and extent. The Court distinguished them as follows:
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> > . . . In administrative law, *supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties*. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. *Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate Officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.*
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> In *Taule v. Santos*, we further stated that the Chief Executive wielded no more authority than that of checking whether local governments or their officials were performing their duties as provided by the

[10] 391 Phil. 84 (2000) [Per *J*. Panganiban, *En Banc*].

fundamental law and by statutes. *He cannot interfere with local governments, so long as they act within the scope of their authority. "Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body*," we said.[11] (Citations omitted; Emphasis supplied)

Hence, executive supervision over local government units should not result in central agencies substituting the findings of a local government unit with their own. The same case of *Pimentel* provides that "[t]he purpose of the delegation [of administrative powers to local government units] is to make governance more directly responsive and effective at local levels."[12]

Limbona v. Mangelin[13] also discussed that the grant of local autonomy "relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns."[14] Thus, if the Constitutional guarantee of local autonomy is to be given effect, it should amount to effective authority for local government units to decide matters concerning local affairs. While this autonomy is not absolute, the criteria limiting its exercise must be reasonable and should not give central government agencies the power to restrict the actions of a local government unit, or to substitute it with their own.

II

Local autonomy should give local government units sufficient discretion to act on matters of local importance, without undue interference from central government agencies. This is intrinsic in the Constitution's qualification that executive interference is limited to general supervision, as opposed to control, over local government units.

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

[12] *Id.* at 102.

[13] 252 Phil. 813 (1989) [Per *J.* Sarmiento, *En Banc*].

[14] *Id.* at 825.

Villafuerte v. Robredo,[15] which concerns the legality of the issuances promulgated by the Department of the Interior and Local Government, provides useful guidance on where to draw the line between an administrative issuance which is supervisory in nature, and one which amounts to an exercise of control by executive fiat. There, the questioned issuances required local government units to publicly disclose budget, finance, and contract information for projects awarded through public bidding. These requirements were imposed because the Commission on Audit found that a substantial portion of local development funds were not actually being used for development projects.

A reading of MC No. 2010-138 shows that it is a mere reiteration of an existing provision in the LGC. It was plainly *intended to remind LGUs to faithfully observe the directive stated in Section 287 of the LGC* to utilize the 20% portion of the IRA for development projects. *It was, at best, an advisory to LGUs to examine themselves if they have been complying with the law.* It must be recalled that the assailed circular was issued in response to the report of the COA that a substantial portion of the 20% development fund of some LGUs was not actually utilized for development projects but was diverted to expenses more properly categorized as MOOE, in violation of Section 287 of the LGC. This intention was highlighted in the very first paragraph of MC No. 2010-138, which reads:

> Section 287 of the Local Government Code mandates every local government to appropriate in its annual budget no less than 20% of its annual revenue allotment for development projects. In common understanding, development means the realization of desirable social, economic and environmental outcomes essential in the attainment of the constitutional objective of a desired quality of life for all. (Underscoring in the original)

That the term development was characterized as the "realization of desirable social, economic and environmental outcome" does not operate as a restriction of the term so as to exclude some other activities that may bring about the same result. The definition was a plain characterization of the concept of development as it is commonly understood. The statement of a general definition was only necessary to illustrate among LGUs the nature of expenses that are properly

[15] 749 Phil. 841 (2014) [Per *J.* Reyes, *En Banc*].

chargeable against the development fund component of the IRA. *It is expected to guide them and aid them in rethinking their ways so that they may be able to rectify lapses in judgment, should there be any, or it may simply stand as a reaffirmation of an already proper administration of expenses.*

The same clarification may be said of the enumeration of expenses in MC No. 2010-138. To begin with, *it is erroneous to call them exclusions because such a term signifies compulsory disallowance of a particular item or activity*[.][16] (Citations omitted; Emphasis and underscoring supplied)

In *Villafuerte*, the assailed circulars were not deemed violations of local autonomy because they operated as mere guidelines for local government action. The requirements did not restrict or "compulsorily disallow" local government action.

This Court further discussed that despite executive supervision being seemingly paradoxical to the guarantee of local autonomy,[17] valid supervision should still allow local governments the "liberty to map out their respective development plans solely on the basis of their own judgment[.]"[18]

Contrary to the petitioners' posturing, however, *the enumeration was not meant to restrict the discretion of the LGUs in the utilization of their funds*. It was *meant to enlighten LGUs as to the nature of the development fund by delineating it from other types of expenses*. It was incorporated in the assailed circular in order to *guide them in the proper disposition of the IRA* and avert further misuse of the fund by citing current practices which seemed to be incompatible with the purpose of the fund. Even then, *LGUs remain at liberty to map out their respective development plans solely on the basis of their own judgment and utilize their IRAs accordingly*, with the only restriction that 20% thereof be expended for development projects. They may even spend their IRAs for some of the enumerated items should they partake of indirect costs of undertaking development projects. In such

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[16] *Id.* at 862-863.

[17] *Ganzon v. Court of Appeals*, 277 Phil. 311, 329 (1991) [Per *J*. Sarmiento, *En Banc*].

[18] *Villafuerte v. Robredo*, 749 Phil. 841, 864 (2014) [Per *J*. Reyes, *En Banc*].

case, however, the concerned LGU must ascertain that applicable rules and regulations on budgetary allocation have been observed lest it be inviting an administrative probe.[19] (Citations omitted; Emphasis and underscoring supplied)

While the requirements imposed by administrative issuances may not have been intended to supplant local government judgment, the issue of whether supervision has lapsed into control should not be a question of intent but of effect. The *ponencia* recognized a valid issue regarding the validity of Joint Circular No. 01-A, but opted to forego a ruling thereon based on procedural grounds.[20] However, a perusal of the questioned circular reveals that it effectively prohibits the provincial government from holding or creating extension classes without prior approval and recommendation by the concerned central government agencies. In fact, the Commission on Audit disallowed the disbursements precisely because certain approvals from central government agencies were not procured.[21]

Thus, these requirements are more than mere guidelines. They effectively control local government action because they allow central government agencies to override the findings made by local government units as to the urgency, need, and propriety of holding extension classes. Being in the best position to determine these matters, the local government units should have been left with this decision.

While both the Local Government Code and Republic Act No. 5447 provide that the Local School Boards' discretion in using the Special Education Fund is not absolute,[22] the criteria to be imposed upon Local School Boards should still be consistent with the greater purpose of administrative decentralization. The approval requirements in Joint Circular No. 01-A should not be allowed to effectively hamstring local

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[19] *Id.* at 863-864.

[20] *Ponencia*, pp. 9-11.

[21] *Id.* at 4.

[22] LOCAL GOVT. CODE, Sec. 99 (a); Republic Act No. 5447, Sec. 6 (a).

government operations. Joint Circular No. 01-A imposes undue restrictions on a local government unit's ability to act on its own findings. This takes the initiative away from local government units and negates the alacrity and responsiveness which it would have had under a more permissive view of local autonomy.

Not only does Joint Circular No. 01-A run contrary to the purpose for which the Special Education Fund was created, it also contradicts the very purpose of local autonomy. It essentially denies local authorities the capacity to promptly and effectively address the exigencies of service.

III

Notwithstanding my concurrence with absolving the provincial government from refunding the disallowed disbursements, I must point out this Court's pronouncement in *Rotoras v. Commission on Audit*:[23]

> *The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit.* Neither would the defense be available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations. Furthermore, the rank and file's obligation to return shall be limited only to what they have actually received. They may, subject to Commission on Audit approval, agree to the terms of payment for the return of the disallowed funds. *For the approving board members or officers, however, the nature of the obligation to return — whether it be solidary or not — depends on the circumstances.*[24] (Citations omitted, emphasis supplied)

Rotoras discussed the liability of members of the approving board to reimburse the amounts they disbursed, and subsequently received, after such disbursements were disallowed by the Commission on Audit. There, this Court did away with the

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[23] G.R. No. 211999, October 21, 2019 <http://sc.judiciary.gov.ph/8130/> [Per *J.* Leonen, *En Banc*].

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

defense of good faith and ordered the approving authorities to reimburse the amounts they received pursuant to the State's policy against unjust enrichment.

Nonetheless, there have been instances when, regardless of the alleged good or bad faith of the responsible officers and recipients, this Court ordered the refund of the amounts received. Applying the rule against unjust enrichment, it required public officers to return the disallowed benefits, considering them as trustees of funds which they should return to the government. . . .

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The rule against unjust enrichment, along with the treatment of recipients of disallowed benefits as trustees in favor of government, was applied in the recent case of *Dubongco v. Commission on Audit*. There, this Court declined to ascribe good or bad faith to the recipients of the disallowed collective negotiation agreement incentive. It found that since they had no valid claim to the benefits, they cannot be allowed to retain them, notwithstanding the absence of fraud in their receipt:

> Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. *Unjust enrichment refers to the result or effect of failure to make remuneration of, or for property or benefits received under circumstances that give rise to légal or equitable obligation to account for them*. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. *Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.* Thus, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. Conversely,

there is no unjust enrichment when the person who will benefit has a valid claim to such benefit.[25] (Citations omitted, emphasis supplied)

Thus, the issue of good faith in the release of disallowed disbursements is no longer relevant to the liability for reimbursement.

ACCORDINGLY, I vote to grant the petition.

EN BANC

[G.R. No. 242342. March 10, 2020]

NATIONAL POWER CORPORATION BOARD OF DIRECTORS MARGARITO B. TEVES, ROLANDO G. ANDAYA, JR., PETER B. FAVILA, ARTHUR C. YAP, ELEAZAR P. QUINTO, RONALDO V. PUNO, AUGUSTO B. SANTOS, and FROILAN A. TAMPINCO, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); FINDINGS OF THE COA ARE GENERALLY RESPECTED AND CAN ONLY BE SET ASIDE WHEN THERE IS GRAVE ABUSE OF DISCRETION.— As the constitutionally mandated guardian of public funds, the COA is vested with latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. Its findings are generally accorded not only respect, but at times

[25] *Id.* at 19-22.

finality if such findings are supported by substantial evidence. The findings of the COA can only be set aside when there is a showing that it has acted without, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. A finding of grave abuse of discretion against the COA means that the audit commission is guilty of evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence, but on caprice, whim and despotism. As the party alleging grave abuse of discretion, petitioners had the burden to prove that the COA had acted in a capricious, whimsical, arbitrary or despotic manner.

2. ID.; EXECUTIVE DEPARTMENTS; UNDER THE DOCTRINE OF QUALIFIED POLITICAL AGENCY, THE DEPARTMENT SECRETARIES ARE ALTER EGOS OF THE PRESIDENT AND THAT THEIR ACTS ARE PRESUMED TO BE THOSE OF THE LATTER UNLESS DISAPPROVED BY HIM; NOT EXTENDED TO ACTS PERFORMED IN *EX OFFICIO* CAPACITY.— The doctrine of political agency provides that department secretaries are alter egos of the President and that their acts are presumed to be those of the latter unless disapproved or reprobated by him. In short, acts of department secretaries are deemed acts of the President. x x x In *Atty. Manalang-Demigillo v. Trade and Investment Development of the Philippines Corporation*, the Court had differentiated the effects of the secretaries' actions as members of the cabinet and actions performed in an *ex officio* capacity, to wit: x x x [The doctrine of qualified political agency] is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office. **But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite**

some of its members being themselves the appointees of the President to the Cabinet. x x x **Such Cabinet members sat on the Board of Directors of TIDCORP *ex officio*, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board.** x x x Petitioners concede that the DBM Secretary sits as member of the National Power Board in an *ex officio* capacity pursuant to R.A. No. 9136 or the Electric Power Industry Reforms Act of 2001.

3. ID.; ADMINISTRATIVE LAW; THE NATIONAL POWER CORPORATION (NPC) EMPLOYEES WHO RECEIVED FINANCIAL ASSISTANCE WITHOUT LEGAL BASIS MUST RETURN THE SAME.— In *Dubongco v. Commission on Audit*, the Court ruled that passive recipients must refund the disallowed benefits considering that they were never entitled to them in the first place, x x x In *Department of Public Works and Highways v. Commission on Audit*, the Court also ruled that employees who have received the disallowed benefit are obliged to return the amounts they received under the principle of unjust enrichment. Meanwhile, in *Rotoras v. Commission on Audit*, the Court was even more unequivocal in ruling that regardless of their lack of malice or bad faith, passive recipients are required to return the benefits they were not entitled to, x x x In other words, good faith is not a valid defense for passive recipients because they are deemed trustees of a constructive trust for having received benefits they were never entitled to in the first place. In addition, the doctrine of unjust enrichment only concerns the question of whether an individual was benefited without legal basis at the expense of another — the belief or intent of the party placed at an advantage is immaterial. Such scenario exists in the disallowance of benefits as the concerned employees receive benefits or emoluments *sans* legal basis to the prejudice of the government. x x x Consequently, the NPC employees who received the Employee Health and Wellness Program and Related Financial Assistance (EHWPRFA) must still be held liable to refund the disallowed amount because they were not entitled thereto as its grant was without legal basis.

LEONEN, *J., concurring and dissenting opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL POWER CORPORATION (NPC); THE NPC EMPLOYEES AS PASSIVE RECIPIENTS OF A GIVEN BENEFIT SHOULD NOT BE REQUIRED TO RETURN THE AMOUNT THEY RECEIVED IN GOOD FAITH. — In modifying the Commission on Audit's decision and requiring the passive recipients to return the disallowed amount, the majority decreed that the passive recipients cannot invoke good faith on the ground that "they are deemed trustees of a constructive trust for having received benefits they were never entitled to in the first place." The majority cited D*ubongco v. Commission on Audit, Rotoras v. Commission on Audit and Department of Public Works and Highways v. Commission on Audit* where this Court applied the principle of unjust enrichment and directed the recipients to return the disallowed amount. x x x The principle of unjust enrichment provided under Article 22 of the Civil Code states that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." It exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." x x x Unlike in the abovementioned cases, the issuance of Board Resolution No. 2009-52—granting the EHWPRFA—was not the result of collective negotiation between NPC and the employees' association. The NPC employees had neither direct nor indirect participation in the benefit's approval, which would have alerted them of the grant's lack of legal basis. The NPC employees were passive recipients who received the benefit in an honest belief that they are validly entitled to it. For this reason, the NPC employees should not be required to return the amount they received in good faith.

APPEARANCES OF COUNSEL

Melchor P. Redulme, Delfin L. Buenafe II & Rodolfo M. De Guzman, Jr. for petitioners.

The Solicitor General for respondent.

D E C I S I O N

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

Before the Court is a Petition for *Certiorari* under Rule 64 of the Revised Rules of Court seeking to reverse and set aside the February 16, 2017 Decision[1] and the March 15, 2018 Resolution[2] of the Commission on Audit (COA) which affirmed the Notice of Disallowance (ND) No. NPC 11-004-10.

Factual Background

On September 10, 2009, the National Power Corporation (NPC) Board of Directors (petitioners), through Board Resolution No. 2009-52, authorized the payment of Employee Health and Wellness Program and Related Financial Assistance (EHWPRFA) to qualified officials and employees of the NPC. The EHWPRFA is a monthly benefit equivalent to ₱5,000.00 to be released on a quarterly basis.[3]

On September 26, 2011, petitioners received a copy of ND No. NPC-11-004-10,[4] which disallowed the payment of EHWPRFA for the first quarter of 2010 amounting to ₱29,715,000.00. The EHWPRFA was disallowed in audit because it was a new benefit and did not have prior approval from the Office of the President as required under Memorandum Order No. 20 dated June 25, 2001.[5]

Aggrieved, petitioners filed an appeal before the COA Corporate Government Sector — Cluster 3 (COA CGS-Cluster 3). In its December 27, 2013 Decision,[6] the COA CGS-Cluster 3 affirmed ND No. NPC-11-004-10.

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[1] Concurred in by Chairperson Michael G. Aguinaldo, Commissioners Jose A. Fabia and Isabel D. Agito; *rollo*, pp. 18-25.

[2] *Id.* at 26-30.

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

[4] Not attached in the *rollo*.

[5] *Rollo*, p. 5.

[6] Not attached in the *rollo*.

Unsatisfied, petitioners filed a petition for review before the COA.

The Assailed COA Decision

In its February 16, 2017 Decision, the COA upheld ND No. NPC-11-004-10. It explained that the EHWPRFA was a new benefit granted to NPC personnel since it was a cash benefit. The COA noted that the benefits under the NPC Star Program, implemented under NPC Circular No. 2006-04 consisted of non-cash grants. It emphasized that the EHWPRFA was a mere allowance or financial assistance which was not categorically related to the activities or health program included in the NPC Star Program.

Further, the COA ruled that whether the EHWPRFA was a new benefit or an extension to an existing benefit, the grant and payment thereof still needed to comply with the requirements under Section 6 of Presidential Decree (P.D.) No. 1597, which requires the approval of the President through the Department of Budget and Management (DBM). In addition, it elucidated that the doctrine of qualified political agency was inapplicable in the present case. The COA expounded that while some members of the board of NPC are department secretaries, they were not acting as such, but as mere members of the board when they approved the grant of EHWPRFA. The COA Decision reads:

> WHEREFORE, premises considered, the Petition for Review of National Power Corporation, Quezon City is hereby DENIED for lack of merit. Accordingly, Commission on Audit Corporate Government Sector - Cluster 3 Decision No. 2013-18 dated December 27, 2013 and Notice of Disallowance No. NPC-11-004-10 dated September 22, 2011, on the payment of the Employee Health and Wellness Program and Related Financial Assistance to the agency's Board of Directors, officials, and employees for the first quarter of 2010 in the total amount of ₱29,715,000.00 are AFFIRMED.[7]

Unsatisfied, petitioners moved for reconsideration.

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[7] *Id.* at 24.

In its March 15, 2018 Resolution, the COA partially granted the petitioners' motion for reconsideration. It appreciated good faith in favor of the passive recipients who merely received the benefit, but had not participated in the approval and release thereof. As such, the COA absolved them from refunding the disallowed amount. Nevertheless, it ruled that the officials, who authorized, approved or certified the grant or payments cannot be deemed in good faith because the laws and rules requiring prior approval from the Office of the President and the DBM were already effective prior to the grant of the subject allowances and benefits. The COA Resolution reads:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby PARTIALLY GRANTED. Accordingly, Commission on Audit (COA) Decision No. 2017-035 dated February 16, 2017, which affirmed COA Corporate Government Sector — Cluster 3 Decision No. 2013-18 dated December 27, 2013 and Notice of Disallowance (ND) No. NPC-11-004-10 dated September 22, 2011 on the payment of the Employee Health and Wellness Program and Related Financial Assistance to the agency's Board of Directors, officials, and employees for the first quarter of 2010 in the total amount of ₱29,715,000.00 is hereby AFFIRMED with MODIFICATION such that the passive recipients are no longer required to refund the disallowed benefits they have received in good faith.[8]

Hence, this present petition raising the following issues:

The Issues

I

[WHETHER THE] COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION IN RULING THAT EHWPRFA WAS A NEW BENEFIT[; and]

II

[WHETHER THE] COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF

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

JURISDICTION IN RULING THAT THE GRANT OF EHWPRFA NEEDED PRESIDENTIAL APPROVAL.[9]

Petitioners argue that the EHWPRFA is not a new benefit as similar benefits had been granted in the past such as the Enhanced Comprehensive Health Benefit Program (CHBP). It explains that EHWPRFA was issued because the amount granted under the CHBP is no longer feasible owing to the exorbitant increase in the prices of medicine. Petitioners assail that EHWPRFA cannot be considered a new benefit as it merely expanded the wellness benefits already enjoyed by the NPC personnel. It laments that the EHWPRFA is an enforcement of the right of the NPC personnel to protect and promote their welfare or well-being.

In addition, petitioners contend that the President's approval was secured as a consequence of the approval of the EHWPRFA by the National Power Board. It highlights that the DBM Secretary is one of the members of the National Power Board. Petitioners aver that having a member of the board review an act already validly enacted by the board itself is a useless proposition as this would result in an absurd scenario that one member of the board can overrule an action taken and approved by the whole board.

In its Comment[10] dated January 28, 2019, the COA reiterated that the EHWPRFA was a new benefit and one that can only be justified on the basis of its exemption from the Salary Standardization Law. It countered that under existing laws, agencies and government-owned or -controlled corporations (GOCCs) that are exempted from the standardized compensation are to observe guidelines and policies the President may issue governing position classification, salary rates, levels of allowances and other forms of compensation and fringe benefits. The COA highlighted that Memorandum Order (M.O.) No. 20 dated June 25, 2001 stated that any increase in the salary or

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[9] *Id.* at 7.

[10] *Id.* at 66-83.

compensation of the GOCCs is subject to the approval of the President. It pointed out that the EHWPRFA was granted without the required approval of the President. Further, the COA disagreed that there was no need for the EHWPRFA to be submitted for the approval of the President on the ground that the National Power Board was composed of cabinet secretaries. It explained that the alter ego doctrine cannot extend to acts done by the cabinet members in an *ex officio* capacity.

The Court's Ruling

The petition is without merit.

As the constitutionally mandated guardian of public funds, the COA is vested with latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds.[11] Its findings are generally accorded not only respect, but at times finality if such findings are supported by substantial evidence[12] The findings of the COA can only be set aside when there is a showing that it has acted without, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[13]

A finding of grave abuse of discretion against the COA means that the audit commission is guilty of evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence, but on caprice, whim and despotism.[14] As the party alleging grave abuse of discretion, petitioners had the burden to prove

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[11] *Technical Education and Skills Development Authority v. Commission on Audit*, 753 Phil. 434, 441 (2015).

[12] *Felix Gochan & Sons Realty Corporation v. Commission on Audit*, G.R. No. 223228, April 10, 2019.

[13] *Tetangco v. Commission on Audit*, 810 Phil. 459, 466 (2017).

[14] *Miralles v. Commission on Audit*, 818 Phil. 380, 389-390 (2017).

that the COA had acted in a capricious, whimsical, arbitrary or despotic manner.[15]

The Court finds that the petitioners failed to prove that the COA acted with grave abuse of discretion in upholding ND No. NPC 11-004-10 disallowing the payment of EHWPRFA for the first quarter of 2010 amounting to ₱29,715,000.00.

Section 1 of M.O. No. 20 provided for the immediate suspension on the grant of any salary increase and new or increased benefit. On the other hand, Section 3 thereof requires that any increase in salary or compensation shall be subject to the approval of the President. In fact, at the time EHWPRFA was granted, Administrative Order (A.O.) No. 103 dated August 31 2004 was still in effect. Section 3(b) of the said A.O. directed the GOCCs to suspend the grant of new or additional benefits to officials and employees.

Petitioners argue that the EHWPRFA is not a new benefit as it is a similar benefit with the previous CHBP under Circular No. 2000-55 dated September 11, 2000. It explains that the EHWPRFA was granted because the amount granted under the CHBP was no longer reasonable owing to the exorbitant increase in the prices of medicines and considering that the preventive approach to wellness would benefit the work force more.

Petitioners' argument fails to persuade.

A perusal of Circular No. 2000-55,[16] which implemented the CHBP, would negate the petitioners' claim that the EHWPRFA is not a new benefit, but merely increased the amounts provided under the CHBP. Under the above-mentioned circular, NPC employees were entitled to the following benefits: (a) reimbursement of medical, dental and optical expenses; (b) medical assistance; (c) Annual Physical Examination; and (d) Annual Executive Check-Up.

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[15] *Chua v. People*, G.R. No. 195248, November 22, 2017, 846 SCRA 74, 81.

[16] *Rollo*, pp. 31-32.

On the other hand, the EHWPRFA is a straight-up cash benefit equivalent to ₱5,000.00 monthly to be released quarterly. It is readily apparent that the EHWPRFA cannot be considered as merely increasing the amounts prescribed under the CHBP since none of the benefits therein consisted of giving cash to the employees. While the CHBP provided Medical Assistance as one of the benefits, it was limited to employees suffering from dreaded diseases. In contrast, the EHWPRFA was given to employees regardless of their health condition as it was not even required that they suffered any medical condition.

Even assuming that the petitioners are correct in arguing that the EHWPRFA merely increased existing benefits of NPC employees, it still erred in concluding that the same did not require the *imprimatur* of the President. Both M.O. No. 20 and A.O. No. 103 did not limit their application to new benefits, but likewise included the increase of existing benefits. Section 3 of M.O. No. 20 required that any increase in salary or compensation shall be subject to the approval of the President. On the other hand, Section 3(b) of A.O. No. 103 directed the GOCCs to suspend the grant of new or **additional benefits** to officials and employees. Clearly, the augmenting of the benefits the NPC employees already enjoyed still required the approval from the President.

On the other hand, the petitioners forward that even if it were to concede that the EHWPRFA required presidential approval, the said requirement was complied with. It notes that the DBM Secretary was one of the members of the National Power Board. Thus, petitioners conclude that since the DBM Secretary was one of the board members who approved the grant of EHWPRFA, presidential approval was already secured by virtue of the doctrine of qualified political agency.

Again, the petitioners' position fail to convince.

The doctrine of political agency provides that department secretaries are alter egos of the President and that their acts are presumed to be those of the latter unless disapproved or

reprobated by him.[17] In short, acts of department secretaries are deemed acts of the President. Acting on this premise, the petitioners posit that the acquiescence of the DBM Secretary as member of the National Power Board to the grant of EHWPRFA has the effect of obtaining the President's approval thereto.

In *Atty. Manalang-Demigillo v. Trade and Investment Development of the Philippines Corporation*,[18] the Court had differentiated the effects of the secretaries' actions as members of the cabinet and actions performed in an *ex officio* capacity, to wit:

> The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the *alter egos* of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.
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> **But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet.** x x x **Such Cabinet members sat on the Board of Directors of TIDCORP *ex officio,* or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board.**
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> Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, **they were acting as the responsible members of the Board of Directors of TIDCORP**

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[17] *Manubay v. Garilao*, 603 Phil. 135, 139 (2009).

[18] 705 Phil. 331, 347-349 (2013).

constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the *alter egos* of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred. (Emphases and underscoring supplied)

Petitioners concede that the DBM Secretary sits as member of the National Power Board in an *ex officio* capacity pursuant to R.A. No. 9136 or the Electric Power Industry Reforms Act of 2001. As such, the Budget Secretary's authority to sit in the National Power Board emanated from the law, and not from the appointment of the President. Thus, the doctrine of qualified political agency does not attach to the acts performed by cabinet secretaries in connection with their position as *ex officio* members of the National Power Board.

Contrary to petitioners' assumption, no absurd situation arises in still requiring presidential approval in the grant of the EHWPRFA. In assenting to the grant of EHWPRFA as part of the National Power Board, the Budget Secretary was not acting as the alter ego of the President as it was in connection with his *ex officio* position as member of the board. Thus, the approval or disapproval of the DBM Secretary as required under the law would not have the effect of one member of the board overturning the votes of the majority of the board since it is, by legal fiat, actually the act of the President exercised through his alter ego.

In sum, the COA did not act with grave abuse of discretion in upholding ND No. NPC-11-004-10 and in finding that the NPC officers who had approved or authorized the disbursement in question are liable to refund the same. To reiterate, the grant of EHWPRFA for the first quarter of 2010 was contrary to existing laws, rules and regulations as it was made sans presidential approval.

Unjust enrichment vis-à-vis obligation to refund the disallowed amount

Nevertheless, the Court finds that the COA committed grave abuse of discretion in exempting the passive recipients of the disallowed benefit from refunding on account of good faith. In *Dubongco v. Commission on Audit*,[19] the Court ruled that passive recipients must refund the disallowed benefits considering that they were never entitled to them in the first place, to wit:

> Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. Unjust enrichment refers to the result or effect of failure to make remuneration of, or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution. Thus, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. Conversely, there is no unjust enrichment when the person who will benefit has a valid claim to such benefit.
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> x x x x x x x x x
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> Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where, although acquired originally without fraud, it is against equity that it should be retained by the person holding it. In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.

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[19] G.R. No. 237813, March 5, 2019.

In *Department of Public Works and Highways v. Commission on Audit*,[20] the Court also ruled that employees who have received the disallowed benefit are obliged to return the amounts they received under the principle of unjust enrichment. Meanwhile, in *Rotoras v. Commission on Audit*,[21] the Court was even more unequivocal in ruling that regardless of their lack of malice or bad faith, passive recipients are required to return the benefits they were not entitled to, *viz.*:

> The defense of good faith, which precludes the requirement to return disallowed benefits or allowances, is based on the principle that public officials are entitled to the presumption of good faith when discharging their official duties. Both the public officers who disbursed the benefits or allowances and those who received them will not be required to return the benefits or disallowances when it is shown that they acted in good faith in doing so.
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> Nonetheless, there have been instances when, regardless of the alleged good or bad faith of the responsible officers and recipients, this Court ordered the refund of the amounts received. **Applying the rule against unjust enrichment, it required public officers to return the disallowed benefits, considering them as trustees of funds which they should return to the government.**
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> The rule against unjust enrichment, along with the treatment of recipients of disallowed benefits as trustees in favor of government, was applied in the recent case of *Dubongco v. Commission on Audit*. **There, this Court declined to ascribe good or bad faith to the recipients of the disallowed collective negotiation agreement incentives. It found that since they had no valid claim to the benefits, they cannot be allowed to retain them, notwithstanding the absence of fraud in their receipt**:
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[20] G.R. No. 237987, March 19, 2019.

[21] G.R. No. 211999, August 20, 2019.

The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank[-]and[-]file should the allowance or benefit be the subject of collective negotiation agreement negotiations. **Furthermore, the rank[-]and[-]file's obligation to return shall be limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return — whether it be solidary or not — depends on the circumstances.** (Emphases supplied)

In other words, good faith is not a valid defense for passive recipients because they are deemed trustees of a constructive trust for having received benefits they were never entitled to in the first place. In addition, the doctrine of unjust enrichment only concerns the question of whether an individual was benefited without legal basis at the expense of another — the belief or intent of the party placed at an advantage is immaterial. Such scenario exists in the disallowance of benefits as the concerned employees receive benefits or emoluments *sans* legal basis to the prejudice of the government.

Both *Dubongco* and *DPWH* involved the disallowance of Collective Negotiation Agreement (CNA) incentives on account of it funded from improper or illegal sources. In the latter case, the Court even expounded that the obligation to reimburse the amounts received becomes more obvious when the nature of CNA incentive as a negotiated benefit is considered. In *Rotoras*, the Court explicitly ruled that the defense of good faith is unavailable to the rank-and-file employees should the allowance or benefit be the subject of collective negotiation agreement negotiations.

Nevertheless, the application of the doctrine of unjust enrichment is not limited to cases which involved the disallowance of CNA or negotiation benefits. It must be remembered that in the above-mentioned cases, there was no

express pronouncement that passive recipients are obliged to return what they received only when the benefit in question is CNA incentive.

In *Government Service Insurance System v. Commission on Audit*,[22] the Court ordered the employees who received benefits under the disallowed GSIS Retirement/Financial Plan (RFP) to return the subject benefit. It was ruled that while the employees committed no fraud in obtaining the benefits under the RFP, it was against equity and good conscience for them to continue holding onto them. As such, it is readily apparent that the application of the doctrine of unjust enrichment is not limited to cases involving the disallowance of CNA incentives because the crux of unjust enrichment is the receipt of a benefit by someone who was not entitled thereto.

Consequently, the NPC employees who received the EHWPRFA must still be held liable to refund the disallowed amount because they were not entitled thereto as its grant was without legal basis.

In *Department of Public Works and Highways v. Commission on Audit*,[23] the Court had modified the COA Decision when it absolved passive recipients from refunding the disallowed benefit. In the said case, only one of the responsible officers had assailed the COA Decision which held only the responsible officers form refunding the disallowed amount. Similar to *DPWH*, only responsible officers challenged the assailed COA Decision as NPC employees who received the EHWPRFA were exempted from refunding on account of good faith. As such, the subject COA Decision must likewise be modified to include the passive recipients in refunding the disallowed amount in order to conform to recent jurisprudence.

WHEREFORE, the February 16, 2017 Decision and the March 15, 2018 Resolution of the Commission on Audit in Decision No. 2017-035 and Decision No. 2018-257, respectively,

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[22] 694 Phil. 518 (2012).

[23] *Supra* note 20.

are **AFFIRMED** with **MODIFICATION**. The certifying and approving officers, as well as all the employees of the National Power Corporation who received the disallowed benefit, are liable for the amount of disallowance. They must reimburse the amount they received through salary deduction, or through whatever mode of payment the Commission on Audit may deem just and proper under the circumstances.

SO ORDERED.

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

Leonen, J., see separate concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur with the majority that the doctrine of qualified political agency does not apply to a cabinet secretary's act performed in connection with his or her position as an *ex officio* member of a board. However, I disagree with the ruling directing the employees of the National Power Corporation to return the disallowed benefit.

On September 10, 2009, the Board of Directors of the National Power Corporation, consisting of among others the Secretaries of: (1) Finance; (2) Energy; (3) Budget and Management; (4) Agriculture; (5) Environment and Natural Resources; (6) Interior and Local Government; and (7) Trade and Industry,[1] approved Board Resolution No. 2009-52, authorizing the payment of Employee Health and Wellness Program and Related Financial Assistance (EHWPRFA) to qualified officials and employees of the National Power Corporation (NPC). Pursuant to Board

[1] *Rollo,* p. 11.

Resolution No. 2009-52, all eligible employees shall be given a monthly EHWPRFA in the amount of ₱5,000.00.[2]

On post-audit, Notice of Disallowance No. NPC-11-004-10 was issued, disallowing the amount of ₱27,715,000.00, representing the payment of EHWPRFA for the first quarter of 2010.[3] Thereafter, the Audit Team Leader and Supervising Auditor of the Commission on Audit disallowed the amount for lack of legal basis after it was found that the grant of EHWPRFA was a new benefit requiring the President's prior approval.[4]

On appeal, the Commission on Audit Corporate Government Cluster (COA-CGS) affirmed the Notice of Disallowance.[5]

Upon a Petition for Review, the Commission on Audit proper upheld the Notice of Disallowance. The Board of Directors of the National Power Corporation moved for reconsideration, which was partially granted in the Commission on Audit's March 15, 2018 Resolution.[6]

Dissatisfied with the decision, the Board of Directors of the National Power Corporation then filed a Petition for *Certiorari* before this Court.

Petitioner argues that the Commission on Audit committed grave abuse of discretion in ruling that the grant of EHWPRFA requires the President's prior approval, considering that the Board consists of cabinet secretaries who act as the President's *alter ego*. It further insists that it is an absurd situation to require the Department of Budget and Management's approval, as it would mean that the board's action can be overridden by one of its members.[7]

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[2] *Ponencia*, p. 2.

[3] *Id.*

[4] *Rollo*, pp. 18-19.

[5] *Ponencia*, p. 2.

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

[7] *Id.* at 4.

The majority dismissed petitioner's invocation of the *alter ego* doctrine ruling that the cabinet secretaries' acts performed in connection with their position as *ex officio* members of the National Power Corporation's Board are not covered by the doctrine of qualified agency.[8]

I agree.

I

As held in *Manalang-Demigillo v. Trade and Investment Development Corp. of the Phils.*, "[t]he doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the *alter egos* of the President[.]"[9] Acts done by the executive department heads in relation to their duties and functions as such, are presumptively deemed the President's own act, which are valid and binding unless disapproved or reprobated by the Chief Executive,[10] thus:

> Under this doctrine, which recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person on the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the *acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive*."[11] (Emphasis in the original, citations omitted)

The doctrine of qualified political agency was introduced in the Philippines as a recognition that by reason of the

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

[9] 705 Phil. 331, 347 (2013) [Per J. Bersamin, *En Banc*].

[10] *Id.*

[11] *Carpio v. Executive Secretary*, 283 Phil. 196, 204-205 (1992) [Per J. Paras, *En Banc*].

multifarious responsibilities demanding a president's attention, it becomes a necessity for his or her control power to be delegated to the members of his or her cabinet.[12] This necessity springs forth from the fact that "the President of the Philippines is the Executive of the Government of the Philippines, and no other."[13]

In *Philippine Institute for Development Studies v. Commission on Audit*,[14] this Court clarified that the doctrine applies only to the President's executive secretary and other cabinet secretaries.

Nonetheless, the doctrine does not extend to acts of a cabinet secretary performed while sitting as an *ex-officio* member of a board,[15] thus:

> The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.
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> But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the

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[12] *Philippine Institute for Development Studies v. Commission on Audit*, G.R. No. 212022, August 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65612> [Per J. Leonen, *En Banc*].

[13] *Villena v. Secretary of the Interior*, 67 Phil. 451, 464 (1939) [Per J. Laurel, *En Banc*].

[14] G.R. No. 212022, August 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65612> [Per J. Leonen, *En Banc*].

[15] *Manalang-Demigillo v. Trade Investment Corporation*, 705 Phil. 331, 348-349 (2013) [Per J. Bersamin, *En Banc*].

Cabinet. Under Section 10 of Presidential Decree No. 1080, as further amended by Section 6 of Republic Act No. 8494, the five *ex officio* members were the Secretary of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board, while the four other members of the Board were the three from the private sector (at least one of whom should come from the export community), who were elected by the *ex officio* members of the Board for a term of not more than two consecutive years, and the President of TIDCORP who was concurrently the Vice-Chairman of the Board. Such Cabinet members sat on the Board of Directors of TIDCORP *ex officio*, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board.

Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the alter egos of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.[16] (Emphasis supplied, citations omitted)

The heads of the various executive departments are appointed by the President to act on his or her behalf on matters relating to his or her executive and administrative functions as Chief Executive of the government. By this reason, the President's *alter egos* occupy a position that is political by nature and "should be of the President's bosom confidence[.]"[17] Necessarily, "their personality is in reality but the projection of that of the President."[18]

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[16] *Id.* at 347-349.

[17] *Villena v. Secretary of the Interior*, 67 Phil. 451, 464 (1939) [Per *J.* Laurel, *En Banc*.]

[18] *Id.*

Section 48 of Republic Act No. 9136 otherwise known as the "Electric Power Industry Reform Act of 2001" explicitly provides for the composition and organization of the National Power Board of the National Power Corporation. It states:

> SECTION 48. *National Power Board of Directors*. — Upon the passage of this Act, Section 6 of RA 6395, as amended, and Section 13 of RA 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

A perusal of Section 48 would disclose that the assumption of the heads of the various executive departments of a position in the National Power Board was not made through any express act, nor acquiescence, of the President. The heads of the various executive departments sat as directors in the National Power Board, not by virtue of the President's power of appointment, but by reason of their position and function. In this light, when the members of the National Power Board issued its resolution authorizing the payment of EHWPRFA, they were acting as directors of the National Power Corporation by reason of their position and function, as provided under R.A. No. 9136.[19]

II

In modifying the Commission on Audit's decision and requiring the passive recipients to return the disallowed amount, the majority decreed that the passive recipients cannot invoke good faith on the ground that "they are deemed trustees of a constructive trust for having received benefits they were never entitled to in the first place."[20] The majority cited *Dubongco*

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[19] Republic Act No. 9136 (2001), Sec. 48.

[20] *Ponencia*, p. 10.

v. Commission on Audit,[21] *Rotoras v. Commission on Audit*[22] and *Department of Public Works and Highways v. Commission on Audit*[23] where this Court applied the principle of unjust enrichment and directed the recipients to return the disallowed amount.

With all due respect, I am of the opinion that the doctrine in *Dubongco, Department of Public Works and Highways* and *Rotoras* were incorrectly applied.

The principle of unjust enrichment provided under Article 22 of the Civil Code states that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." It exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience."[24]

In *Dubongco*, the benefit involved a Collective Negotiation Agreement (CNA) incentive sourced from the Comprehensive Agrarian Reform Program (CARP) fund. The employee-beneficiaries were required to return the disallowed benefit on the ground that they participated in the grant and approval of the benefit. By participating in the CNA incentive's negotiation and approval, the employees could not have feigned ignorance on the necessity of it being sourced from the

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[21] *Dubongco v. Commission on Audit*, G.R. No. 237813, March 5, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051> [Per *J.* Reyes, Jr., *En Banc*].

[22] *Rotoras v. Commission on Audit*, G.R. No. 211999, August 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65585> [Per *J.* Leonen, *En Banc*].

[23] *Department of Public Works and Highways, Region IV-A v. Commission on Audit*, G.R. No. 237987, March 19, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047> [Per *J.* Reyes, Jr., *En Banc*].

[24] *Reyes v. Lim*, 456 Phil. 1, 14 (2003) [Per *J.* Carpio, First Division] citing 66 Am. Jur. 20 *Restitution and Implied Contracts* § 2 (1973).

Maintenance and Other Operating Expenses (MOOE) allotment savings:

> Hence, it can be gleaned that unlike ordinary monetary benefits granted by the government, CNA Incentives require the participation of the employees who are. the intended beneficiaries. The employees indirectly participate through the negotiation between the government agency and the employees' collective negotiation representative and directly, through the approval of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the prerequisites for the valid release of the CNA Incentive. They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE.[25]

Similarly, in *Department of Public Works and Highways, Region IV-A v. Commission on Audit*, the amount disallowed represented the collective negotiation agreement incentive granted as a result of the collective negotiation between Department of Public Works and Highways and the employees' collective negotiation representative, thus:

> The obligation of the DPWH IV-A employees to reimburse the amounts they received becomes more obvious when the nature of CNA Incentive as negotiated benefit is considered.
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> It must be recalled that CNA Incentive is granted as a form of reward to motivate employees to exert more effort toward higher productivity and better performance. However, before any CNA Incentive may be granted, the CNA on which it is based must first be negotiated, approved, and implemented. . . .
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> From the provisions of the aforecited rule, there are two necessary steps which must be undertaken before the CNA Incentive could be released to the government employees: first, the negotiation between the government agency and the employees' collective negotiation representative; and second, the approval by the majority of the rank-

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[25] *Dubongco v. Commission on Audit*, G.R. No. 237813, March 5, 2019, <http://elibrary.judiciary.gov.ph /thebookshelf/showdocs/1/65051> [Per *J.* Reyes, Jr., *En Banc*].

and-file employees in the negotiating unit. In the first step, the government employees concerned participates through their duly-elected representative; in the second, the rank-and-file employees participate directly. Thus, unlike ordinary monetary benefits granted by the government, the CNA Incentive involve the participation of the employees who are intended to be the beneficiaries thereof.

In this case, the DPWH IV-A employees' participation in the negotiation and approval of the CNA, whether direct or indirect, certainly gives them the necessary information to know the requirements for the valid release of the CNA incentive. Verily, when they received the subject benefit, they must have known that they were undeserving of it.[26] (Emphasis supplied)

The pronouncement in *Dubongco* was reiterated and further clarified in *Rotoras* wherein this Court made a categorical statement that rank-and-file employees can no longer invoke the defense of good faith when the disallowed benefit was the result of a collective negotiation agreement:

The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. *Neither would the defense be available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations.* Furthermore, the rank and file's obligation to return shall be limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return — whether it be solidary or not — depends on the circumstances.[27] (Emphasis supplied.)

Unlike in the abovementioned cases, the issuance of Board Resolution No. 2009-52—granting the EHWPRFA—was not the result of collective negotiation between NPC and the

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[26] G.R. No. 237987, March 19, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047> [Per *J.* Reyes, Jr., *En Banc*].

[27] *Rotoras v. Commission on Audit*, G.R. No. 211999, August 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65585> [Per *J.* Leonen, *En Banc*].

employees' association. The NPC employees had neither direct nor indirect participation in the benefit's approval, which would have alerted them of the grant's lack of legal basis. The NPC employees were passive recipients who received the benefit in an honest belief that they are validly entitled to it. For this reason, the NPC employees should not be required to return the amount they received in good faith.

Finally, neither is the case of *Government Service Insurance System v. Commission on Audit*[28] applicable. In that case, this Court applied the principle of unjust enrichment and required the payees to return the retirement benefits they received under the GSIS RFP. This Court rejected the payees' plea of good faith due to the nature of the benefit involved. It decreed that unlike cash gifts or other fringe benefits which are given as a form of additional compensation, retirement benefits are given as a reward for the services rendered by the separated employee. Its purpose is to aid the employees during their twilight years, thus:

> While it is true, as claimed by the Movants Federico Pascual, *et al*., that based on prevailing jurisprudence, disallowed benefits received in good faith need not be refunded, the case before us may be distinguished from all the cases cited by Movants Federico Pascual, et al. because the monies involved here are **retirement benefits.**
>
> Retirement benefits belong to a different class of benefits. All the cases cited by the Movants Federico Pascual, *et al*. involved benefits such as cash gifts, representation allowances, rice subsidies, uniform allowances, *per diems*, transportation allowances, and the like. The foregoing allowances or fringe benefits are given **in addition** to one's salary, either to reimburse him for expenses he might have incurred in relation to his work, or as a form of supplementary compensation. On the other hand, retirement benefits are given to one who is separated from employment either voluntarily or compulsorily. Such benefits, subject to certain requisites imposed by law and/or contract, are given to the employee on the assumption that he can no longer work. They are also given as a form of reward for the services he had rendered.

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[28] *Government System Insurance System v. Commission on Audit*, 694 Phil. 518 (2012) [Per *J*. Leonardo-De Castro, *En Banc*].

The purpose is not to enrich him but to help him during his non-productive years.

Our Decision dated October 11, 2011 does not preclude Movants Federico Pascual, *et al*. from receiving retirement benefits provided by existing retirement laws. What they are prohibited from getting are the additional benefits under the GSIS RFP, which we found to have emanated from a void and illegal board resolution. To allow the payees to retain the disallowed benefits would amount to their unjust enrichment to the prejudice of the GSIS, whose avowed purpose is to maintain its actuarial solvency to finance the retirement, disability, and life insurance benefits of its members.[29] (Emphasis in the original, citations omitted)

ACCORDINGLY, I submit that the Petition for *Certiorari* be **DISMISSED**.

EN BANC

[G.R. No. 247610. March 10, 2020]

CYNTHIA S. DEL ROSARIO, FEDERICO N. VIRGO, JR., RENATO V. BALADAD, BEATRIZ A. DIOSO, CORAZON MANALON DAVILA, LORETA N. ALSA, HIYA I. HASSAN, and JOHN VINCENT C. COLILI, *petitioners, vs.* **COMMISSION ON ELECTIONS, THE DEPARTMENT OF BUDGET AND MANAGEMENT, THE PROVINCIAL GOVERNMENT OF PALAWAN, and THE PROVINCIAL TREASURER OF THE PROVINCIAL GOVERNMENT OF PALAWAN,** *respondents*.

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[29] *Id.* at 524-525.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; STANDING TO SUE; REQUISITES.—** Standing to sue, for purposes of assailing the constitutionality of statutes, has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. Following this definition, a party was held to have standing upon proof of the following: (1) the suing party has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought.

2. **ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY; ANY DECLARATION ON THE UNCONSTITUTIONALITY OF THE LAW *IN TOTO* IS PREMATURE WHEN MOST OF THE PROVISIONS OF THE LAW HAVE YET TO TAKE EFFECT.—** As regards the alleged prematurity of the petition, in *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, which also involved a Rule 65 challenge against a statute and its implementation, it was held that: This Court has consistently ruled that an actual case or controversy is necessary even in cases where the constitutionality of a law is being questioned. It is not enough that the statute has been passed. There must still be a real act. The law must have been implemented, and the party filing the case must have been affected by the act of implementation. On this point, it must be stressed that most of the provisions of RA No. 11259 will take effect only after the approval thereof by the electorate of Palawan. x x x [T]he creation and existence of the three provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur is contingent upon the approval thereof by the voters of the affected areas in a plebiscite conducted for the purpose. Until such plebiscite has been conducted and it is ascertained that the majority of the electorate in said plebiscite

approved the proposed division, the provisions of RA No. 11259 relating to the organization and governance of the three provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur will remain inoperative, as the provinces to which they pertain have not been created yet. Pending the conduct of the plebiscite, only Sections 51, 54, 58, 59, and 60 of the law can be considered to be in full force and effect, as these provisions pertain to matters preparatory to the conduct of the plebiscite for the creation of the three proposed provinces. These are the very provisions sought to be implemented by respondents as they prepare for the conduct of the plebiscite this coming May. It is therefore premature for this Court to make any declaration on the unconstitutionality of the law *in toto*, when most of the provisions of the law have yet to take effect.

3. ID.; ID.; THE 1987 PHILIPPINE CONSTITUTION; LOCAL GOVERNMENT; CONVERSION OF LOCAL GOVERNMENT UNITS; PRIOR PUBLIC CONSULTATION IS NOT A PREREQUISITE FOR THE VALIDITY OF A STATUTE.— [T]he Constitution does not establish prior public consultation as a prerequisite for the validity of a statute. Article XIII, Section 16, as cited by petitioners, is a protection against any action which serves to abridge the right of people's organizations to "effective and reasonable participation at all levels of social, political, and economic decision-making." x x x This Court sustains the contention of the Solicitor General that the assailed statute does not run afoul of the constitutional policy on public consultation because its effectivity is still subject to the supreme mode of public consultation: the ballot. Petitioners must be reminded that ours is a republican state, where the people are heard primarily through their elected representatives. Sovereignty resides in the people, but is primarily manifested through their elected representatives. In the case at bar, the duly elected representatives of the people of Palawan at every level: municipal, provincial, and national, have registered their support and consent to the proposed division of their province.

4. ID.; ID.; ID.; ID.; ID.; IN THE DETERMINATION OF WHICH POLITICAL UNITS ARE DIRECTLY AFFECTED BY THE CHANGE OR CONVERSION OF A LOCAL GOVERNMENT UNIT, THE THREE-FACTOR TEST

SHALL BE APPLIED.— Article X, Section 10 of the Constitution requires that the division of a province must be approved "by a majority of the votes cast in a plebiscite in the political units directly affected." As applied to the present petition, is the HUC of Puerto Princesa a "political unit directly affected" by the partition of the province of Palawan into three separate provinces? In determining which political units are directly affected — hence eligible to participate in the pertinent plebiscite — by a merger, division, creation, or abolition of a local government unit, the Supreme Court has taken into account a number of political and economic factors. Early decisions of the Court on the matter hinged primarily on the matter of territorial and boundary alteration. x x x Later Decisions apply a more comprehensive approach in the determination of which political units are directly affected by a change or conversion of an LGU. x x x A careful survey of x x x [the] cases reveals that the Court has considered three key factors in determining whether an LGU is a "political unit directly affected" by an LGU change or conversion: territorial alteration, political effects, and economic effects. The Court shall now apply this three-factor test to Puerto Princesa and the rest of Palawan, in the light of the parties' pleadings and the applicable law. As regards territorial alteration, x x x this Court agrees with respondents that the assailed statute will not result in the alteration of Puerto Princesa's territorial jurisdiction. Section 4 of the law provides in part that "The terrestrial jurisdictions of the newly created provinces shall be within the present metes and bounds of all the municipalities that comprise the respective provinces" without reference to Puerto Princesa. The Court has pored over the law and finds nothing in it that changes the metes and bounds of Puerto Princesa's territory. x x x As regards political and economic effects, the Court first considers x x x Section 452 of the Local Government Code x x x. It is glaringly clear from this provision that voters of highly urbanized cities cannot vote for elective provincial officials. Notably, Section 452(c) uses the phrase "shall remain excluded," because such exclusion was carried over from previous statutes on the matter. x x x This Court is aware of the fact that Section 89 of the city charter of Puerto Princesa allows its residents to vote for provincial officials of Palawan. However, upon the declaration of Puerto Princesa as an HUC by the President, and the subsequent approval thereof in a plebiscite as required by Section 453 of the LGC, Section

452(c) of the LGC, and Article X, Section 12 of the Constitution became applicable to the city, superseding Section 89 of the Puerto Princesa charter. As such, when Puerto Princesa was converted from a component city into an HUC, its political ties with the province of Palawan were effectively severed, in accordance with the principle of HUC independence as provided in the Constitution and the LGC. x x x On the economic effects of LGU changes or conversions, the x x x [case of] *Umali* [*v.* Commission on Elections, *et al.*] is illuminating x x x. [T]he economic factors contemplated in the determination of "political units directly affected" by an LGU change or conversion pertain strictly to fiscal or budgetary relations among the political units concerned, specifically, the sharing of internal revenue allotments, budgetary allocations, and taxing powers, all of which are governed by the pertinent provisions of the LGC and other laws. x x x Confining ourselves, thus, to the consideration of what is essentially the fiscal impact on Puerto Princesa of the division of Palawan into three provinces, We must again have recourse to the provisions of the Constitution and the LGC. As an HUC, Puerto Princesa, in its own right, has the power to impose its own taxes, fees and charges, the revenues of which shall accrue to its own treasury. It is likewise entitled to its own internal revenue allotment and its own share in whatever natural resources may be found within its territory. It is therefore clear that Puerto Princesa has been rendered *fiscally* autonomous from the province of Palawan by virtue of the city's conversion into an HUC.

5. ID.; ID.; ID.; ID.; HIGHLY URBANIZED CITIES; REFER TO CITIES THAT HAVE ATTAINED A LEVEL OF POPULATION GROWTH AND ECONOMIC DEVELOPMENT WHICH THE LEGISLATURE HAS DEEMED SUFFICIENT FOR DEVOLUTION OF GOVERNMENTAL POWERS AS SELF-CONTAINED POLITICAL UNITS, AND AS SUCH THEY SHALL BE INDEPENDENT OF THE PROVINCE.— HUCs, as conceptualized in our local government laws, are essentially cities that have attained a level of population growth and economic development which the legislature has deemed sufficient for devolution of governmental powers as self-contained political units. As such, these cities are intended to function as first-level political and administrative subdivisions in their own right, on par with provinces. For this reason, Article X, Section 12 of

the Constitution provides that "[c]ities that are highly urbanized, as determined by law, x x x shall be independent of the province." This constitutionally-mandated independence from provincial units is explicitly declared in Section 29 of the Local Government Code and manifests itself throughout said Code in three forms: first, exclusion from participation in provincial elections x x x; second, direct Presidential supervision over HUCs and their local chief executives; and third, other special distinctions provided for in the Code.

APPEARANCES OF COUNSEL

Julius M. Concepcion for petitioners.
The Solicitor General for respondents.

D E C I S I O N

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

Are the voters of a city which used to be a component city of a province entitled to vote in a plebiscite for the division of said province, even after the city has been converted into a highly urbanized city (HUC)?

The Case and Its Antecedents

The present petition for prohibition assails the constitutionality and validity of Republic Act (RA) No. 11259, entitled "Charter of the Provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur."[1] The bill originated from House Bill Nos. 7413 and 8055, which was initiated in the 17th Congress by the representatives of the three legislative districts of the province of Palawan.[2] The bill was signed into law on April 5, 2019[3] and published in the Official Gazette on May 20, 2019.[4]

[1] Republic Act No. 11259, Section 1.

[2] House of Representatives, 17th Congress, Committee Report No. 809. Accessed February 13, 2020 at http://www.congress.gov.ph/legisdocs/first_17/CR00809.pdf; *rollo*, p. 342.

[3] As admitted by petitioners and respondents; *id.* at 8, 342.

[4] 115 O.G. (No. 20) 5025 (2019).

Sections 51 and 54 of the assailed law provide:

> SEC. 51. Plebiscite. — The provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur shall be created upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) on the second Monday of May 2020 following the effectivity of this Charter.
>
> The amount necessary for the conduct of the plebiscite shall be charged against the appropriations of the present Province of Palawan.
>
> SEC. 54. Residents of the City of Puerto Princesa. — The residents of the City of Puerto Princesa, as a highly urbanized city, shall not be qualified to vote in the plebiscite and for candidates for provincial elective positions.
>
> The district representatives who were duly elected and qualified in the election immediately preceding the May 2022 national and local elections of the present First Legislative District, Second Legislative District, and Third Legislative District shall continue to represent their respective districts until the representatives for the newly created legislative districts for the three (3) provinces and the highly urbanized City of Puerto Princesa shall have been elected and qualified.

Petitioners Cynthia S. Del Rosario, Federico N. Virgo, Jr., Renato V. Baladad, Beatriz A. Dioso, and Corazon Manalon Davila are all residents of various barangays in Puerto Princesa City; while the other petitioners are residents of three municipalities in Palawan. Loreta N. Alsa is a resident of Sagpangan, Aborlan; petitioner Hiya I. Hassan is a resident of Panitian, Sofronio Española; and petitioner John Vincent C. Colili is a resident of Amas, Brooke's Point. Claiming standing as taxpayers and registered voters of Puerto Princesa City and of Palawan, they ask this Court to declare RA No. 11259 unconstitutional and invalid. Consequently, they also seek the issuance of a writ of prohibition against the conduct of the May 11, 2020[5] plebiscite provided for in Sections 51 and 54 of RA No. 11259, without the participation of the

[5] The second Sunday of May 2020 falls on May 11, 2020.

electorate of Puerto Princesa City, as well as the disbursement of funds relative thereto.

The Issues

The petition alleges that RA No. 11259 suffers from three infirmities which render it unconstitutional: first, its passage and enactment into law was made in gross violation of the public's right to take part in the conduct of public affairs through public hearings and consultations;[6] second, it disqualifies the voters of Puerto Princesa City from voting in the scheduled plebiscite, contrary to Article X, Section 10 of the Constitution;[7] and third, it provides for a substantial change in the sharing of proceeds from the development and utilization of the national wealth between the three new provinces and their existing municipalities and barangays, in violation of Article X, Section 7 of the Constitution.[8]

Ruling of the Court

I.

Before delving into the merits of the petition, this Court resolves the objections made by respondents, through the Solicitor General, regarding the prematurity of the petition and petitioners' lack of standing to file the same.

Standing to sue, for purposes of assailing the constitutionality of statutes, has been defined as:

> a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[9]

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

[7] *Id.* at 13-18.

[8] *Id.* at 19-24.

[9] *Southern Hemisphere Engagement Network, Inc., et al. v. Anti-Terrorism*

Following this definition, a party was held to have standing upon proof of the following: (1) the suing party has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought.[10]

Considering the foregoing parameters, We hold that petitioners Cynthia S. Del Rosario, Federico N. Virgo, Jr., Renato V. Baladad, Beatriz A. Dioso, and Corazon Manalon Davila lack standing to file the present petition. As residents of Puerto Princesa, they have become residents of an entity separate, distinct, and autonomous from the province of Palawan, when Puerto Princesa became an HUC. In fact, said petitioners, as qualified voters of Puerto Princesa, have not participated in the elections for provincial officials of Palawan.[11] By the same token, they have likewise lost the right to vote in the plebiscite for the division of the province of Palawan, as discussed in the latter part of this ruling. Nevertheless, this Court cannot dismiss the petition on this point alone, considering that petitioners Loreta N. Alsa, Hiya I. Hassan, and John Vincent C. Colili are residents and registered voters of the province of Palawan, and as such, are directly affected by the implementation of the assailed statute, which will divide their home province into three distinct and separate provinces.

As regards the alleged prematurity of the petition, in *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*,[12] which also involved a

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Council, et al., 646 Phil. 452, 472 (2010), citing *Anak Mindanao Party-List Group v. Executive Secretary*, 558 Phil. 338 (2007).

[10] *Atty. Lozano, et al. v. Speaker Nograles*, 607 Phil. 334, 342 (2009).

[11] Respondents Provincial Treasurer and Provincial Government of Palawan submitted a sample ballot for Puerto Princesa, which does not include the choices for Governor, Vice-Governor, and Members of Sangguniang Panlalawigan; *rollo*, pp. 129-130.

[12] G.R. Nos. 216930, 217451, 217752, 218045, 218098, 218123 & 218465, October 9, 2018.

Rule 65 challenge against a statute and its implementation, it was held that:

> This Court has consistently ruled that an actual case or controversy is necessary even in cases where the constitutionality of a law is being questioned. It is not enough that the statute has been passed. There must still be a real act. The law must have been implemented, and the party filing the case must have been affected by the act of implementation.

On this point, it must be stressed that most of the provisions of RA No. 11259 will take effect only after the approval thereof by the electorate of Palawan. Sections 51 and 52 of the law provide:

> SEC. 51. *Plebiscite*. — **The provinces** of Palawan del Norte, Palawan Oriental, and Palawan del Sur **shall be created upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC)** on the second Monday of May 2020 following the effectivity of this Charter.
>
> x x x x x x x x x
>
> SEC. 52. *Commencement of Corporate Existence*. — **The provinces** of Palawan del Norte, Palawan Oriental, and Palawan del Sur **shall commence its corporate existence upon the election and qualification of its provincial governor, provincial vice governor and majority of the members of the sangguniang panlalawigan**.
>
> The election of the provincial officials of the newly created provinces shall be held on the second Monday of May in the year 2022. (Emphases supplied.)

At the risk of being repetitive, it is clear from the foregoing that the creation and existence of the three provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur is contingent upon the approval thereof by the voters of the affected areas in a plebiscite conducted for the purpose. Until such plebiscite has been conducted and it is ascertained that the majority of the electorate in said plebiscite approved the proposed division, the provisions of RA No. 11259 relating to the organization and governance of the three provinces of Palawan del Norte,

Palawan Oriental, and Palawan del Sur will remain inoperative, as the provinces to which they pertain have not been created yet. Pending the conduct of the plebiscite, only Sections 51, 54, 58, 59, and 60 of the law can be considered to be in full force and effect, as these provisions pertain to matters preparatory to the conduct of the plebiscite for the creation of the three proposed provinces. These are the very provisions sought to be implemented by respondents as they prepare for the conduct of the plebiscite this coming May. It is therefore premature for this Court to make any declaration on the unconstitutionality of the law *in toto*, when most of the provisions of the law have yet to take effect.

It is for these reasons that the Court must refrain from ruling upon the issue raised by the petition regarding the alteration of the natural resource revenue allotments of the three proposed provinces *vis-à-vis* the prescribed allotment ratio in the Local Government Code (LGC). Thus, this decision is confined to the resolution of the first and third issues, *i.e.*, the alleged lack of public consultation in the formulation of R.A. No. 11259, and the question of whether or not Puerto Princesa can still be considered a political unit directly affected by the division of Palawan into three provinces, so as to entitle the city's voters to participate in the plebiscite scheduled for that purpose.

II.

Petitioners allege that in formulating the assailed statute, the legislature:

> x x x failed to invite written submissions and to conduct public hearings on the subject legislation such that the [H]ouse and [S]enate bills on the proposed act dividing the province of Palawan were never submitted to the constituents of the province of Palawan for public consultations and public hearings.[13]

According to petitioners, this constituted a violation of the political right of the people of Palawan to participate in public consultations on matters affecting their interest.

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[13] *Rollo*, p. 8.

Respondents Provincial Treasurer and Provincial Government of Palawan counter that the assailed statute was developed in coordination with the various offices of the provincial government, as well as the municipal mayors and *Sangguniang Panlalawigan* members of Palawan. They also aver that petitioner Cynthia del Rosario was even present during one of the deliberations of the House of Representatives on the matter.[14]

Respondents Commission on Elections and the Department of Budget and Management argue that the passage of the statute did not disregard the right to participate in public consultations on matters of the public interest, for the creation of the proposed provinces still needs the approval of the electorate of Palawan.

The Court agrees with the submissions of the respondents on the matter. Petitioners' long but vacuous citation of various constitutional provisions and treaty instruments does not persuade. The records of the case reveal that the proposed division of Palawan, as reflected in the assailed statute, was in fact made in consultation with the people of Palawan, through their elected representatives: the municipal mayors,[15] municipal councilors, and the members of the *Sangguniang Panlalawigan*, as reflected in the transcripts of the consultative meeting,[16] *Sangguniang Panlalawigan* meetings,[17] and resolutions from the municipal councils of Palawan.[18]

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

[15] Resolution No. 03, series of 2018 of the League of Municipalities of the Philippines, Palawan Chapter, "Manifesting the Full Support of the League of the Municipalities of the Philippines-Palawan Chapter to the Provincial Government of Palawan Particularly on the Passage of the Creation of Three (3) New Provinces Through the Division of Palawan"; *id.* at 258-259.

[16] Minutes of Consultative Meeting on Regionalization of Palawan; *id.* at 132-148.

[17] Minutes of the Joint Committee Meeting of the Committees on Rules and Laws and Local Government Regarding the Division of Palawan into Three Provinces, October 14, October 17, and November 7, 2017, respectively; *id.* at 149-240; Palawan Provincial Resolution No. 13465, series of 2017; *id.* at 241-245.

[18] Resolution No. 2018-026 of the Sangguniang Bayan of Rizal, Palawan; *id.* at 246-247; Resolution No. 30, series of 2018 of the Sangguniang

Furthermore, the Constitution does not establish prior public consultation as a prerequisite for the validity of a statute. Article XIII, Section 16, as cited by petitioners, is a protection against any action which serves to abridge the right of people's organizations to "effective and reasonable participation at all levels of social, political, and economic decision-making." A renowned constitutional scholar and Constitutional Commission member explains that:

> x x x At most, the provisions serve as exhortations to the people to act jointly, and to associations to act with independence and not to allow themselves to be instrumentalized by the state. Moreover, *Kilosbayan v. Morato* rejected the notion that the provisions confer on organizations "standing" to challenge in court the validity of governmental policies.
>
> It should be pointed out that the language of Section 16 hews closely to the phraseology of the Bill of Rights. The deliberate intention of the Commission was to not "in any way dilute or diminish the rights already guaranteed in the Bill of Rights, particularly [Sections 8 and 4], which guarantee the right of the people to form associations and unions for purposes not contrary to law, and also the guarantee which says that no law shall be passed abridging the right of the people peaceably to assemble and petition the government for redress of grievances." Furthermore, in relation to consultation mechanisms, the role of the state is to "facilitate" their creation. x x x[19]

This Court sustains the contention of the Solicitor General that the assailed statute does not run afoul of the constitutional policy on public consultation because its effectivity is still subject to the supreme mode of public consultation: the ballot. Petitioners must be reminded that ours is a republican state, where the people are heard primarily through their elected

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Bayan of Aborlan, Palawan; *id.* at 248-249; Resolution No. 2018-78 of the Sangguniang Bayan of San Vicente, Palawan; *id.* at 250-251; Resolution No. 141, series of 2017 of the Sangguniang Bayan of Coron, Palawan; *id.* at 252-254; Resolution No. 2018-3249 of the Sangguniang Bayan of Narra, Palawan; *id.* at 255-257.

[19] Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, pp. 1272-1273 (2009). Citations omitted.

representatives.[20] Sovereignty resides in the people, but is primarily manifested through their elected representatives. In the case at bar, the duly elected representatives of the people of Palawan at every level: municipal, provincial, and national, have registered their support and consent to the proposed division of their province.

III.

Article X, Section 10 of the Constitution requires that the division of a province must be approved "by a majority of the votes cast in a plebiscite in the political units directly affected." As applied to the present petition, is the HUC of Puerto Princesa a "political unit directly affected" by the partition of the province of Palawan into three separate provinces?

In determining which political units are directly affected — hence eligible to participate in the pertinent plebiscite — by a merger, division, creation, or abolition of a local government unit, the Supreme Court has taken into account a number of political and economic factors.

Early decisions of the Court on the matter hinged primarily on the matter of territorial and boundary alteration. In *Tan v. Comelec*,[21] the Court considered the possible alteration of boundaries and reduction of municipal boundaries, and held that the whole mother province must vote in the division thereof into two provinces. After citing Article XI, Section 3 of the 1973 Constitution, the Court held:

> It can be plainly seen that the aforecited constitutional provision makes it imperative that there be first obtained "the approval of a majority of votes in the plebiscite in the unit or units affected" whenever a province is created, divided or merged and there is substantial alteration of the boundaries. It is thus inescapable to conclude that the boundaries of the existing province of Negros Occidental would necessarily be substantially altered by the division of its existing boundaries in order that there can be created the proposed new province

[20] CONSTITUTION, Art. II, Sec. 1.

[21] 226 Phil. 624 (1986).

of Negros del Norte. Plain and simple logic will demonstrate than that two political units would be affected. The first would be the parent province of Negros Occidental because its boundaries would be substantially altered. The other affected entity would be composed of those in the area subtracted from the mother province to constitute the proposed province of Negros del Norte.[22]

The applicability of the *Tan* ruling to local government unit (LGU) creations, mergers, divisions, or abolitions under the present Constitution was confirmed in *Gov. Padilla, Jr. v. Commission on Elections*,[23] where the Court held that the whole municipality must vote in a plebiscite for the creation of a new barangay therein.[24] In *Tobias v. City Mayor Abalos*,[25] the Court, faced with a challenge against the constitutionality of the law converting Mandaluyong from a municipality into an HUC, rejected the assertion that a municipality within the same legislative district — but not within the same province — as the proposed HUC is a "political unit directly affected" by such conversion. Said the Court:

> Petitioners contend that the people of San Juan should have been made to participate in the plebiscite on R.A. No. 7675 as the same involved a change in their legislative district. The contention is bereft of merit since the principal subject involved in the plebiscite was the conversion of Mandaluyong into a highly urbanized city. The matter of separate district representation was only ancillary thereto. Thus, the inhabitants of San Juan were properly excluded from the said plebiscite as they had nothing to do with the change of status of neighboring Mandaluyong.[26]

Later Decisions apply a more comprehensive approach in the determination of which political units are directly affected by a change or conversion of an LGU. In *Miranda v. Hon.*

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[22] *Id.* at 639.

[23] 289 Phil. 356 (1992).

[24] *Id.* at 360-361.

[25] 309 Phil. 100 (1994).

[26] *Id.* at 106.

Aguirre,[27] which involved the conversion[28] of Santiago City from an independent component city to a component city of the province of Isabela, the Court said:

x x x The resolution of the issue depends on whether or not the downgrading falls within the meaning of creation, division, merger, abolition or substantial alteration of boundaries of municipalities per Section 10, Article X of the Constitution. A close analysis of the said constitutional provision will reveal that the creation, division, merger, abolition or substantial alteration of boundaries of local government units involve a *common denominator* — material change in the political and economic rights of the local government units directly affected as well as the people therein. It is precisely for this reason that the Constitution requires the approval of the people "in the political units *directly* affected." It is not difficult to appreciate the rationale of this constitutional requirement. x x x Section 10, Article X [of the Constitution] addressed the undesirable practice in the past whereby local government units were created, abolished, merged or divided on the basis of the vagaries of politics and not of the welfare of the people. Thus, the consent of the people of the local government unit directly affected was required to serve as a checking mechanism to any exercise of legislative power creating, dividing, abolishing, merging or altering the boundaries of local government units. x x x This plebiscite requirement is also in accord with the philosophy of the Constitution granting more autonomy to local government units.

The changes that will result from the downgrading of the city of Santiago from an independent component city to a component city are many and cannot be characterized as insubstantial. For one, the independence of the city as a political unit will be diminished. The city mayor will be placed under the administrative supervision of the provincial governor. The resolutions and ordinances of the city council of Santiago will have to be reviewed by the Provincial Board of Isabela. Taxes that will be collected by the city will now have to be shared with the province. x x x

x x x x x x x x x

It is markworthy that when R.A. No. 7720 *upgraded* the status of Santiago City from a municipality to an independent component city,

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[27] 373 Phil. 386 (1999).

[28] In the words of the Court, "downgrading."

it required the approval of its people thru a plebiscite called for the purpose. There is neither rhyme nor reason why this plebiscite should not be called to determine the will of the people of Santiago City when R.A. No. 8528 *downgrades* the status of their city. Indeed, there is more reason to consult the people when a law substantially diminishes their right. (Italics in the original)[29]

This comprehensive approach was followed in *Umali v. Commission on Elections, et al.*,[30] where the Court held that the whole province of Nueva Ecija is the political unit directly affected by the conversion of Cabanatuan into an HUC, *viz.*:

In cutting the umbilical cord between Cabanatuan City and the province of Nueva Ecija, the city will be separated from the territorial jurisdiction of the province, as earlier explained. The provincial government will no longer be responsible for delivering basic services for the city residents' benefit. Ordinances and resolutions passed by the provincial council will no longer cover the city. Projects queued by the provincial government to be executed in the city will also be suspended if not scrapped to prevent the LGU from performing functions outside the bounds of its territorial jurisdiction, and from expending its limited resources for ventures that do not cater to its constituents.

In view of these changes in the economic and political rights of the province of Nueva Ecija and its residents, the entire province certainly stands to be directly affected by the conversion of Cabanatuan City into an HUC. Following the doctrines in *Tan* and *Padilla*, all the qualified registered voters of Nueva Ecija should then be allowed to participate in the plebiscite called for that purpose.[31]

A careful survey of these cases reveals that the Court has considered three key factors in determining whether an LGU is a "political unit directly affected" by an LGU change or conversion: territorial alteration, political effects, and economic effects. The Court shall now apply this three-factor test to Puerto Princesa and the rest of Palawan, in the light of the parties' pleadings and the applicable law.

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[29] *Supra* note 27 at 400-402.

[30] 733 Phil. 775 (2014).

[31] *Id.* at 809.

As regards territorial alteration, the petitioners allege that RA No. 11259 will re-draw the boundaries of Palawan's Third Legislative District, which is currently composed of Puerto Princesa and the municipality of Aborlan.[32] On the other hand, respondents aver that the law will neither alter the boundaries of Puerto Princesa nor reduce its land area.[33] On this point, this Court agrees with respondents that the assailed statute will not result in the alteration of Puerto Princesa's territorial jurisdiction. Section 4 of the law provides in part that "The terrestrial jurisdictions of the newly created provinces shall be within the present metes and bounds of all the municipalities that comprise the respective provinces" without reference to Puerto Princesa. The Court has pored over the law and finds nothing in it that changes the metes and bounds of Puerto Princesa's territory. Furthermore, following *Tobias v. Abalos*[34] and *Bagabuyo v. COMELEC*,[35] the realignment of Palawan's legislative district boundaries does not amount to a territorial alteration so as to render Puerto Princesa directly affected by the division of the province of Palawan, for the re-drawing of legislative district boundaries does not require electoral approval through a plebiscite.

As regards political and economic effects, the Court first considers the applicable laws. Section 452 of the Local Government Code provides:

> Sec. 452. *Highly Urbanized Cities*. — (a) Cities with a minimum population of two hundred thousand (200,000) inhabitants as certified by the National Statistics Office, and within the latest annual income of at least Fifty Million Pesos (₱50,000,000.00) based on 1991 constant prices, as certified by the city treasurer, shall be classified as highly urbanized cities.
>
> (b) Cities which do not meet above requirements shall be considered component cities of the province in which they are geographically

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

[33] Comment of Provincial Treasurer and Provincial Government of Palawan; *id*. at 87.

[34] *Supra* note 25.

[35] 593 Phil. 678 (2008).

located. If a component city is located within the boundaries of two (2) or more provinces, such city shall be considered a component of the province of which it used to be a municipality.

(c) Qualified voters of highly urbanized cities shall remain excluded from voting for elective provincial officials.

Unless otherwise provided in the Constitution or this Code, qualified voters of independent component cities shall be governed by their respective charters, as amended, on the participation of voters in provincial elections.

Qualified voters of cities who acquired the right to vote for elective provincial officials prior to the classification of said cities as highly-urbanized after the ratification of the Constitution and before the effectivity of this Code, shall continue to exercise such right. (Underscoring supplied)

It is glaringly clear from this provision that voters of highly urbanized cities cannot vote for elective provincial officials. Notably, Section 452 (c) uses the phrase "shall remain excluded," because such exclusion was carried over from previous statutes on the matter.[36] Pertinently, Section 3 of Batas Pambansa Blg. 51 provides:

SEC. 3. Cities. — There shall be in each city such elective local officials as provided in their respective charters, including the city mayor, the city vice-mayor, and the elective members of the sangguniang panlungsod, all of whom shall be elected by the qualified voters in the city. In addition thereto, there shall be appointive sangguniang panlungsod, members consisting of the president of the city association of barangay councils, the president of the city federation of the kabataang barangay, and one representative each from the agricultural and industrial labor sectors who shall be appointed by the President (Prime Minister) whenever, as determined by the sangguniang panlungsod, said sectors are of sufficient number in the city to warrant representation.

Until cities are reclassified into highly urbanized and component cities in accordance with the standards established in the Local Government Code as provided for in Article XI, Section 4 (1) of the Constitution,

[36] Batas Pambansa Blg. 337, Sections 166-168.

any city now existing with an annual regular income derived from infrastructure and general funds of not less than forty million pesos (₱40,000,000.00) at the time of the approval of this Act shall be classified as a highly urbanized city. All other cities shall be considered components of the provinces where they are geographically located.

The City of Baguio, because of its special functions as the summer capital of the Philippines, shall be classified as a highly urbanized city irrespective of its income.

The registered voters of a component city may be entitled to vote in the election of the officials of the province of which that city is a component, if its charter so provides. However, **voters registered in a highly urbanized city, as hereinabove defined, shall not participate nor vote in the election of the officials of the province in which the highly urbanized city is geographically located**. (Emphasis and underscoring supplied)

HUCs, as conceptualized in our local government laws, are essentially cities that have attained a level of population growth and economic development which the legislature has deemed sufficient for devolution of governmental powers as self-contained political units. As such, these cities are intended to function as first-level political and administrative subdivisions in their own right, on par with provinces.[37] For this reason, Article X, Section 12 of the Constitution provides that "[c]ities that are highly urbanized, as determined by law, x x x shall be independent of the province." This constitutionally-mandated independence from provincial units is explicitly declared in Section 29 of the Local Government Code and manifests itself throughout said Code in three forms: first, exclusion from participation in provincial elections, as earlier discussed;[38] second, direct Presidential supervision over HUCs and their local chief executives;[39] and third, other special distinctions

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[37] See *Ceniza v. Commission on Elections*, 184 Phil. 597 (1980).

[38] CONSTITUTION, Article X, Section 12; LOCAL GOVERNMENT CODE, Sec. 452 (c).

[39] LOCAL GOVERNMENT CODE, Sections 25, 45, 47, 61, 62, 67, and 82.

provided for in the Code.[40] As this Court explained in *Umali*, involving the issue of which political units are directly affected by the conversion of a component city into an HUC:

x x x x x x x x x

Aside from the alteration of economic rights, the political rights of Nueva Ecija and those of its residents will also be affected by Cabanatuan's conversion into an HUC. Notably, the administrative supervision of the province over the city will effectively be revoked upon conversion. x x x

Duties, privileges and obligations appertaining to HUCs will attach to Cabanatuan City if it is converted into an HUC. This includes the right to be outside the general supervision of the province and be under the direct supervision of the President. An HUC is not subject to provincial oversight because the complex and varied problems in an HUC due to a bigger population and greater economic activity require greater autonomy. The provincial government stands to lose the power to ensure that the local government officials of Cabanatuan City act within the scope of its prescribed powers and functions, to review executive orders issued by the city mayor, and to approve resolutions and ordinances enacted by the city council. The province will also be divested of jurisdiction over disciplinary cases concerning the elected city officials of the new HUC, and the appeal process for administrative case decisions against barangay officials of the city will also be modified accordingly. Likewise, the registered voters of the city will no longer be entitled to vote for and be voted upon as provincial officials.

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[40] LOCAL GOVERNMENT CODE, Sections 13 (b) (regarding special provisions for street renaming in HUCs), 39 (b) (regarding qualifications of local chief executives, where the mayors, vice-mayors and member of the sangguniang panlungsod of HUCs are placed in the same group as governors, vice-governors, and members of the sangguniang panlalawigan), 118 (d) (regarding the settlement of boundary disputes where one of the parties is a HUC), 386 (a) (regarding increased population requirement for creation of a barangay in Metro Manila and other HUCs), 436 (c) (providing that elected presidents of the pederasyon at the provincial, highly urbanized city, and metropolitan political subdivision levels shall constitute the pambansang katipunan ng mga sangguniang kabataan), and 456 (b) (prescribing different salary grades for vice-mayors of HUCs as against vice-mayors of component cities).

In cutting the umbilical cord between Cabanatuan City and the province of Nueva Ecija, the city will be separated from the territorial jurisdiction of the province, as earlier explained. The provincial government will no longer be responsible for delivering basic services for the city residents' benefit. Ordinances and resolutions passed by the provincial council will no longer cover the city. Projects queued by the provincial government to be executed in the city will also be suspended if not scrapped to prevent the LGU from performing functions outside the bounds of its territorial jurisdiction, and from expending its limited resources for ventures that do not cater to its constituents.[41]

This Court is aware of the fact that Section 89 of the city charter of Puerto Princesa allows its residents to vote for provincial officials of Palawan.[42] However, upon the declaration of Puerto Princesa as an HUC by the President, and the subsequent approval thereof in a plebiscite as required by Section 453 of the LGC, Section 452 (c) of the LGC, and Article X, Section 12 of the Constitution became applicable to the city, superseding Section 89 of the Puerto Princesa Charter. As such, when Puerto Princesa was converted from a component city into an HUC, its political ties with the province of Palawan were effectively severed, in accordance with the principle of HUC independence as provided in the Constitution and the LGC. It must be noted that the conversion of Puerto Princesa took effect in 2007,[43] under the aegis of the present LGC, taking its case out of the ambit of the last paragraph of Section 453 (c), which only applies to cities which became HUCs after the ratification of the 1987 Constitution *and* before the effectivity of the LGC.

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[41] *Supra* note 30 at 806-809. Citations omitted.

[42] Republic Act No. 5906, Sec. 89.

[43] Presidential Proclamation No. 1264, Conversion of Puerto Princesa City into a Highly-Urbanized City, March 26, 2007. The conversion was approved by the electorate of the city in a plebiscite held on July 9, 2007. See *Mitra v. Commission on Elections*, 636 Phil. 753 (2010) and *Umali v. Commission on Elections, supra* note 12 at 798. See also Philippine Statistics Authority, PSGC Updates (July-September 2007). Accessed 17 February 2020 at https://web.archive.org/web/20160508081947/http://nap.psa.gov.ph/activestats/psgc/PSGC_updates/Sept07.asp.

On the economic effects of LGU changes or conversions, the following excerpt from *Umali* is illuminating:

Often raised is that Cabanatuan City's conversion into an HUC and its severance from Nueva Ecija will result in the reduction of the Internal Revenue Allotment (IRA) to the province based on Sec. 285 of the LGC. The law states:

> **Sec. 285.** *Allocation to Local Government Units*. — The share of local government units in the internal revenue allotment shall be collected in the following manner:
>
> (a) Provinces — Twenty-three percent (23%);
> (b) Cities — Twenty-three percent (23%);
> (c) Municipalities — Thirty-four percent (34%); and
> (d) Barangays — Twenty percent (20%).
>
> Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:
>
> (a) Population — Fifty percent (50%);
> (b) Land Area — Twenty-five percent (25%); and
> (c) Equal sharing — Twenty-five percent (25%).

In our earlier disquisitions, we have explained that the conversion into an HUC carries the accessory of substantial alteration of boundaries and that the province of Nueva Ecija will, without a doubt, suffer a reduction in territory because of the severance of Cabanatuan City. The residents of the city will cease to be political constituencies of the province, effectively reducing the latter's population. Taking this decrease in territory and population in connection with the above formula, it is conceded that Nueva Ecija will indeed suffer a reduction in IRA given the decrease of its multipliers' values. x x x

x x x x x x x x x

Clear as crystal is that the province of Nueva Ecija will suffer a substantial reduction of its share in IRA once Cabanatuan City attains autonomy. In view of the economic impact of Cabanatuan City's conversion, petitioner Umali's contention, that its effect on the province is not only direct but also adverse, deserves merit.

Moreover, his claim that the province will lose shares in provincial taxes imposed in Cabanatuan City is well-founded. This is based on Sec. 151 of the LGC x x x.

x x x x x x x x x

Once converted, the taxes imposed by the HUC will accrue to itself. Prior to this, the province enjoys the prerogative to impose and collect taxes such as those on sand, gravel and other quarry resources, professional taxes, and amusement taxes over the component city. While, it may be argued that this is not a derogation of the province's taxing power because it is in no way deprived of its right to collect the mentioned taxes from the rest of its territory, the conversion will still reduce the province's taxing jurisdiction, and corollary to this, it will experience a corresponding decrease in shares in local tax collections. This reduction in both taxing jurisdiction and shares poses a material and substantial change to the province's economic rights, warranting its participation in the plebiscite.

x x x x x x x x x

A component city's conversion into an HUC and its resultant autonomy from the province is a threat to the latter's economic viability. Noteworthy is that the income criterion for a component city to be converted into an HUC is higher than the income requirement for the creation of a province. The ensuing reduction in income upon separation would clearly leave a crippling effect on the province's operations as there would be less funding to finance infrastructure projects and to defray overhead costs. Moreover, the quality of services being offered by the province may suffer because of looming austerity measures. These are but a few of the social costs of the decline in the province's economic performance, which Nueva Ecija is bound to experience once its most progressive city of Cabanatuan attains independence.[44]

Petitioners argue that the division of Palawan into three provinces will deprive Puerto Princesa of the benefits it enjoys as the provincial capital. Specifically, they assert that the relocation of 1,400 permanent employees and 7,000 job order employees of the provincial government will affect consumer spending in Puerto Princesa.[45] They also argue that the removal of Puerto Princesa as provincial capital will result in a "dramatic decline" in the number of tourists visiting the city, and affect

[44] *Supra* note 30 at 802-806. Citations omitted.

[45] *Rollo*, p. 19.

the price of basic commodities in the city, which will now come from three different provinces which may have different tax rates.[46]

Respondents Provincial Treasurer and Provincial Government of Palawan counter that not all of its employees are residents of Puerto Princesa, and most of its employees are assigned to different offices around the province.[47] They also argue that the rest of Palawan has enough hospitals, ports, and airports which are enough to service the needs of the three proposed provinces.[48]

As made abundantly clear in *Umali*, the economic factors contemplated in the determination of "political units directly affected" by an LGU change or conversion pertain strictly to fiscal or budgetary relations among the political units concerned, specifically, the sharing of internal revenue allotments, budgetary allocations, and taxing powers, all of which are governed by the pertinent provisions of the LGC and other laws. An expansion of the scope of economic impact analysis outside these factors, as petitioners would want this Court to do, will require the presentation and evaluation of evidence: a task which is outside the purview of this Court's functions.[49] Furthermore, the holistic consideration of the economic effects of LGU changes or conversions is a matter of policy in which the judiciary must defer to the other two great branches of government. The holistic

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[46] *Id.* at 20.

[47] Comment of Provincial Treasurer and Provincial Government of Palawan; *id.* at 110.

[48] *Id.* at 110-112.

[49] The Supreme Court is not a trier of facts. *Spouses Liu v. Espinosa*, G.R. No. 238513, July 31, 2019; *University of the Philippines v. City Treasurer of Quezon City*, G.R. No. 214044, June 19, 2019; *Miranda v. Social Security Commission*, G.R. No. 238104, February 27, 2019; *Union Bank of the Philippines v. Regional Agrarian Reform Officer*, 806 Phil. 545 (2017); *Information Technology Foundation of the Philippines v. Commission on Elections*, 810 Phil. 400 (2017); *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172 (2017).

analysis of the economic impact of an LGU change or conversion on its neighboring LGUs concerns the wisdom, prudence, and economic viability of the proposed division, and do not pertain to the legality thereof.[50]

Confining ourselves, thus, to the consideration of what is essentially the fiscal impact on Puerto Princesa of the division of Palawan into three provinces, We must again have recourse to the provisions of the Constitution and the LGC. As an HUC, Puerto Princesa, in its own right, has the power to impose its own taxes, fees and charges, the revenues of which shall accrue to its own treasury.[51] It is likewise entitled to its own internal revenue allotment[52] and its own share in whatever natural resources may be found within its territory.[53] It is therefore clear that Puerto Princesa has been rendered *fiscally* autonomous from the province of Palawan by virtue of the city's conversion into an HUC.

The foregoing disquisitions make it abundantly clear that Puerto Princesa has become a distinct political entity independent and autonomous from the province of Palawan, by virtue of its conversion into a highly urbanized city in 2007. Hence, it can no longer be considered a "political unit directly affected" by the proposed division of Palawan into three provinces; and perforce, the qualified voters of the city of Puerto Princesa, including herein petitioners Cynthia S. Del Rosario, Federico N. Virgo, Jr., Renato V. Baladad, Beatriz A. Dioso, and Corazon Manalon Davila were properly excluded from the coverage of the plebiscite scheduled by RA No. 11259. The petition must therefore be dismissed.

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[50] *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, *supra* note 12; *Padilla v. Congress of the Philippines*, 814 Phil. 344 (2017), citing *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015).

[51] LOCAL GOVERNMENT CODE, Sec. 151.

[52] LOCAL GOVERNMENT CODE, Sec. 285.

[53] LOCAL GOVERNMENT CODE, Sec. 292.

IN VIEW OF THE FOREGOING PREMISES, the present petition for prohibition is hereby **DISMISSED.**

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 8789. March 11, 2020]

ATTY. HONESTO ANCHETA CABARROGUIS, *complainant, vs.* **ATTY. DANILO A. BASA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; FILING OF SEVERAL BASELESS CRIMINAL COMPLAINTS AGAINST A PERSON FOR THE SAME CAUSE OF ACTION CONSTITUTES A VIOLATION OF CANON 12, RULE 12.02, AND CANON 19, RULE 19.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [A]tty. Basa initiated four more criminal complaints against Atty. Cabarroguis for the same cause of action, in violation of Canon 12, Rule 12.02, and Canon 19, Rule 19.01 of the CPR, to wit: Canon 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE. x x x Rule 12.02 - A lawyer shall not file multiple actions arising from the same cause. Canon 19 - A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW. Rule 19.01 - A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten

to present unfounded criminal charges to obtain an improper advantage in any case or proceeding. The four criminal complaints were all in relation to the same affidavit-complaint Atty. Cabarroguis filed as the attorney-in-fact of Godofredo in the *estafa* case against Erlinda.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY AND LAWYER'S OATH; INASMUCH AS LAWYERS MUST GUARD THEMSELVES AGAINST THEIR OWN IMPULSES OF INITIATING UNFOUNDED SUITS, THEY ARE EQUALLY BOUND TO ADVISE A CLIENT, ORDINARILY A LAYMAN ON THE INTRICACIES AND VAGARIES OF THE LAW, ON THE MERIT OR LACK OF MERIT OF HIS OR HER CASE, AS LAWYERS MUST RESIST THE WHIMS AND CAPRICES OF THEIR CLIENTS AND TO TEMPER THEIR PROPENSITIES TO LITIGATE.— [A]tty. Basa recklessly applied the same cause of action in four different complaints that were all dismissed for lack of probable cause. He cannot validly argue that it was not he who initiated I.S. No. 2008-G-5045 and I.S. No. 2008-G-5045-A but his client, Erlinda. He cannot deny the fact that these complaints were filed two years after similar complaints, which he personally filed himself, were already dismissed for lack of probable cause. It is inexcusable for Atty. Basa to not be aware of his duty under his Lawyer's Oath not to "wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same." This duty has also been expressly provided for in Rule 1.03, Canon 1 of the CPR, to wit: Rule 1.03 - A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause. Hence, inasmuch as lawyers must guard themselves against their own impulses of initiating unfounded suits, they are equally bound to advise a client, ordinarily a layman on the intricacies and vagaries of the law, on the merit or lack of merit of his or her case. If the lawyer finds that his or her client's cause is defenseless, then it is his or her bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. Lawyers must resist the whims and caprices of their clients and to temper their propensities to litigate.

3. ID.; ID.; ID.; THE RENDITION OF IMPROPER SERVICE BY LAWYERS WHICH DOES NOT MEET THE

STRICTEST PRINCIPLES OF MORAL LAW INVITES STERN AND JUST CONDEMNATION FROM THE COURT BECAUSE BY DOING SO, THEY FAIL TO ADVANCE THE HONOR OF THEIR PROFESSION AND THE BEST INTERESTS OF THEIR CLIENTS.— Atty. Basa, by all means, is given the liberty to defend his client's cause with utmost zeal. This obligation, however, is not without reasonable limitations. The filing of frivolous suits against his opposing counsel manifests, at the very least, his gross indiscretion as a colleague in the legal profession and his malicious desire to vex Atty. Cabarroguis. Atty. Basa's act ultimately exhibits his intent to paralyze Atty. Cabarroguis from exerting his utmost effort in protecting his client's interest. Verily, the rendition of improper service by lawyers which does not meet the strictest principles of moral law invites stern and just condemnation from the Court because by doing so, they fail to advance the honor of their profession and the best interests of their clients.

4. ID.; ID.; ID.; LAWYERS SHOULD TREAT THEIR OPPOSING COUNSELS WITH COURTESY, DIGNITY AND CIVILITY; LAWYERS WHO RESORT TO DEROGATORY, OFFENSIVE, AND VIRULENT LANGUAGE AGAINST THEIR OPPOSING COUNSELS VIOLATE CANON 8, RULE 8.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [T]he Court cannot turn a blind eye to the crafty way with which Atty. Basa disrespected Atty. Cabarroguis *via* an Omnibus Motion dated June 22, 2007. In this omnibus motion filed by Atty. Basa on behalf of his clients, the Molabolas, in a special proceeding case where Atty. Cabarroguis was the petitioner, Atty. Basa misspelled the first name of Atty. Cabarroguis, Honesto, as "HONESTo." The Court notes that this was not the first time that Atty. Basa misspelled the first name of Atty. Cabarroguis. In a previous demand letter dated May 31, 2007 drafted by Atty. Basa and addressed to Atty. Cabarroguis, the latter's name had also been misspelled as "Honest." While the mistake in the demand letter may be dismissed as unintentional, the Court cannot arrive at the same conclusion with regard to the omnibus motion. By spelling the first six letters of Atty. Cabarroguis's first name in capital letters and leaving the last letter in lowercase, the impression given to the reader is that the author is attempting

to illustrate an irony at the expense of Atty. Cabarroguis. The misspelling was far from being a mere inadvertence as it had consistently appeared in all 14 pages of the omnibus motion. Atty. Basa, as a lawyer, ought to know that his action becomes all the more malicious given that the omnibus motion was not a mere private communication but formed part of public record when he filed it in court. In a long line of cases, the Court has disciplined lawyers who resorted to clearly derogatory, offensive, and virulent language against their opposing counsels, in violation of Canon 8, Rule 8.01 of the CPR, *viz.*: CANON 8 - A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL. Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper. While it may be argued that the omnibus motion did not use language that can easily be characterized as such, the Court finds Atty. Basa's method underhanded, a subtle way of name-calling, and was improperly offensive to Atty. Cabarroguis just the same. Inasmuch as the Court has exhorted lawyers not to be too onion-skinned and should be tolerant of criticisms (especially those which are fair or mild) against them as litigation is inherently a hostile endeavor between adverse or contending parties, this has been weighed against an oft-repeated similar exhortation of the Court to treat their opposing counsels with courtesy, dignity and civility. To the mind of the Court, the act of Atty. Basa in poking fun at the name of Atty. Cabarroguis has traversed these bounds and exhibited a conduct unbecoming of an officer of the court.

5. **ID.; ID.; ID.; FILING OF MULTIPLE BASELESS CRIMINAL COMPLAINTS AND MOVING FOR THE INHIBITIONS OF THE JUDGES TO WHOM THE CASE WAS RE-RAFFLED, CAUSING UNDUE DELAY IN THE RESOLUTION OF THE CASE, CONSTITUTE A VIOLATION OF CANON 12, RULE 12.04 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** [T]he Court also finds merit in the claim of Atty. Cabarroguis that Atty. Basa has failed to measure up to Canon 12, Rule 12.04 of the CPR when, apart from the baseless criminal complaints mentioned earlier, Atty. Basa also caused the filing of a motion for inhibition against the presiding judge in the *estafa* case against Erlinda.

While the Court will not presume to evaluate the soundness of Judge Fuentes' discretion to inhibit from the case, the Court finds it imperative to consider the unfortunate timing of the filing of the motion, which was after the trial of the case had taken eight years to conclude, as well as its bearing in light of the totality of the other infractions of Atty. Basa which meant to vex and harass Atty. Cabarroguis. The Court cannot likewise fail to observe how the inhibition of Judge Fuentes led to five more inhibitions of the other judges to whom the case was re-raffled, which thus ultimately presented the problem of unavailability of a judge who would try and hear the case. Needless to say, this turn of events caused untold delay in the resolution of the case to the prejudice of Atty. Cabarroguis' client.

6. ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS, IMPOSED FOR VIOLATIONS OF THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY.— [T]he Court agrees with the previous Resolution No. XXI-2014-484 of the IBP finding Atty. Basa guilty of violating his Lawyer's Oath and multiple Canons of the CPR. In previous cases, the penalties handed down by the Court against lawyers who violated Canon 8 of the CPR ranged from admonition to suspension for periods ranging from one (1) month to three (3) months. In *Atty. Herminio Harry L. Roque, Jr. v. Atty. Rizal P. Balbin*, following precedents, the Court suspended respondent therein from the practice of law for a period of two (2) years for violating various Canons of the CPR, including Canon 8, Canon 12, Rule 12.03, Rule 12.04, Canon 19, and Rule 19.01 of the CPR. Similarly in *In Re: G.R. No. 157659 "Eligio P. Mallari v. Government Service Insurance System and the Provincial Sheriff of Pampanga*," the Court suspended respondent therein from the practice of law for two (2) years for violating the Lawyer's Oath and Canons 10 and 12, Rules 10.03, 12.02, and 12.04 of the CPR. As applied to the facts of this case, the Court deems it best to modify and temper the recommended penalty of suspension from the practice of law from one (1) year to six (6) months. The Court also takes into consideration that this is the first administrative case against Atty. Basa in his more than three decades in the legal profession.

D E C I S I O N

CAGUIOA, *J.*:

This instant administrative case arose from a verified Complaint[1] for disbarment filed by complainant Atty. Honesto Ancheta Cabarroguis (Atty. Cabarroguis) against respondent Atty. Danilo A. Basa (Atty. Basa) before this Court. Atty. Cabarroguis accuses Atty. Basa of violations of Canon 1, Rules 1.01 and 1.03;[2] Canon 8, Rule 8.01;[3] Canon 10;[4] Rules 12.02 and 12.04;[5] Rule 15.05;[6] and Rule 19.01[7] of the Code of Professional Responsibility (CPR).

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[1] *Rollo*, Vol. I, pp. 2-39.

[2] CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

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

x x x x x x x x x

Rule 1.03 — A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

[3] CANON 8 — A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARDS HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

[4] CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

[5] Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause.

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

[6] Rule 15.05. — A lawyer when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case.

[7] Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate

The Case

Atty. Cabarroguis alleged in his complaint that he was the retained legal counsel of his friend, Godofredo V. Cirineo, Jr. (Godofredo), who filed an *estafa* case against his sister-in-law, Erlinda Basa-Cirineo (Erlinda) before the Regional Trial Court (RTC) of Davao City, Branch 11. Erlinda was represented by her brother, Atty. Basa.[8] Atty. Cabarroguis accused Atty. Basa of dilatory tactics when, after eight years of court trial, Atty. Basa asked for the inhibition of the presiding judge, Hon. Renato Fuentes (Judge Fuentes). After Judge Fuentes inhibited himself, all the other presiding judges of the other regular RTCs to whom the case was raffled, also inhibited themselves one after the other and for one reason or another.[9]

Atty. Cabarroguis further alleged that Atty. Basa exhibited his immaturity on two occasions. First was through an omnibus motion filed by Atty. Basa in a civil case on behalf of his clients, Raul and Evelyn Molabola (collectively, the Molabolas), where he repeatedly spelled Atty. Cabarroguis' first name, Honesto, as "HONESTo." Second was through a demand letter involving the same case in which Atty. Basa purportedly misspelled the first name of Atty. Cabarroguis as "Honest."[10]

Atty. Cabarroguis also alleged that in retaliation against him for being the private prosecutor in the *estafa* case against Atty. Basa's sister, Erlinda, Atty. Basa filed numerous administrative, civil, and criminal cases against him which were all malicious and unfounded. Atty. Cabarroguis enumerated these cases, to wit:

1. CBD-ADM Case No. 6629 *Danilo Basa v. Atty. Honesto A. Cabarroguis* for Falsification
2. CBD-ADM Case No. 07-2110 *Raul Molabola and Evelyn Molabola v. Atty. Honesto A. Cabarroguis* for Falsification and Perjury

in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

[8] *Rollo,* Vol. I, pp. 9-11; p. 64.

[9] *Id.* at 11-12.

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

3. CBD-ADM Case No. 08-2223 *Atty. Danilo A. Basa v. Atty. Honesto A. Cabarroguis* for Falsification and Perjury
4. I.S. No. 03-E-3753 *Danilo A. Basa v. Atty. Honesto A. Cabarroguis* for Falsification
5. I.S. No. 2006-D-2748 *Danilo A. Basa v. Atty. Honesto A. Cabarroguis* for Falsification
6. I.S. No. 2006-E-3378 *Atty. Danilo A. Basa v. Atty. H. A. Cabarroguis and Godofredo Cirineo* for Falsification
7. I.S. No. 08-E-4146 *Atty. Danilo A. Basa v. Atty. H. A. Cabarroguis* for Falsification (2 counts)
8. I.S. No. 2008-G-5045 *Erlinda B. Cirineo v. Atty. Honesto A. Cabarroguis and Atty. Dante C. Sandiego* for Falsification
9. I.S. No. 2008-[G]-5045-A *Danilo A. Basa v. Atty. H. A. Cabarroguis* for Falsification
10. I.S. No. 07-F-4093 *Raul Molabola, et al. v. H. A. Cabarroguis* for Falsification and Perjury (2 counts)
11. I.S. No. 07-F-4094 *Raul Molabola, et al. v. Honesto A. Cabarroguis* for Falsification and Perjury
12. I.S. No. 07-F-4095 Raul *Molabola, et al. v. Honesto A. Cabarroguis* for Falsification and Perjury
13. I.S. No. 07-F-4096 Raul *Molabola, et al. v. Honesto A. Cabarroguis* for Falsification and Perjury
14. I.S. No. 07-F-4097 *Raul Molabola, et al. v. Honesto A. Cabarroguis* for Falsification and Perjury
15. I.S. No. 07-[F]-4098 *Raul Molabola, et al. v. Honesto A. Cabarroguis* for Falsification and Perjury
16. I.S. No. 07-F-4099 *Raul Molabola, et al. v. Honesto A. Cabarroguis* for Falsification and Perjury
17. I.S. No. 07-G-4682 *Raul Molabola, et al. v. Honesto A. Cabarroguis* for Falsification
18. A-RSPO XI No. 2004-004 *Atty. Danilo A. Basa v. Atty. H. A. Cabarroguis* for Falsification

19. A-RSPO XI No. 2006-062 *Danilo A. Basa v. Atty. H. A. Cabarroguis* for Falsification
20. A-[ORSPXI No. 2009-K-080 to 2009-K-081] *Erlinda Basa-Cirineo v. Atty. H. A. Cabarroguis and Atty. Dante C. Sandiego* for Falsification
21. A-[ORSP] XI No. 2008-G-025 to 2008-G-[031] *Raul Molabola, et al. v. Atty. H. A. Cabarroguis* for Falsification and Perjury
22. Criminal Case Nos. 134-394 to 400-C-2009 *People of the Philippines v. Atty. Honesto A. Cabarroguis* for Falsification and Perjury
23. Civil Case No. 35041 *Raul Molabola, et al. v. Atty. Honesto A. Cabarroguis* for damages and attorney's fees with preliminary attachment pending trial[11]

Atty. Cabarroguis also pointed out that in a complaint for malicious prosecution he filed against Atty. Basa, the latter offered in evidence different court records in several cases where Atty. Cabarroguis was counsel or party-litigant to prove that he was engaging in patently dishonest and deceitful conduct.[12] Atty. Cabarroguis prayed that the Court orders Atty. Basa to suppress or destroy this extensive database gathered about him in violation of the Writ of Habeas Data.[13]

In his Comment to the Complaint,[14] Atty. Basa attempted to set the record straight about the alleged numerous cases he filed against Atty. Cabarroguis. In CBD-ADM Case No. 6629, contrary to Atty. Cabarroguis' assertion that it was dismissed, the Integrated Bar of the Philippines-Board of Governors (IBP-BOG) found him guilty of ethical misconduct and admonished him for preparing the affidavit-complaint for *estafa* against Erlinda, signing it and swearing it before an administering officer despite having no personal knowledge of the facts recited therein.

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[11] *Id.* at 14-20.

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

[13] *Id.* at 36.

[14] *Id.* at 215-232.

Atty. Cabarroguis was also being untrue when he said in his complaint that CBD-ADM Case No. 07-2110 was awaiting the outcome of the eight criminal complaints filed with the City Prosecution Office of Davao City against him. Atty. Basa countered that there was nothing in the record of CBD-ADM Case No. 07-2110 which showed this status. On the contrary, before the filing of the administrative complaint, the City Prosecution Office of Davao City had already filed against Atty. Cabarroguis two Informations for Perjury and five Informations for Falsification in the Municipal Trial Courts in Cities in Davao City.

Atty. Basa also cleared up that CBD-ADM Case No. 08-2223 was already decided by the IBP-BOG, finding Atty. Cabarroguis guilty of violating Canon 10 of the CPR and meting him with the penalty of suspension from the practice of law for one (1) year.

Atty. Basa clarified further that it was not he who personally filed or instituted several of the criminal cases adverted to by Atty. Cabarroguis, but his clients. Specifically, I.S. Nos. 07-F-4093, 07-F-4094, 07-F-4095, 07-F-4096, 07-F-4097, 07-F-4098, 07-F-4099 and 07-G-4682 were supported with affidavit-complaints of the Molabolas, while I.S. Nos. 2008-G-5045 and 2008-G-5045-A were supported with the affidavit-complaints of Erlinda.

Moreover, A-RSPO XI No. 2004-004, A-RSPO XI No. 2006-062, A-RSPO XI, A-ORSP XI No. 2008-G-025 to 2008-G-031 were appealed cases of the Resolutions of the City Prosecution Office before the Regional State Prosecutor, specifically, of I.S. Nos. 03-E-3753, 2006-D-2748, 2008-G- 5045, 2008-G-5045-A, 07-F-4093-99, and 07-G-4682.

Thus, according to Atty. Basa, Atty. Cabarroguis was then facing in court two counts of Perjury and five counts of Falsification, together with administrative sanctions recommended by the IBP-BOG in three separate administrative

cases.[15] He stressed that the instant complaint against him was only filed by Atty. Cabarroguis after all the other cases against the latter were filed. The truth then was that Atty. Cabarroguis was the one motivated by vengeance in filing the instant disbarment suit against Atty. Basa.

Lastly, as to the voluminous evidence he offered in the complaint for malicious prosecution that Atty. Cabarroguis filed against him, Atty. Basa maintained it was done in the exercise of his right to defend himself and to disprove the several self-laudatory allegations contained in the complaint.

After the Court referred the Complaint and the Comment to the IBP for investigation, report and recommendation, Atty. Cabarroguis filed three more supplemental complaints. In his first Supplemental Complaint and Reply to the Comment to the Complaint,[16] Atty. Cabarroguis alleged that Atty. Basa filed another retaliatory complaint for falsification against him, which was dismissed by the Office of the City Prosecutor of Davao City for lack of probable cause. He also insisted how obvious it was that all the other complaints against him were commenced after he filed an *estafa* case against Erlinda.

In his Second Supplemental Complaint,[17] Atty. Cabarroguis narrated the various motions and pleadings filed by the parties in said falsification case adverted to in the first supplemental complaint to underscore the further retaliatory acts of Atty. Basa against him.

In his Third Supplemental Complaint,[18] Atty. Cabarroguis alleged that Atty. Basa filed two new retaliatory complaints for disbarment against him in the form of: (1) a manifestation and motion (in the malicious prosecution case filed by Atty.

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[15] *Id.* at 224. One-year suspension in CBD-ADM Case No. 07-2110; one-year suspension in CBD-ADM Case No. 08-2223; and admonition in CBD-ADM Case No. 6629.

[16] *Id.* at 334-345.

[17] *Id.* at 469-473.

[18] *Rollo*, Vol. II, pp. 1290-1295.

Cabarroguis against Atty. Basa) to take judicial notice of a complaint Atty. Cabarroguis filed against a certain Dario Tangcay for collection of unpaid attorney's fees; and (2) a supplement to the motion for reconsideration Atty. Basa filed in CBD-ADM Case No. 08-2223.

The IBP Proceedings

After the mandatory conference and the submission of the parties' position papers, the Investigating Commissioner issued a Report and Recommendation[19] to suspend Atty. Basa from the practice of law for one (1) year. The Investigating Commissioner found Atty. Basa to have clearly breached his ethical duty towards his fellow lawyer under Canon 8 of the CPR when he showed extraordinary zeal in representing his sister in the *estafa* case filed by Atty. Cabarroguis' client, Godofredo. He employed harassing and annoying tactics while the case was being tried, evidenced by the several cases Atty. Basa filed against Atty. Cabarroguis. These cases had been clearly triggered by the *estafa* case against Erlinda as all had been instituted after the filing of the *estafa* case.

The Investigating Commissioner also held that Atty. Basa had shown abuse of processes when he filed the multiple suits against Atty. Cabarroguis and when he moved for the inhibition of the judges handling the *estafa* case. He clearly prostituted the judicial processes manifestly for delay and did not advance the cause of law or his client by commencing such unmeritorious cases.

Also, by poking fun at the name of Atty. Cabarroguis in his letter and his omnibus motion, Atty. Basa denied the esteem his fellow lawyer deserved and instead, denigrated and belittled him.

The IBP-BOG, in Resolution No. XXI-2014-484[20] dated August 10, 2014, resolved to adopt the findings of fact and recommendation of the Investigating Commissioner.

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[19] *Id.* at 1333-1337. Rendered by Commissioner Oliver A. Cachapero.

[20] *Id.* at 1331.

Both parties filed their respective motions for reconsideration. Atty. Basa argued that Atty. Cabarroguis was guilty of forum shopping, particularly insofar as CBD-ADM Case Nos. 6629, 07-2110, and 2223 were concerned.[21] Atty. Cabarroguis, on the other hand, argued that Atty. Basa's actions merited a disbarment and not just a suspension.[22]

On June 17, 2017, the IBP-BOG issued Resolution No. XXII-2017-1238[23] granting the Motion for Reconsideration of Atty. Basa, and reversing its earlier decision on the ground that there is no showing that he acted with bad faith in filing the cases against Atty. Cabarroguis.

In the Extended Resolution[24] dated June 18, 2018 penned by Deputy Director Franklin B. Calpito for the Board, the IBP-BOG found that although several cases against Atty. Cabarroguis were dismissed, some were subsequently found to be substantiated. For instance, in CBD-ADM Case Nos. 07-2110 and 08-2223, Atty. Cabarroguis was meted with a penalty of one-year suspension in each case for violating Canon 10, Rule 10.01 of the CPR. In CBD-ADM Case No. 6629, Atty. Cabarroguis was also admonished.

The IBP-BOG held further that there is no standard definition of bad faith and its presence cannot be automatically inferred from the sheer number of cases filed by Atty. Basa against Atty. Cabarroguis. The Board noted that in falsification cases, one act of falsification is tantamount to one cause of action and as such, Atty. Basa can have as many causes of action as he may have against Atty. Cabarroguis.

The IBP-BOG likewise pointed out that there were only six cases which Atty. Basa filed in his name against Atty. Cabarroguis. In all the other cases he filed as counsel, it cannot

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[21] *Id.* at 1346-1370.

[22] *Rollo*, Vol. III, pp. 1597-1611.

[23] *Id.* at 1775.

[24] *Id.* at 1867-1875.

be immediately inferred that Atty. Basa instigated the parties in filing them.

Atty. Cabarroguis thereafter filed the instant petition for review before the Court where he maintained that Atty. Basa's act of filing and/or instigating the filing of multiple cases against him clearly constitutes bad faith.

The Issue Before the Court

The sole issue here is whether the IBP correctly dismissed the complaint against Atty. Basa.

Ruling of the Court

The Court reverses the findings of the IBP-BOG in Resolution No. XXII-2017-1238 and reinstates the previous Resolution No. XXI-2014-484 dated August 10, 2014. The Court finds that Atty. Basa violated the Lawyer's Oath, Canon 1, Rule 1.03,[25] Canon 8, Rule 8.01,[26] Canon 12, Rules 12.02 and 12.04,[27] and

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[25] CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

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Rule 1.03 — A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

[26] CANON 8 — A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

[27] CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

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Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause.

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

Canon 19, Rule 19.01[28] of the CPR when he: (1) filed baseless criminal suits against Atty. Cabarroguis; (2) poked fun at Atty. Cabarroguis by deliberately misspelling his name in an omnibus motion; and (3) caused delay in the *estafa* case after moving for the inhibition of the presiding judge after eight years in trial. The Court agrees with the original findings of the IBP that Atty. Basa employed harassing tactics against Atty. Cabarroguis after he, on behalf of his client, filed an *estafa* case against Atty. Basa's sister in 2002.

Firstly, the Court does not wholly agree with the more recent findings of the IBP in its Resolution No. XXII-2017-1238 that Atty. Basa did not act with malice or bad faith in filing all of the 17 complaints against Atty. Cabarroguis. True, the administrative cases were proved to be substantiated as Atty. Cabarroguis was eventually disciplined in all three. Also, the eight counts for falsification and perjury initiated by Atty. Basa's clients, the Molabolas, were later filed in court. However, there are criminal complaints relative to, or were offshoots of, the *estafa* case filed against Erlinda which were dismissed for lack of merit, and which the Court believes were frivolous and had no other apparent purpose to serve but to vex Atty. Cabarroguis.

In **I.S. No. 03-E-3753** filed by Atty. Basa against Atty. Cabarroguis for falsification under Article 172, paragraph 1 or 2 of the Revised Penal Code (RPC), the cause of action was founded on the complaint-affidavit executed by Godofredo through his attorney-in-fact, Atty. Cabarroguis, in the *estafa* case filed against Erlinda. Atty. Cabarroguis allegedly averred facts therein not of his own personal knowledge and had subscribed and sworn to the truthfulness of these allegations before an authorized officer. I.S. No. 03-E-3753 was dismissed because the prosecutor held that one of the elements of the

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[28] CANON 19 - A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

Rule 19.01 - A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

crime, which is "that the offender knew that a document was falsified by another person" was not present. The prosecutor went on to say that there can be no false narration of facts when the allegations averred in the subject complaint-affidavit was attested to as being hearsay, *i.e.* there was an admission that the facts narrated are not within the personal knowledge of Atty. Cabarroguis. At the most, complainant can only argue that said allegations cannot be used as evidence for being hearsay.[29]

The dismissal of I.S. No. 03-E-3753 prompted Atty. Cabarroguis to file a complaint for malicious prosecution with damages against Atty. Basa. In his complaint-affidavit, Atty. Cabarroguis stated that he enjoys the honor and distinction of being President Emeritus of the Davao Jaycees, Inc. (JCI). This allegation, in turn, impelled Atty. Basa to file another complaint for falsification which was docketed as **I.S. No. 08-E-4146**. In his complaint, Atty. Basa alleged that JCI certified that it has not, at any time, bestowed the title or position of President Emeritus to any of its members. I.S. No. 08-E-4146 was, however, dismissed on the ground of the existence of a prejudicial question in view of the pendency of the civil case for malicious prosecution with damages.[30] The essence of the resolution for dismissal was that the question as to whether the claim of Atty. Cabarroguis is true can best be threshed out in the very civil case for malicious prosecution and damages. The resolution of the issue would henceforth determine whether a criminal case for falsification could indeed proceed.

The frivolity in filing I.S. No. 03-E-3753 and I.S. No. 08-E-4146 is readily apparent. Representation by the principal of an attorney-in-fact is sanctioned by law. This representation to act on behalf of the principal includes the filing of complaints. Thus, there is nothing irregular for an agent duly armed with a special power of attorney to aver facts in an affidavit-complaint and to subscribe and swear to the truthfulness of the same before an authorized officer on behalf of a principal.

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[29] *Rollo*, Vol. I, p. 77.

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

Insofar as I.S. No. 08-E-4146 was concerned, the dismissal of the complaint was likewise called for. In the first place, the alleged falsity does not involve a fact that is material or relevant to the crime of malicious prosecution, which only has as its elements the presence of malice and absence of probable cause. More significantly, in the crime of falsification of making an untruthful statement in a narration of facts, one of the elements is that there is a legal obligation to disclose the truth of the facts narrated by the respondent. Legal obligation means that there is a law requiring the disclosure of the truth of the facts narrated.[31] While arguably, Atty. Cabarroguis was morally obliged not to falsely claim that he was accorded the status of a President Emeritus by the JCI, there is, nevertheless, no law which requires him to disclose the truth of the matter.

Moreover, Atty. Basa initiated four more criminal complaints against Atty. Cabarroguis for the same cause of action, in violation of Canon 12, Rule 12.02, and Canon 19, Rule 19.01 of the CPR, to wit:

> Canon 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.
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> Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause.
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> Canon 19 — A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.
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> Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

The four criminal complaints were all in relation to the same affidavit-complaint Atty. Cabarroguis filed as the attorney-in-

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[31] *Galeos v. People*, 657 Phil. 500, 524 (2011).

fact of Godofredo in the *estafa* case against Erlinda. In **I.S. No. 2006-D-2748** for falsification, Atty. Basa accused Atty. Cabarroguis of making a false allegation in paragraph 1 of said affidavit-complaint when he said that Godofredo inherited his parents' part in the parcel of land covered by Transfer Certificate of Title No. T-14402, when in truth, Godofredo did not. The prosecutor dismissed I.S. No. 2006-D-2748 on the grounds that there can be no perjury because the allegation of inheritance in the subject complaint-affidavit was not material to the charge of *estafa*, and that the element of willful and deliberate assertion of a falsehood was not sufficiently established. The prosecutor noted that Atty. Cabarroguis only acted as an attorney-in-fact when he signed the subject complaint-affidavit and, hence, prepared and signed the same in accordance with the facts narrated to him by Godofredo.[32]

In another complaint docketed as **I.S. No. 2006-E-3378**, Atty. Basa charged Atty. Cabarroguis and Godofredo with falsification of public document under Article 172(1) of the RPC. The complaint shared the same cause of action with I.S. No. 2006-D-2748, in that Atty. Cabarroguis purportedly made a false allegation by stating in the same affidavit-complaint in the *estafa* case against Erlinda that Godofredo acquired the subject property by succession or inheritance, when in truth, he purchased it from his parents. I.S. No. 2006-E-3378 was likewise dismissed for lack of probable cause on the same grounds that I.S. No. 2006-D-2748 was dismissed.

Two years after, the same cause of action in I.S. No. 2006-D-2748 and I.S. No. 2006-E-3378 was again alleged in two more complaints for falsification under Article 172 of the RPC, that is, the allegation in the affidavit-complaint of Godofredo against Erlinda in the *estafa* case that he and his brother inherited the subject property from their parents was false. The truth, rather, according to Erlinda, was that Godofredo and his brother purchased the subject property from their parents. This time, the complaints, which were docketed as **I.S. No. 2008-G-5045** and **I.S. No. 2008-G-5045-A**, were filed by Erlinda against

[32] *Rollo*, Vol. I, p. 79.

Atty. Cabarroguis and Atty. Dante C. Sandiego. There was also the additional allegation that Godofredo, although an American citizen, made it appear in his affidavit-complaint that he was qualified to acquire and own the subject land because he and his brother inherited it from their parents. I.S. No. 2008-G-5045 and I.S. No. 2008-G-5045-A were also dismissed for lack of probable cause because the alleged false statement of fact was, on the contrary, a mere conclusion of law and that Godofredo was a former Filipino citizen who later acquired an American citizenship and was not, therefore, absolutely disqualified from acquiring lands in the Philippines.

The foregoing shows how Atty. Basa recklessly applied the same cause of action in four different complaints that were all dismissed for lack of probable cause. He cannot validly argue that it was not he who initiated I.S. No. 2008-G-5045 and I.S. No. 2008-G-5045-A but his client, Erlinda. He cannot deny the fact that these complaints were filed two years after similar complaints, which he personally filed himself, were already dismissed for lack of probable cause. It is inexcusable for Atty. Basa to not be aware of his duty under his Lawyer's Oath not to "wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same." This duty has also been expressly provided for in Rule 1.03, Canon 1 of the CPR, to wit:

> Rule 1.03 - A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

Hence, inasmuch as lawyers must guard themselves against their own impulses of initiating unfounded suits,[33] they are equally bound to advise a client, ordinarily a layman on the intricacies and vagaries of the law, on the merit or lack of merit of his or her case. If the lawyer finds that his or her client's cause is defenseless, then it is his or her bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible.[34] Lawyers must resist the whims and caprices of their clients and to temper their propensities to litigate.[35]

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[33] See *Judge Madrid v. Atty. Dealca*, 742 Phil. 514, 525 (2014).

[34] *Spouses Aguilar v. Manila Banking Corp.*, 533 Phil. 645, 669 (2006).

[35] See *Judge Madrid v. Atty. Dealca, supra*.

Atty. Basa, by all means, is given the liberty to defend his client's cause with utmost zeal. This obligation, however, is not without reasonable limitations. The filing of frivolous suits against his opposing counsel manifests, at the very least, his gross indiscretion as a colleague in the legal profession and his malicious desire to vex Atty. Cabarroguis. Atty. Basa's act ultimately exhibits his intent to paralyze Atty. Cabarroguis from exerting his utmost effort in protecting his client's interest.[36] Verily, the rendition of improper service by lawyers which does not meet the strictest principles of moral law invites stern and just condemnation from the Court because by doing so, they fail to advance the honor of their profession and the best interests of their clients.[37]

In the same vein, the Court cannot turn a blind eye to the crafty way with which Atty. Basa disrespected Atty. Cabarroguis *via* an Omnibus Motion[38] dated June 22, 2007. In this omnibus motion filed by Atty. Basa on behalf of his clients, the Molabolas, in a special proceeding case where Atty. Cabarroguis was the petitioner, Atty. Basa misspelled the first name of Atty. Cabarroguis, Honesto, as "HONESTo." The Court notes that this was not the first time that Atty. Basa misspelled the first name of Atty. Cabarroguis. In a previous demand letter[39] dated May 31, 2007 drafted by Atty. Basa and addressed to Atty. Cabarroguis, the latter's name had also been misspelled as "Honest." While the mistake in the demand letter may be dismissed as unintentional, the Court cannot arrive at the same conclusion with regard to the omnibus motion. By spelling the first six letters of Atty. Cabarroguis's first name in capital letters and leaving the last letter in lowercase, the impression given to the reader is that the author is attempting to illustrate an

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[36] See *Alpajora v. Calayan*, A.C. No. 8208, January 10, 2018, 850 SCRA 99, 114.

[37] See *Atty. Reyes v. Atty. Chiong, Jr.*, 453 Phil. 99, 107 (2003).

[38] *Rollo*, Vol. I, pp. 46-61.

[39] *Id*. at 45.

irony at the expense of Atty. Cabarroguis. The misspelling was far from being a mere inadvertence as it had consistently appeared in all 14 pages of the omnibus motion. Atty. Basa, as a lawyer, ought to know that his action becomes all the more malicious given that the omnibus motion was not a mere private communication but formed part of public record when he filed it in court.[40]

In a long line of cases, the Court has disciplined lawyers who resorted to clearly derogatory, offensive, and virulent language against their opposing counsels, in violation of Canon 8, Rule 8.01 of the CPR, *viz.*:

CANON 8 - A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

While it may be argued that the omnibus motion did not use language that can easily be characterized as such, the Court finds Atty. Basa's method underhanded, a subtle way of name-calling, and was improperly offensive to Atty. Cabarroguis just the same.

Inasmuch as the Court has exhorted lawyers not to be too onion-skinned and should be tolerant of criticisms (especially those which are fair or mild) against them as litigation is inherently a hostile endeavor between adverse or contending parties,[41] this has been weighed against an oft-repeated similar exhortation of the Court to treat their opposing counsels with courtesy, dignity and civility.[42] To the mind of the Court, the act of Atty. Basa in poking fun at the name of Atty. Cabarroguis

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[40] See *Belen v. People*, 805 Phil. 628, 645 (2017).

[41] *Tabuzo v. Atty. Gomos*, A.C. No. 12005, July 23, 2018. (Unsigned Resolution)

[42] *Atty. Reyes v. Atty. Chiong, Jr.*, *supra* note 37, at 106.

has traversed these bounds and exhibited a conduct unbecoming of an officer of the court.

Finally, the Court also finds merit in the claim of Atty. Cabarroguis that Atty. Basa has failed to measure up to Canon 12, Rule 12.04 of the CPR when, apart from the baseless criminal complaints mentioned earlier, Atty. Basa also caused the filing of a motion for inhibition against the presiding judge in the *estafa* case against Erlinda. While the Court will not presume to evaluate the soundness of Judge Fuentes' discretion to inhibit from the case, the Court finds it imperative to consider the unfortunate timing of the filing of the motion, which was after the trial of the case had taken eight years to conclude, as well as its bearing in light of the totality of the other infractions of Atty. Basa which meant to vex and harass Atty. Cabarroguis. The Court cannot likewise fail to observe how the inhibition of Judge Fuentes led to five more inhibitions of the other judges to whom the case was re-raffled, which thus ultimately presented the problem of unavailability of a judge who would try and hear the case. Needless to say, this turn of events caused untold delay in the resolution of the case to the prejudice of Atty. Cabarroguis' client.

In sum, the Court agrees with the previous Resolution No. XXI-2014-484[43] of the IBP finding Atty. Basa guilty of violating his Lawyer's Oath and multiple Canons of the CPR. In previous cases, the penalties handed down by the Court against lawyers who violated Canon 8 of the CPR ranged from admonition to suspension for periods ranging from one (1) month to three (3) months.[44] In *Atty. Herminio Harry L. Roque, Jr. v. Atty. Rizal P. Balbin*,[45] following precedents,[46] the Court suspended

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[43] *Rollo*, Vol. II, p. 1331.

[44] *Arlene O. Bautista v. Atty. Zenaida M. Ferrer*, A.C. No. 9057 (Formerly CBD Case No. 12-3413), July 3, 2019; *Washington v. Dicen*, A.C. No. 12137, July 9, 2018, 871 SCRA 140.

[45] A.C. No. 7088, December 4, 2018.

[46] *Vaflor-Fabroa v. Paguinto*, 629 Phil. 230 (2010); *Atty. Reyes v. Atty. Chiong, Jr.*, *supra* note 37, at 104.

respondent therein from the practice of law for a period of two (2) years for violating various Canons of the CPR, including Canon 8, Canon 12, Rule 12.03, Rule 12.04, Canon 19, and Rule 19.01 of the CPR. Similarly in *In Re*: *G.R. No. 157659* "*Eligio P. Mallari v. Government Service Insurance System and the Provincial Sheriff of Pampanga*,"[47] the Court suspended respondent therein from the practice of law for two (2) years for violating the Lawyer's Oath and Canons 10 and 12, Rules 10.03, 12.02, and 12.04 of the CPR. As applied to the facts of this case, the Comt deems it best to modify and temper the recommended penalty of suspension from the practice of law from one (1) year to six (6) months. The Court also takes into consideration that this is the first administrative case against Atty. Basa in his more than three decades in the legal profession.[48]

WHEREFORE, respondent Atty. Danilo A. Basa is hereby found **GUILTY** of violating the Lawyer's Oath, Canon 1, Rule 1.03, Canon 8, Rule 8.01, Canon 12, Rule 12.02 and Rule 12.04, and Canon 19, Rule 19.01 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of six (6) months effective upon receipt of a copy of this Decision. He is warned that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Danilo A. Basa as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator, for circulation to all courts in the country for their information and guidance.

SO ORDERED.

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

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[47] A.C. No. 11111, January 10, 2018, 850 SCRA 175.

[48] See *Carmelita Canete v. Atty. Artemio Puti*, A.C. No. 10949 (Formerly CBD Case No. 13-3915), August 14, 2019.

SECOND DIVISION

[A.C. No. 12071. March 11, 2020]

JONATHAN C. PARUNGAO, *complainant, vs.* **ATTY. DEXTER B. LACUANAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER'S OATH AND CODE OF PROFESSIONAL RESPONSIBILITY; PROHIBITION AGAINST REPRESENTING CONFLICTING INTERESTS; A LAWYER'S DUTY TO PROTECT THE INTEREST AND CONFIDENCE OF HIS CLIENT, TOGETHER WITH THE COROLLARY OBLIGATION NOT TO REPRESENT INTEREST IN CONFLICT OR INCONSISTENT WITH THE SAME, EXTENDS EVEN BEYOND THE END OF HIS PROFESSIONAL ENGAGEMENT WITH SAID CLIENT.— The prohibition against a lawyer representing conflicting interests is rooted in his duty to protect the interest and confidence of his clients. A member of the bar vows in the Lawyer's Oath to conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his client. To ensure the fidelity of a lawyer to his clients, Canon 15.03 of the CPR prescribes that "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts[;]" while Canon 17 of the same Code mandates that "[a] lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him." Section 20(e) of Rule 138 of the Rules of Court likewise enjoins a lawyer "[t]o maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client x x x." A lawyer's duty to protect the interest and confidence of his client, together with the corollary obligation not to represent interest in conflict or inconsistent with the same, extends even beyond the end of his professional engagement with said client. x x x In addition, "[t]he protection given to the client is perpetual and does not cease with the termination of the litigation, nor is it affected by the party's ceasing to employ the attorney and retaining another, or by any other change of relation between them. It even survives the death of the client."

2. ID.; ID.; ID.; ID.; CONFLICTING INTERESTS WHEN A FORMER CLIENT IS INVOLVED; WHEN PRESENT.— [F]or there to be conflicting interests when a former client is involved, the following circumstances must concur: (a) the lawyer is called upon in his present engagement to make use against a former client confidential information which was acquired through their connection or previous employment, and (b) the present engagement involves transactions that occurred during the lawyer's employment with the former client and matters that the lawyer previously handled for the said client.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY TO PRESERVE THE CONFIDENCES AND SECRETS OF CLIENTS; THE MERE RELATION OF ATTORNEY AND CLIENT DOES NOT RAISE A PRESUMPTION OF CONFIDENTIALITY.— Under Canon 21 of the CPR, "[a] lawyer shall preserve **the confidences and secrets** of his client even after the attorney-client relation is terminated." It is settled that the mere relation of attorney and client does not raise a presumption of confidentiality. Proof must be presented that the client intended the communication to be confidential. In the case at bar, Jonathan failed to establish that Atty. Lacuanan has confidential information which the latter acquired through their connection or previous employment and which can be used against him in the pending civil and criminal proceedings instituted by Mary Grace. Jonathan generally avers that in the course of their professional and personal relations, he had shared with Atty. Lacuanan confidential information as regards his marital and family life as well as his businesses and properties. However, these are merely his bare allegations, unsubstantiated by any piece of evidence, and disputed by Atty. Lacuanan.

APPEARANCES OF COUNSEL

Livian May Sanchez-Llorito for complainant.
Valdecantos & Valencia Law Office for respondent.

D E C I S I O N

HERNANDO, *J.*:

The present administrative case arose from a Disbarment Complaint initiated by Jonathan C. Parungao (Jonathan) against respondent Atty. Dexter B. Lacuanan (Lacuanan) before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), docketed as CBD Case No. 13-4044, for representing conflicting interests.

In his Complaint, Jonathan alleged that he was introduced by his wife, Mary Grace, to Atty. Lacuanan in 2007. Since then, Atty. Lacuanan had served as Jonathan's counsel in several transactions which involved either Jonathan alone or both Jonathan and Mary Grace (Spouses Parungao). In 2008, Jonathan, who was then still engaged in the buy and sell business, consulted Atty. Lacuanan regarding the collection of payment from a client. Thereafter, he retained Atty. Lacuanan's services and paid his professional fees amounting to ₱3,000.00 for consultation or conference. In 2009, Jonathan had a pending application for dealership with Chevron, and Atty. Lacuanan submitted a proposal for a retainer agreement for the said business with a retainer fee of ₱5,000.00, but such agreement did not push through. In March 2011, the Spouses Parungao availed of Atty. Lacuanan's services for the purchase of a lot from the Metropolitan Banking and Trust Company (Metrobank). The Deed of Absolute Sale for the said lot was executed on May 13, 2011 between Metrobank as vendor and the Spouses Parungao as vendees. Atty. Lacuanan also had to verify with the Regional Trial Court (RTC) of Quezon City, Branch 96 the existence of a purported writ of possession for the same lot. For this engagement, Atty. Lacuanan was paid ₱2,000.00 per appearance. In addition, Atty. Lacuanan, using his letterhead, drafted and signed a demand letter dated November 2, 2011 on behalf of his client, Jonathan, addressed to one Remedios S. Espela (Espela), requiring Espela to pay the ₱35,000.00 estimated cost of the necessary repairs on the defective Toyota Fortuner which Espela sold to Jonathan or otherwise, to give back the entire

amount of consideration paid by Jonathan for the said vehicle upon return of its possession to her.

According to Jonathan, more than just a professional relationship, a friendship also developed between him and Atty. Lacuanan. Atty. Lacuanan dined several times with him and his wife in Greenhills, San Juan. Atty. Lacuanan even visited Jonathan's car showroom in Dampa, Libis. Jonathan had confided with Atty. Lacuanan details regarding his personal life, family, and even about his marriage.

Jonathan further narrated that by February 2013, his marriage with Mary Grace was encountering serious problems. Jonathan was suddenly served with a subpoena from the Office of the City Prosecutor of Quezon City requiring him to attend the preliminary investigation hearings scheduled on May 22 and June 6, 2013 of the Criminal Complaint for Concubinage, Physical Injury, and Threat, in relation to Republic Act (R.A.) No. 9262,[1] filed against him by Mary Grace. Jonathan was surprised that Atty. Lacuanan attended the said hearings before the Assistant City Prosecutor as counsel for Mary Grace. Subsequently, in September 2013, Jonathan received Summons dated August 30, 2013 with the attached Petition for Declaration of Nullity of Marriage filed by Mary Grace, through her counsel, Atty. Lacuanan, and docketed as R-QZN-13-02668 before the RTC of Quezon City, Branch 107.

Based on the foregoing allegations, Jonathan prayed for the disbarment of Atty. Lacuanan for representing conflicting interests in violation of Canons 15.03 and 17 of the Code of Professional Responsibility (CPR), the Lawyer's Oath, and Section 20 of Rule 138 of the Rules of Court. He maintained that there was no severance of the attorney-client relationship between him and Atty. Lacuanan and it had continued from the time they met in 2007 until the filing of the criminal complaint against Jonathan before the Quezon City Prosecutor's Office. Jonathan argued in the alternative that even if there was already

[1] Otherwise known as "Anti-Violence Against Women and Their Children Act of 2004."

a termination of the attorney-client relationship between him and Atty. Lacuanan, the latter still committed the violations he was being charged within the Disbarment Complaint as the lawyer's duty to protect his client's confidences extended beyond the expiration of the professional employment. Jonathan asserted that during the time they got together, whether for professional consultations or personal visits, he had confided to Atty. Lacuanan personal matters which the latter could use against him in Mary Grace's criminal complaint and civil case. He had not given Atty. Lacuanan any written consent to represent Mary Grace as counsel in the criminal and civil proceedings against him.

Among the documentary evidence Jonathan submitted in support of his Disbarment Complaint were a copy of the Deed of Absolute Sale dated May 13, 2011 between Metrobank and the Spouse Parungao and the demand letter dated November 2, 2011 to Espela printed on Atty. Lacuanan's letterhead and signed by Atty. Lacuanan to prove that said lawyer had previously rendered legal services to Jonathan and his wife Mary Grace; and an Affidavit dated March 21, 2014 executed by Leonora C. Parungao, Jonathan's mother, to corroborate Jonathan's assertion that Atty. Lacuanan never asked for Jonathan's consent to represent Mary Grace as counsel in the criminal complaint and civil case when they all met at the Quezon City Prosecutor's Office.

Atty. Lacuanan, for his part, admitted that he had been friends with Mary Grace since 2006 and that Mary Grace introduced him to Jonathan in 2007. He denied, though, that he and Jonathan were close friends and that the latter confided or divulged to him anything about his personal life and marital affairs.

Atty. Lacuanan further contended that there was no standing attorney-client relationship between him and Jonathan. He only rendered intermittent professional services to the Spouses Parungao from 2008 to 2011, all relating to Jonathan's businesses. He pointed out that Jonathan himself could particularly identify and prove only a couple of such transactions, the last one being way back in 2011. Even then, they had only

met face-to-face around six times, since they communicated mostly through cellphone or through Mary Grace. He maintained that there was no conflict of interest under the purview of Rule 15.03 of the CPR because Jonathan was no longer his client at the time he agreed to be Mary Grace's counsel in the criminal and civil proceedings against Jonathan; and more importantly, he did not acquire any information, confidential or otherwise, which would be valuable or material in the pending legal proceedings between the Spouses Parungao. The information as regards Jonathan's standing, income, capacity to pay, assets and liabilities, and businesses — which Jonathan claimed to be valuable in the petition for declaration of nullity of marriage filed by Mary Grace — were not confidential as these were all known to Mary Grace as Jonathan's wife. In addition, Atty. Lacuanan argued that a lawyer is forbidden from representing a subsequent client only when the subject matter of the present controversy is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for a former client. The demand letter he prepared for Jonathan and the verification he made to check the legal intricacies of the sale of the lot from Metrobank to the Spouses Parungao are totally alien, unrelated, and immaterial to Mary Grace's criminal complaint and civil case against Jonathan.

In addition, Atty. Lacuanan avowed that he was not initially involved in Mary Grace's filing of the criminal complaint for concubinage, physical injury, and threat against Jonathan at the Quezon City Prosecutor's Office on April 19, 2013 since he was out of the country from March 29 to April 29, 2013. Mary Grace only secured his professional services thereafter. He also recounted that at one instance, he met Jonathan at the Quezon City Prosecutor's Office as regards Mary Grace's criminal complaint and he took the opportunity to fully disclose to Jonathan about his possible legal representation for Mary Grace in the said criminal proceedings as well as in the civil case for declaration of nullity of marriage which was then yet to be filed. Jonathan did not object and only requested that Atty. Lacuanan convince Mary Grace not to pursue the criminal complaint. It was only after making the full disclosure to Jonathan

that Atty. Lacuanan accepted the engagement with Mary Grace for the criminal and civil proceedings against Jonathan.

Atty. Lacuanan submitted Mary Grace's Affidavit dated January 9, 2014 to establish the circumstances of his professional engagements with her for the criminal complaint and civil case against Jonathan.

Report and Recommendation of the Integrated Bar of the Philippines

In his Report and Recommendation[2] dated May 19, 2014, Investigating Commissioner Honesto A. Villamor generally adopted Atty. Lacuanan's allegations and arguments and ruled that no conflict of interest existed in the present case. Thus, he recommended that Jonathan's charges against Atty. Lacuanan be dismissed.

However, the IBP Board of Governors passed Resolution No. XXI-2015-319[3] on April 19, 2015, which reads:

RESOLVED to REVERSE, as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", finding Respondent guilty of conflict of interest. Respondent being the counsel to spouses Jonathan and Mary Grace Parungao in certain criminal and civil cases and is thus proscribed from appearing as counsel for the wife, Mary Grace, or for the husband Complainant herein, as the case may be, in cases where both parties are contending protagonists. Hence, Atty. Dexter B. Lacuanan is hereby ***SUSPENDED from the practice of law for one (1) month****.*

In its Extended Resolution[4] dated August 11, 2016, the IBP Board of Governors held that Atty. Lacuanan was administratively liable on the basis of the following: (a) the

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[2] *Rollo*, pp. 140-144.

[3] *Id.* at 139.

[4] *Id.* at 145-152; penned by Atty. Leo B. Malagar, Assistant Director for Bar Discipline.

rule prohibiting the representation of conflicting interest covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used; (b) Atty. Lacuanan's acceptance of the engagement with Mary Grace invited suspicion of unfaithfulness and double dealing which led to the filing of the instant Disbarment Complaint; (c) Atty. Lacuanan's actions in representing Mary Grace in the civil and criminal cases filed against Jonathan, a former client, even if these cases were totally unrelated to Atty. Lacuanan's previous engagement with the Spouses Parungao, were improper and constituted serious misconduct; (d) The termination of the attorney-client relationship provides no justification for a lawyer to represent an interest adverse to or in conflict with a former client because the client's confidence reposed on his attorney could not be divested by the mere expediency of terminating the professional engagement; and (e) Atty. Lacuanan likewise violated the duty imposed upon him as an attorney under Section 20(e), Rule 138 of the Rules of Court to maintain inviolate the confidence and, at every peril to himself, to preserve the secrets of his client.

The IBP Board of Governors, in Resolution No. XXII-2017-1307[5] dated April 20, 2017, denied Atty. Lacuanan's Motion for Reconsideration.

Our Ruling

The Court resolves not to adopt the findings of the IBP Board of Governors. We hold that Atty. Lacuanan is not guilty of representing conflicting interests and absolves him of all administrative charges.

At the outset, the Court notes that based on evidence on record, when Atty. Lacuanan agreed in 2013 to represent Mary Grace as her legal counsel in the criminal and civil proceedings that the latter instituted against her husband and herein complainant, Jonathan, there was no longer an existing attorney-

[5] *Id.* at 162.

client relationship between Atty. Lacuanan and Jonathan. As Atty. Lacuanan avers, his engagements with Jonathan were intermittent and limited. In particular, these involved facilitating the sale of a lot by Metrobank to the Spouses Parungao and verifying the legal implications thereof; plus drafting a demand-letter to Espela concerning a defective vehicle sold to Jonathan, both of which took place in 2011. There was no standing retainer agreement between Atty. Lacuanan and Jonathan. The Court shall keep these factual considerations in mind in resolving Jonathan's Disbarment Complaint.

The prohibition against a lawyer representing conflicting interests is rooted in his duty to protect the interest and confidence of his clients.

A member of the bar vows in the Lawyer's Oath to conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his client. To ensure the fidelity of a lawyer to his clients, Canon 15.03 of the CPR prescribes that "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts[;]" while Canon 17 of the same Code mandates that "[a] lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him." Section 20(e) of Rule 138 of the Rules of Court likewise enjoins a lawyer "[t]o maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client x x x."

A lawyer's duty to protect the interest and confidence of his client, together with the corollary obligation not to represent interest in conflict or inconsistent with the same, extends even beyond the end of his professional engagement with said client.

The termination of attorney-client relation provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client. The client's confidence once reposed should not be divested by mere expiration of professional employment. Even after the severance of the relation, a lawyer should not do anything which will injuriously affect his former client in any matter in which

he previously represented him nor should he disclose or use any of the client's confidences acquired in the previous relation.[6]

In addition, "[t]he protection given to the client is perpetual and does not cease with the termination of the litigation, nor is it affected by the party's ceasing to employ the attorney and retaining another, or by any other change of relation between them. It even survives the death of the client."[7]

In *Quiambao v. Bamba*[8] (*Quiambao Case*), the Court had the occasion to lay down the tests by which it can be determined whether or not a conflict of interests exists:

> Rule 15.03, Canon 5 of the Code of Professional Responsibility provides: "A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts." This prohibition is founded on principles or public policy and good taste. ln the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. The nature of that relationship is, therefore, one of trust and confidence of the highest degree. It behooves lawyers not only to keep in violate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.
>
> In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose. Developments in jurisprudence have particularized various tests to determine whether a lawyer's conduct lies within this proscription. One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.
>
> Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's

[6] *Heirs of Falame v. Baguio*, 571 Phil. 428, 441-442 (2008).

[7] *Id.* at 442.

[8] 505 Phil. 126 (2005).

duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. **Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.**[9] (Emphasis supplied.)

Of the three tests identified above, the third test — with references to "new relation," "former client," and "previous employment" — specifically applies to a situation wherein the professional engagement with the former client was already terminated when the lawyer entered into a new engagement with the present client. It bears to stress that this test explicitly requires the lawyer's use against his former client of "confidential information acquired through their connection or previous employment."

The Court further categorically declared in *Palm v. Iledan, Jr.*[10] that "[a] lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client. The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated."

Hence, for there to be conflicting interests when a former client is involved, the following circumstances must concur: (a) the lawyer is called upon in his present engagement to make use against a former client confidential information which was acquired through their connection or previous employment, and (b) the present engagement involves transactions that occurred during the lawyer's employment with the former client and matters that the lawyer previously handled for the said client.

In contrast, when the opposing parties are both the lawyer's present clients, the prohibition on conflicting interests is

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

[10] 617 Phil. 212, 221 (2009).

necessarily stricter and its extent broader, as reflected in the following pronouncements of the Court in the *Quiambao Case:*

> The proscription against representation of conflicting interests applies to a situation where the **opposing parties are present clients** in the **same action or in an unrelated action.** It is of no moment that the lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other client, or that there would be no occasion to use the confidential information acquired from one to the disadvantage of the other as the two actions are wholly unrelated. **It is enough that the opposing parties in one case, one of whom would lose the suit, are present clients and the nature or conditions of the lawyer's respective retainers with each of them would affect the performance of the duty of undivided fidelity to both clients.**[11] (Emphasis supplied.)

Under Canon 2 1 of the CPR, "[a] lawyer shall preserve **the confidences and secrets** of his client even after the attorney-client relation is terminated." It is settled that the mere relation of attorney and client does not raise a presumption of confidentiality. Proof must be presented that the client intended the communication to be confidential.[12]

In the case at bar, Jonathan failed to establish that Atty. Lacuanan has confidential information which the latter acquired through their connection or previous employment and which can be used against him in the pending civil and criminal proceedings instituted by Mary Grace. Jonathan generally avers that in the course of their professional and personal relations, he had shared with Atty. Lacuanan confidential information as regards his marital and family life as well as his businesses and properties. However, these are merely his bare allegations, unsubstantiated by any piece of evidence, and disputed by Atty. Lacuanan.

Relevant herein is the ruling of the Court in *BSA Tower Condominium v. Reyes II*[13] placing the burden of proof on the

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[11] *Quiambao v. Bamba, supra* note 8 at 134-135.

[12] *Palm v. Iledan, Jr., supra* note 10 at 219-220.

[13] A.C. No. 11944, June 20, 2018.

complainant to prove with substantial evidence the allegations in his administrative complaint against a lawyer, thus:

> The Court has consistently held that **an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved**, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Burden of proof, on the other hand, is defined in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.
>
> In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, **the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof.** Likewise, charges based on mere suspicion and speculation cannot be given credence. x x x (Emphasis supplied.)

It was also completely unnecessary, and not to mention highly improbable, for Atty. Lacuanan to have acquired knowledge of all of Jonathan's assets and businesses in order to carry out or accomplish their previous engagements. To recall, Jonathan employed the services of Atty. Lacuanan for two specific matters, *i.e.*, to facilitate the sale of a lot from Metrobank to the Spouses Parungao and draft a demand-letter concerning a defective vehicle sold to Jonathan. These are apparently simple undertakings which Atty. Lacuanan could get done even with limited information.

Moreover, there is merit to Atty. Lacuanan's argument that the allegations of concubinage, grounds for both the criminal and civil proceedings against Jonathan, are based on public records, particularly, the final and executory Decision dated September 27, 2002 of the Court of Appeals in C.A. G.R. No. 70503, which recalled and set aside the Decision dated May 28, 1999 of the RTC of Valenzuela, Branch 75, declaring null and void Jonathan's previous marriage to one Annaliza Javellana-Parungao (Annaliza). The said Decision of the appellate court

effectively upheld the validity of Jonathan's previous marriage to Annaliza. Documents which are public records could not be considered confidential.[14]

Finally, Mary Grace has employed the services of Atty. Lacuanan as counsel for two legal proceedings against Jonathan, *viz.*, (a) the criminal complaint for concubinage, physical injury, and threat, in relation to R.A. No. 9262; and (b) the petition for declaration of nullity of marriage. The significant events which led to the institution of said proceedings only took place from late 2012 onwards. It is being alleged in both proceedings that Jonathan separated from Mary Grace and left the family dwelling in November 2012; that Mary Grace discovered in February 2013 that Jonathan was already cohabiting with another woman; and that when Mary Grace chanced upon Jonathan and his other woman on April 17, 2013, an altercation ensued between them, with Jonathan ultimately inflicting physical injury on Mary Grace. The pending criminal and civil proceedings against Jonathan in which Atty. Lacuanan now acts as counsel for Mary Grace evidently involve matters that are totally distinct and unrelated to Atty. Lacuanan's previous two engagements with Jonathan, which only pertained to the acquisition of a lot and a defective vehicle in 2011. Absent any showing that said lot and vehicle still formed part of the current marital assets of the Spouses Parungao, they have no material significance in the pending proceedings between the spouses.

WHEREFORE, the instant Disbarment Complaint of Jonathan C. Parungao against Atty. Dexter B. Lacuanan is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

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[14] *Palm v. Iledan, Jr., supra* note 10 at 219.

SPECIAL THIRD DIVISION

[G.R. No. 170677. March 11, 2020]

VSD REALTY & DEVELOPMENT CORPORATION, *petitioner, vs.* **UNIWIDE SALES, INC. and DOLORES BAELLO TEJADA,** *respondents*.

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; TRANSFER CERTIFICATE OF TITLE (TCT); TCT NO. T-285312 IS NULL AND VOID, AS THE SAME WAS DERIVED FROM TAMPERED TCT NO. 265777/T-1325 AND TRACED BACK TO PARTIES WHO ACQUIRED NO RIGHT OVER THE SUBJECT PROPERTY.— The Court finds that VSD's claim of title over the subject property cannot be sustained. Based on the Investigation Report of the Court of Appeals and the evidence on record, VSD's title was derived from Felisa Bonifacio's TCT No. 265777/T-1325, which was tampered with to reflect that it was derived from the legitimate and authentic OCT No. 994 registered on May 3, 1917. The certification of registration portion of the Caloocan issued TCT No. 265777/T-1325 states that the land was originally registered on **May 3, 1917** in the Registration Book of the Office of the Register of Deeds of **Rizal, Volume A-9-A, page 226** as OCT No. 994, while in the microfilm copy of TCT No. 265777/T-1325, the said land was originally registered on **April 19, 1912** in the Registration Book of the Office of the Register of Deeds of **Manila**, with **no volume and page numbers**. Indeed, the pinpointed discrepancies in the certification of registration entries in Felisa Bonifacio's title on file with the Registry of Deeds of Caloocan City and the microfilm thereof in the Micrographic and Computer Division of the LRA are evident proof of tampering. x x x. [P]etitioner VSD's TCT No. T-285312, which was derived from Felisa Bonifacio's tampered TCT No. 265777/T-1325 and traced back to Eleuteria Rivera Bonifacio and Maria de la Concepcion Vidal, who acquired no right over the subject property, is hereby held to be null and void. Respondent Baello is the legitimate owner of the subject property, which was registered by Baello in her name (and also Baello's predecessors-

in-interest in their respective names) decades earlier than VSD and Felisa Bonifacio.

2. ID.; ID.; ID.; ID.; TCT NO. [35788] 12754 IN THE NAME OF THE RESPONDENT CAN BE TRACED BACK TO THE LEGITIMATE AND AUTHENTIC OCT NO. 994, AND THE TITLES OF RESPONDENT AND HER PREDECESSORS-IN-INTEREST OVER THE SUBJECT PROPERTY WERE REGISTERED DECADES EARLIER THAN THE RESPECTIVE TITLES OF PETITIONER AND ITS PREDECESSOR-IN-INTEREST.— In regard to the title (TCT No. [35788] 12754) of respondent Baello, the Investigation Report and evidence on record show that Baello's title can be traced back to the legitimate and authentic OCT No. 994 registered on May 3, 1917, and her title was derived from her predecessors-in-interest (Jacoba Jacinto Galauran, Teodoro Jacinto, Juan Cruz Sanchez and Vedasto Galino) who had validly acquired title to the subject property. Vedasto Galino's TCT No. 8004, issued on July 24, 1923, was derived from the legitimate OCT No. 994 registered on May 3, 1917. The subject property was bequeathed to respondent Baello through a will by her adoptive mother Jacoba Jacinto Galauran whose right to the subject property is evidenced by TCT No. 10300 issued on February 16, 1926. Respondent Baello's TCT No. (35788) 12754 was registered on September 6, 1954, more or less forty (40) years before the registration of the same property in petitioner VSD's name on September 22, 1994 and in the name of Felisa Bonifacio on March 29, 1993. Clearly, the respective titles of respondent Baello and her predecessors-in-interest over the subject property were registered decades earlier than the respective titles of petitioner VSD and its predecessor-in-interest Felisa Bonifacio.

APPEARANCES OF COUNSEL

Villaraza & Angangco for petitioner.

Angara Abello Concepcion Regala & Cruz for respondent D.B. Tejada.

Fortun Narvasa & Salazar for respondent Uniwide Sales, Inc.

R E S O L U T I O N

PERALTA, ***C.J.*:**

This case involves a complaint for annulment of title and recovery of possession of property filed by petitioner VSD Realty & Development Corporation *(VSD)* against respondents Uniwide Sales, Inc. *(Uniwide)* and Dolores Baello Tejada *(Baello)*.VSD seeks the nullification of Transfer Certificate of Title *(TCT)* No. (35788) 12754 in the name of Baello, and recovery of possession of the property that is being occupied by Uniwide by virtue of a contract of lease with Baello.

In the Court's Resolution[1] dated July 31, 2013, the Court remanded this case to the Court of Appeals for further proceedings to determine which of the parties in this case derived valid title from the legitimate and authentic Original Certificate of Title *(OCT)* No. 994 registered on May 3, 1917 and which of the conflicting claims of title to the subject property should prevail. The *fallo* of the Resolution reads:

> Accordingly, the Court hereby remands this case to the Court of Appeals. The Court of Appeals is tasked to hear and receive evidence, conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within three (3) months from finality of this Resolution.
>
> In determining which of the conflicting claims of title should prevail, the Court of Appeals is directed to establish, based on the evidentiary evidence already on record and other evidence that will be presented in the proceedings before it, the following matter:
>
> (1) Whether the title of Felisa D. Bonifacio, TCT No. 265777/ T-1325, and the title of VSD, TCT No. T-285312, can be traced back to the legitimate and authentic OCT No. 994 dated May 3, 1917;
>
> (2) Whether Eleuteria Rivera Bonifacio, who allegedly assigned the subject property to Felisa D. Bonifacio, had the right and interest over the subject property, and whether Eleuteria

[1] CA *rollo*, pp. 3450-3462.

Rivera Bonifacio was entitled to assign her alleged rights and interests over the subject property, known as Lot 23-A-4-B-2-A-3-A, Psd 706, covered by OCT No. 994, to Felisa D. Bonifacio;

(3) Whether the copy of Felisa D. Bonifacio's TCT No. 265777/T-1325 was tampered with to fraudulently reflect that it was derived from the legitimate and authentic OCT No. 994 dated May 3, 1917;

(4) Whether respondent Baello's TCT No. (35788) 12754 can be traced back to the legitimate and authentic OCT No. 994 dated May 3, 1917;

(5) Whether the technical description of the title of Baello covers the subject property; and

(6) Such other matters necessary and proper in determining which of the conflicting claims of title should prevail.

WHEREFORE, this case is REMANDED to the Court of Appeals for further proceedings in accordance with the two preceding paragraphs of this Resolution.

SO ORDERED.[2]

Factual Antecedents

On June 8, 1995, petitioner VSD filed with the Regional Trial Court *(RTC)* of Caloocan City, Branch 126 *(trial court)* a Complaint[3] for annulment of title and recovery of possession of property against respondents Uniwide and Baello.[4]

VSD alleged that it is the registered owner of a parcel of land in Caloocan City, with an area of 2,835.3 square meters, more or less, and covered by TCT No. T-285312[5] of the Register of Deeds of Caloocan City. On September 7, 1994, VSD bought the said property from Felisa Bonifacio, whose title thereto,

[2] Investigation Report, pp. 1-2.

[3] CA *rollo*, pp. 3794-3800.

[4] Referred to as respondent Dolores Baello Tejada in the title of G.R. No. 170677.

[5] Annex "A"; records, Vol. I, p. 9.

TCT No. 265777, was registered by virtue of an Order[6] dated October 8, 1992 of Judge Geronimo S. Mangay, RTC of Caloocan City, Branch 125, authorizing the segregation of two lots, Lot 23-A-4-B-2-A-3-A (the subject property in this case) and Lot 23-A-4-B-2-A-3-B, Psd-706, in Land Registration Commission *(LRC)* Case No. C-3288, entitled *"In the Matter of Petition for Authority to Segregate an Area of 5,630.1 Sq. mtrs. from Lot 23-A-4-B-2-A-3-B, Psd 706 (Psu-2345) of Maysilo Estate and Issuance of Separate Certificates of Title in the name of Felisa D. Bonifacio."* VSD alleged that its right to the subject property, and the validity and correctness of the technical description and location of the property are duly established in LRC Case No. C-3288. VSD claimed that its title, TCT No. T-285312, is the correct, valid and legal document that covers the subject property since it is the result of land registration proceedings in accordance with the law.

Petitioner VSD alleged that the technical description of respondent Baello's title, TCT No. (35788) 12754, is so general that it is impossible to determine with certainty the exact location of the property covered by it and the technical description has no legal basis per the records of the Land Management Bureau and the Bureau of Lands. Moreover, Baello's title described the property to be Lot 3-A of subdivision plan Psd-706, but an examination of Psd-706 shows that there is no Lot 3-A in plan Psd-706. Thus, VSD contends that Baello has no legal basis to claim the subject property and Baello's title is spurious and illegal, and should be annulled. Hence, VSD sought recovery of possession of the subject property and the payment of rent from respondents.

In her Answer, Baello alleged that the subject property was bequeathed to her through a will by her adoptive mother, Jacoba Galauran. She alleged that during the lifetime of Jacoba Galauran, the subject property was originally surveyed on January 24-26, 1923[7] and, thereafter, on December 29, 1924.[8] Baello alleged

[6] Records, Vol. II, pp. 585-586.

[7] Records, Vol. I, p. 196.

[8] *Id.* at 195.

that after Jacoba Galauran died in 1952, her will was duly approved by the probate court, the Court of First Instance, Pasig, Rizal. Baello averred that she registered the subject property in her name, and TCT No. (35788) 12754[9] was issued in her favor on September 6, 1954. In 1959, she had the subject property surveyed. On July 15, 1988, she entered into a Contract of Lease[10] with respondent Uniwide which erected in full public view the building it presently occupies. Baello stated that she has been religiously paying realty taxes for the subject property,[11] and that VSD's complaint should be dismissed as she enjoys a superior right over the subject property because the registration of her title predates the registration of VSD's title by at least 40 years.

On October 2, 2000, the trial court rendered a Decision[12] in favor of petitioner VSD. The trial court held that the evidence for VSD showed that it is the rightful owner of the subject lot covered by TCT No. T-285312 of the Register of Deeds of Caloocan City. The lot was purchased by VSD from Felisa Bonifacio, who became the owner thereof by virtue of her petition for segregation of the subject property from OCT No. 994 of the Register of Deeds of Rizal in LRC Case No. C-3288. TCT No. 265777 was issued to Felisa Bonifacio pursuant to an Order dated October 8, 1992 by the RTC of Caloocan City in LRC Case No. C-3288. The trial court found that the technical description in respondent Baello's title is not the same as the technical description in VSD's title, and that a mere reading of the technical description in VSD's title and that in Baello's title would show that they are not one and the same. Moreover, the technical description of the subject lot in VSD's title is recorded with the Register of Deeds of Caloocan City.[13]

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[9] Annex "2"; *id.* at 197.

[10] Annex "1"; *id.* at 65-72.

[11] Annexes "4" to "4-H"; *id.* at 201-209.

[12] *Rollo,* Vol. I, pp. 78-96.

[13] Exhibit "F"; records, Vol. II, p. 588.

The trial court stated that in the face of documentary and testimonial evidence of competent government witnesses who affirmed VSD's right to the technical description, it was incumbent on Baello to present credible evidence to overcome the same, but she failed to do so. The trial court held that VSD proved its ownership and the identity of the subject property that it sought to recover, which is an essential requisite in its action for annulment of title and recovery of possession of property. The trial court also held that Baello is the holder of a title over a lot entirely different and not in any way related to VSD's title and its technical description. The dispositive portion of the trial court's Decision reads:

> WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered ordering the following:
>
> 1. Declaring TCT No. 35788 [12754] to be null and void;
> 2. Defendant Baello and all persons/entity claiming title under her, including UNIWIDE, to convey and to return the property to plaintiff VSD on the basis of the latter's full, complete, valid and legal ownership;
> 3. Defendant Baello and UNIWIDE, jointly and severally, to pay a just and reasonable compensation per month of ₱1,200,000.00 with legal interest for the occupancy and use of plaintiff's land from September 12, 1994, until actually vacated by them;
> 4. Defendants, jointly and severally, to pay attorney's fees of ₱200,000.00.
>
> SO ORDERED.[14]

Respondents Uniwide and Baello appealed the trial court's decision to the Court of Appeals.

In a Decision dated May 30, 2005, the Court of Appeals ruled in favor of respondents Uniwide and Baello. The *fallo* of the Decision of the Court of Appeals reads:

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[14] *Rollo,* Vol. I, pp. 95-96.

WHEREFORE, the assailed Decision of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933 is REVERSED and SET ASIDE and a new one entered DISMISSING the instant complaint.[15]

The Court of Appeals stated that the main issue to be resolved was whether or not there was a valid ground to annul Baello's title, TCT No. (35788) 12754, to warrant the reconveyance of the subject property to VSD. The Court of Appeals said that while VSD sought to annul Baello's TCT No. (35788) 12754 on the ground that the same was spurious, it failed to prove that Baello's title was indeed spurious. It held that since there was no legal basis for the annulment of Baello's TCT No. (35788) 12754, the trial court erred in declaring the said title null and void. It stated that a Torrens title is generally conclusive evidence of ownership of the land referred to therein, and a strong presumption exists that it was regularly issued and valid. Hence, the Court of Appeals held that Baello's title enjoys the presumption of validity.

VSD's motion for reconsideration was denied by the Court of Appeals in a Resolution[16] dated December 6, 2005.

VSD filed a petition for review on *certiorari* of the Court of Appeals' decision before this Court. The Court discussed the pertinent issues raised with the main issues: whether or not VSD is entitled to recover, possession of the subject property and whether or not the title of Baello may be annulled.

The Court stated that Article 434[17] of the Civil Code provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: *first*,the identity of the land claimed; and *second*,his title thereto.[18]

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[15] *Id.* at 58.

[16] CA *rollo*, p. 595.

[17] Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

[18] *Spouses Hutchison v. Buscas*, 498 Phil. 257, 262 (2005).

As Baello failed to clearly establish that the technical description of her title pertains to the subject property, the Court upheld the decision of the trial court that VSD was able to establish through documentary and testimonial evidence that the technical description of its Torrens title, embodying the identity of the land claimed, covers the property that is being occupied by Uniwide by virtue of a lease contract with Baello, and that a comparison of the technical description of the land covered by the title of VSD and the technical description of the land covered by the title of Baello shows that they are not the same. The dispositive portion of the Court's Decision dated October 24, 2012 reads:

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated May 30, 2005 and its Resolution dated December 6, 2005, in CA-G.R. CV No. 69824, are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933 is REINSTATED with MODIFICATION as follows:

(1) Paragraph 1 of the dispositive portion of the Decision dated October 2, 2000 of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933, is deleted;

(2) Respondent Dolores Baello and all persons/entities claiming title under her, including respondent Uniwide Sales, Inc., are ordered to convey and to return the property or the lot covered by TCT No. T-285312 to petitioner VSD Realty and Development Corporation upon finality of this Decision;

(3) Respondent Dolores Baello is ordered to pay just and reasonable compensation for the occupancy and use of the land of petitioner VSD Realty and Development Corporation in the amount of ₱58,333.30 per month from September 12, 1994 until the Decision is final and executory, with legal interest of six percent (6%) per annum reckoned from the filing of the Complaint on June 8, 1995 until the finality of this Decision. Thereafter, respondent Uniwide Sales, Inc. is jointly and severally liable with Dolores Baello for the payment to petitioner VSD Realty and Development Corporation of monthly rental in the amount of ₱58,333.30 from the finality of this Decision until the land is actually vacated, with twelve percent (12%) interest per annum.

(4) The award of attorney's fees is deleted.

No costs.

SO ORDERED.[19]

Respondent Baello filed a motion for reconsideration[20] of the Court's decision, contending that the Court erred (1) in not holding that petitioner VSD's TCT No. T-285312 is null and void, having been derived from the fake and non-existent OCT No. 994 dated April 19, 1917; (2) when it made a finding that Baello's title (TCT No. [35788] 12754) does not cover the subject property; (3) in finding that VSD was able to prove that it has a better right to the subject property by mere presentation of its TCT No. T-285312 and by showing that the title's technical description correctly described the subject property; (4) in not holding that Baello enjoys a superior right to the disputed property because the registration of her title predated the registration of VSD's title by at least 40 years; and (5) in ordering Baello to pay monthly compensation to VSD.[21]

On February 13, 2013, Baello,[22] by counsel, filed a *Motion for Leave and Time to File Judicial Affidavit of Mr. Felino Cortez and Supplemental Motion for Reconsideration (Re: Decision dated 24 October 2012)*.[23] In the said motion, Baello contended that subsequent to the filing of her motion for reconsideration, she discovered new evidence, not available at the time of trial and of the filing of her motion for reconsideration, which established that VSD's TCT No. T-285312 cannot be traced to the legitimate and authentic OCT No. 994; hence, VSD's title is null and void. Baello's daughter,

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[19] *Rollo*, Vol. I, pp. 967-968.

[20] *Rollo*, Vol. II, pp. 1019-1067.

[21] *Id.* at 1019-1021.

[22] The Resolution (*id.* at 1078-1078A), dated January 23, 2013, noted the Notice of Death of Baello, who died on June 22, 2012 and who is survived by her heirs, namely, Ma. Bernadette T. Flores, Ma. Cecille T. Novales, and Jose George Tejada.

[23] *Id.* at 1079-1987.

Ma. Bernadette Flores, requested Mr. Felino Cortez, retired and former Director on Registration of the Land Registration Authority *(LRA)*, to conduct an investigation on VSD's TCT No. T-285312. Mr. Cortez examined the documents with the LRA and the Register of Deeds of Caloocan City, and he allegedly found that the copy of Felisa Bonifacio's TCT No. 265777/T-1325 that was presented to the Register of Deeds of Caloocan City, for the purpose of the issuance of VSD's TCT No. T-285312, was tampered to fraudulently reflect that it was derived from the legitimate and authentic OCT No. 994 dated May 3, 1917. It is alleged that the original microfilm copy retained by the LRA shows that the same TCT No. 265777/T-1325 did not originate from the legitimate and authentic OCT No. 994 dated May 3, 1917, but was instead derived from a certain OCT No. 994 dated April 19, 1912. In view of this development, in the interest of justice, and to protect Baello's constitutional right to property, as well as to avoid a conflicting ruling by the Court, Baello begged the indulgence of the Court to grant her motion, which was granted by the Court.[24]

On March 14, 2013, Baello by counsel, filed a Supplemental Motion for Reconsideration (Re: Decision dated 24 October 2012)[25] on the following grounds: (1) Felisa Bonifacio's TCT No. 265777/T-1325, from which VSD derived its title, is null and void, having been derived from a fake and non-existent OCT No. 994, and Felisa Bonifacio's title cannot be traced back to the legitimate and authentic OCT No. 994 dated May 3, 1917; (2) a careful examination of Baello's TCT No. (35788) 12754 and VSD's TCT No. T-285312 will show that the technical descriptions of the land referred to in those titles both refer to the same parcel of land; and (3) Baello's TCT No. (35788) 12754 can be traced back to the legitimate OCT No. 994 dated May 3, 1917.[26]

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[24] Resolution dated February 25, 2013; *id.* at 1089A-1089B.

[25] *Id.* at 1460-1476.

[26] *Id.* at 1462-1463.

Petitioner VSD was required to file a comment on the motion for reconsideration. In its Comment on the motion for reconsideration and the supplemental motion for reconsideration, VSD contends that a valid title can arise even from an allegedly void title if a buyer in good faith, like VSD, intervenes; that the alleged nullity of its title cannot be raised for the first time on appeal; that additional evidence cannot be presented for the first time on appeal, more so in a motion for reconsideration before the Court; and that respondent Baello failed to prove that her title covers the subject property, among others.

The Court noted that ***Manotok Realty, Inc. v. CLT Realty Development Corp.***[27] ruled that there is only one OCT No. 994, which is correctly registered on May 3, 1917, and that any title that traces its source to OCT No. 994 dated April [19],[28] 1917 is void, for such mother title is inexistent.

Considering the importance of protecting our Torrens system from fake land titles and deeds, and in the interest of justice, the Court, which is not a trier of facts, issued the Resolution dated July 31, 2013, remanding the case to the Court of Appeals for further proceedings to determine which of the parties derived valid title from the legitimate OCT No. 994 registered on May 3, 1917, and who is entitled to claim ownership over the disputed lot.

Pursuant to the Internal Rules of the Court of Appeals, the case was raffled station wide to Associate Justice Carmelita S. Manahan for completion and report, since the *ponente* of the Decision of the Court of Appeals dated May 30, 2005, Associate Justice Aurora Santiago-Lagman, had already retired from the service. The other members who composed this Special Division[29] were Associate Justices Jafar B. Dimaampao (Chairperson) and Elihu A. Ybañez.

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[27] 565 Phil. 59 (2007).

[28] Through advertence, the number "17" appeared in the original; footnote* in *Manotok Realty, Inc., et al. v. CLT Realty Dev't. Corp.*, 601 Phil. 571, 582 (2009).

[29] CA *rollo*, p. 2403; permanent composition of the Special Division established.

The Court of Appeals (Special Division) submitted to this Court its Investigation Report dated May 22, 2017, which gave an account of the proceedings conducted before it and its findings on the issues to be resolved.

Proceedings before the Court of Appeals (Special Division)

On March 3, 2014, Baello filed with the Court of Appeals a Motion to Set Case for Reception of Evidence[30] citing as basis the Resolution dated July 31, 2013 of this Court. On July 25, 2014, the Court of Appeals issued a Resolution[31] directing the parties to appear for hearing and to produce their respective evidence in accordance with A.M. No. 12-8-8-SC (Judicial Affidavit Rule) in order to resolve the issues under consideration.

On August 8, 2014, VSD filed a Manifestation with Urgent Omnibus Motion,[32] raising procedural concerns, particularly the return of the case to the original handling Justice and for the suspension/cancellation of the scheduled hearing.

On October 8, 2014, the Court of Appeals issued a Resolution[33] denying VSD's Omnibus Motion for the suspension/cancellation of hearing in view of this Court's Resolution dated July 23, 2014, which denied VSD's pending motion for reconsideration with finality, *inter alia*.[34]

Thereafter, hearing for the presentation of evidence ensued.

Evidence for respondent Baello

The Court of Appeals reported thus:

Baello proffered the Judicial Affidavit (79 Questions and Answers) and Reply Affidavit (24 Questions and Answers) of Engr. Felino M. Cortez, as her expert witness, to testify on the following matters, to wit:

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[30] *Id.* at 685-690.

[31] *Id.* at 692-694.

[32] *Id.* at 707-713.

[33] *Id.* at 1146-1149.

[34] Investigation Report, p. 3.

1. Engr. Cortez is a geodetic engineer with specialization in surveying, titling and land registration procedures and an expert in the field of geodetic engineering and qualified to testify as an expert witness in matters relating to the said field.
2. The technical description contained in Dolores Baello Tejada's ("Ms. Baello") Transfer Certificate of Title ("TCT") No. (35788) 12754 and the technical description contained in VSD Realty & Development Corporation's ("VSD") TCT No. 285312 cover the SAME parcel of land.
3. VSD's TCT No. 285312 originated from a void and non-existent Original Certificate of Title No. 994.
4. VSD's TCT No. 285312 was derived from Felisa Bonifacio's TCT No. 265777/T-1325.
5. The microfilm of TCT No. 265777/T-1325 in the Micrographic and Computer Division of the Land Registration Authority and TCT No. 265777/T-1325 on file with the [R]egister of Deeds of Caloocan City bear different original registration dates.
6. Felisa Bonifacio's TCT No. 265777/T-1325 on file with the Register of Deeds of Caloocan City has been tampered.
7. Ms. Baello is the legitimate owner of the property covered by the technical description in TCT No. (35788) 12754.[35]

In the course of Baello's presentation of evidence, the Court of Appeals and the parties found it necessary to be produced in court for authentication and/or verification the original of the following titles: (a) OCT No. 994 dated May 3, 1917; (b) TCT No. 10300/T-42 (reconstituted title);(c) TCT No. 10300/T-42 (original title);(d) TCT No. 10301; (e) TCT No. 10302; (f) TCT No. 10303; (g) TCT No. 285312; (h) TCT No. 265777/T-1325; (i) TCT No. 8164; (j) TCT No. (35788) 12754; (k) TCT No. 8160; (l) TCT No. 8059; and (m) TCT No. 8004.[36]

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

[36] *Id.* at 4.

On October 31, 2014, the Court of Appeals issued an Order[37] directing the issuance of a *subpoena duces tecum ad testificandum* to the LRA Administrator and/or the Register of Deeds of Caloocan City.

In the hearing held on November 25, 2014, LRA-Chief Property Officer Robert Paul Ancheta appeared before the Court of Appeals and presented the original copy of OCT No. 994 dated May 3, 1917 and answered clarificatory questions in relation thereto. Thereafter, Register of Deeds of Caloocan City-Acting Records Officer *(ARO)* Jose Benigno Diaz appeared in the same hearing and presented the original of the following land titles: (1) TCT No. (35788) 12754, registered in the name of Baello; (2) TCT No. 285312, registered in the name of VSD; and (3) TCT No. 265777/T-1325, registered in the name of Felisa Bonifacio.[38]

On even date, the Court of Appeals issued an Order[39] requiring ARO Diaz to bring Title Nos. 8164, 8160, 8059 and 8004 (predecessor titles of TCT No. 8318 in the name of Teodoro Jacinto, Baello's predecessor-in-interest),in the hearing scheduled on December 3, 2014. The appellate court also directed the issuance of a *subpoena duces tecum ad testifcandum* to Mila G. Flores, retired Register of Deeds of Caloocan City, to appear and testify on matters relating to the issuance of Felisa Bonifacio's TCT No. 265777/T-1325 in the hearing scheduled on January 14, 2015.[40]

In the hearing of December 9, 2014, ARO Diaz presented a certified true copy of Baello's TCT No. (35788) 12754. He testified that TCT Nos. 8004, 8059, 8160 and 8164 are not in the records of the Registry of Deeds of Caloocan City. He assumed that the said TCTs are in the possession of the Register of Deeds of Binangonan, Rizal from where the titles originated.[41]

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[37] CA *rollo,* pp. 1207-1209.

[38] Investigation Report, p. 5.

[39] CA *rollo,* pp. 1883-1885.

[40] Investigation Report, p. 5.

[41] *Id.*

In the hearing held on January 14, 2015, the Court of Appeals was notified that the *subpoena duces tecum ad testificandum* issued to secure the presence of Mila G. Flores was returned unserved because she could no longer be located in her last known address.[42]

On February 18, 2015, Baello filed a Manifestation[43] averring that she was able to obtain machine copies of the certified true copies of TCT Nos. 8004, 8059, 8160 and 8164, which were the very titles utilized in ***Phil-Ville Dev't. and Housing Corp. v. Bonifacio, et al.***[44] On March 2, 2015, the Court of Appeals issued an Order[45] directing the issuance of a *subpoena duces tecum ad testificandum* to the Register of Deeds of Binangonan, Rizal, Register of Deeds of Antipolo City, and Register of Deeds of Marikina City.[46] In the hearing of March 11, 2015, it was established that the original of TCT Nos. 8004, 8059, 8160 and 8164 were not in the custody or possession of the Registry of Deeds of Caloocan City, Registry of Deeds of Binangonan, Rizal, Registry of Deeds of Antipolo City and Registry of Deeds of Marikina City.[47]

The evidence for Baello consisted of the following: Baello's TCT No. (35788) 12754; VSD's TCT No. T-285312; OCT No. 994 dated May 3, 1917; TCT No. 10300/T-42; original of the plan showing the relative position of Lot 3-A in relation to its location in Lot 23-A, Psu-2345; certified true copy of TCT No. 8318; original of the plan showing the subdivision of Lot 3 into four (4) lots; certified true copy of TCT No. 265777/T-1325 (Felisa Bonifacio's title);certified true copy of the microfilm of TCT No. 265777/T-1325 (Felisa Bonifacio's title) on file in the Micrographic and Computer Division of the LRA;

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[42] *Id.* at 6.

[43] CA *rollo,* pp. 2060-2063.

[44] 666 Phil. 325 (2011).

[45] CA *rollo,* pp. 2091-2092.

[46] Investigation Report, p. 6.

[47] *Id.*

original of the plan showing the location of the property covered by Baello's title and VSD's title based on the technical descriptions indicated in their respective titles; original plan showing the technical description of Baello's title; original plan showing the technical description of VSD's title; certified true copy of OCT No. 994 issued by the LRA consisting of 18 pages; certified true copy of TCT No. 10300/T-42 on file with the Register of Deeds; certified true copy of Decree No. 36455 with Case No. 4429 issued by the LRA consisting of 29 pages; Judicial Affidavit of Engr. Felino M. Cortez dated August 11, 2014; Department of Justice Report dated August 28, 1997 mentioned in *Phil-Ville Dev't. and Housing Corp. v. Bonifacio, et al.*;[48] certified true copy of TCT No. 10301; certified true copy of TCT No. 10302; certified true copy of TCT No. 10303; certified true copy of the 2nd Indorsement dated March 12, 1984 issued by the Minister of Justice; Reply-Affidavit dated February 13, 2014 of Engr. Cortez; photocopy of certified print microfilm of TCT No. 8004; photocopy of certified print microfilm of TCT No. 8059; photocopy of certified print of TCT No. 8160; and photocopy of print microfilm of TCT No. 8164.[49]

The Court of Appeals took notice of this Court's Decision in ***Syjuco, et al. v. Bonifacio, et al.***,[50] promulgated on January 14, 2015. The parties were directed to file their manifestation regarding the impact of the said Decision on this case. VSD essentially opined in its Manifestation/Compliance[51] dated September 10, 2015 that the said case bears no effect on the proceedings. Baello averred in her Manifestation,[52] dated September 25, 2015, that the Court of Appeals should take judicial notice of this Court's pronouncements in ***Syjuco***,*viz.*:

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[48] *Supra* note 44.

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

[50] 750 Phil. 443 (2015).

[51] CA *rollo*, pp. 2522-2529.

[52] *Id.* at 2540-2557.

a) That the true and valid OCT No. 994 was registered on May 3, 1917, not on April 19, 1917;

b) That any title that traces its source to April 19, 1917 is deemed void and inexistent; and

c) That the Office of the Solicitor General's findings regarding the defects in the titles in the Syjuco case took into account the findings of the Department of Justice and the Senate Committees.[53]

Evidence for petitioner VSD

The Court of Appeals reported that on November 26, 2015, VSD commenced the presentation of its evidence. VSD proffered the Judicial Affidavit[54] of Engr. Godofredo Limbo, Jr.,as its expert witness, to prove, among others, the following:

1. Engr. Godofredo Limbo, Jr. is an engineer by profession with expertise in surveying, titling and land registration procedure and is qualified to testify as an expert witness in matters relating to said fields.
2. Transfer Certificate of Title No. (35788) 12754 in the name of Dolores Baello cannot be traced back to the legitimate and authentic OCT No. 994 dated May 03, 1917.
3. The discrepancies in the Baello Title and its predecessor/ source titles that cast a cloud of doubt on the genuineness of the title.
4. TCT No. 285312 in the name of VSD Realty and Development Corporation and the Baello Title do not cover the same property.
5. The property covered by TCT No. 265777 in the name of Felisa Bonifacio, from which the VSD title was sourced, is a property within the property covered by Original Certificate of Title No. 994 dated 03 May 1917.
6. Identification and authentication of documents.[55]

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[53] Investigation Report, p. 9.

[54] CA *rollo*, pp. 1077-1104.

[55] Investigation Report, pp. 9-10.

The evidence for VSD consisted of the following: TCT No. T-285312 (VSD's title);TCT No. 265777/T-1325 (Felisa Bonifacio's title);the Order dated October 8, 1992 in the case entitled, *"In the Matter of Petition for Authority to Segregate an Area of 5,630.1 Sq. mtrs. from Lot 23-A-4-B-2-A-3-B, Psd-706 (Psu-2345) of Maysilo Estate and Issuance of Separate Certificates of Title in the Name of Felisa D. Bonifacio,"* docketed as LRC Case No. C-3288; Technical Description of Lot 23-A-4-B-2-A-3-A prepared on June 20, 1990; Petition dated January 6, 1992 in the Bonifacio LRC Case; Certificate of Finality dated April 6, 1993 in the Bonifacio LRC Case; OCT No. 994 dated May 3, 1917; *Curriculum Vitae* of Engr. Limbo; copy of TCT No. (35788) 12754 in the name of Baello; photograph taken during the ocular inspection of Engr. Limbo showing the southwest portion of the property subject of litigation; LRA issued TCT No. 10300/T-42; TCT No. 10300/ T-42 (with typographical differences from Exhibits "N" and "V");TCT No. 8318 (marked as Exhibit "6" of Engr. Cortez's Affidavit);TCT No. 8318 issued by the LRA; Figures 1 to 4: in Engr. Limbo's Reply-Affidavit; Engr. Cortez's Judicial Affidavit dated March 14, 2013 filed with the Supreme Court; Letter dated October 13, 2014 from Eng. Bienvenido Cruz of the Land Management Bureau; Letter dated October 22, 2014 from the Chief of the Regional Surveys Division of the Land Surveys Records of the Department of Environment and Natural Resources; certified true copy of TCT No. 10301; certified true copy of TCT No. 10302; certified true copy of TCT No. 10303; OCT No. 8160 in the name of Eustaquio S. Abad; TCT No. N-8160 dated June 17, 1976 in the names of Santiago Valmonte and Concordia Ortiz Valmonte; TCT No. 8004 dated June 11, 1976 in the name of Jaybee Real Estate Corporation; TCT No. 8164 dated June 17, 1976 in the names of Loreto T. Cristi, Amada de Vera, Pilar Cristi, Trinidad C. Javier and Enrique T. Cristi; Judicial Affidavit of Engr. Limbo; Reply Affidavit of Engr. Limbo; Plat of Lot 3A (based on the technical description of TCT No. 10300).[56]

[56] *Id.* at 11-12.

Thereafter, the Court of Appeals evaluated the evidence of the parties based on the issues to be resolved, thus:

I.

Whether the title of Felisa D. Bonifacio, TCT No. 265777/T-1325, and the title of VSD, TCT No. T-285312, can be traced back to the legitimate and authentic OCT No. 994 dated May 3, 1917[;]

x x x x x x x x x

II.

Whether Eleuteria Rivera Bonifacio, who allegedly assigned the subject property to Felisa D. Bonifacio, had the right and interest over the subject property, and whether Eleuteria Rivera Bonifacio was entitled to assign her alleged rights and interests over the subject property, known as Lot 23-A-4-B-2-A-3-A, Psd 706[,covered] by OCT No. 994, to Felisa D. Bonifacio[;]

x x x x x x x x x

III.

Whether the copy of Felisa D. Bonifacio's TCT No. 265777/T-1325 was tampered with to fraudulently reflect that it was derived from the legitimate and authentic OCT No. 994 dated May 3, 1917[;]

x x x x x x x x x

IV.

Whether respondent Baello's TCT No. (35788) 12754 can be traced back to the legitimate and authentic OCT No. 994 dated May 3, 1917[;]

x x x x x x x x x

V.

Whether the technical description of the title of Baello covers the subject property[; and]

x x x x x x x x x

VI.

Whether VSD is a purchaser for value and in good faith[.][57]

Findings of the Court of Appeals (Special Division)

We shall now discuss the evaluation/findings of the Court of Appeals on the aforementioned issues, starting with the first three issues that touch on the validity of the respective titles of petitioner VSD and Felisa Bonifacio.

I. Whether the title of Felisa D. Bonifacio, TCT No. 265777/T-1325, and the title of VSD, TCT No. T-285312, can be traced back to the legitimate and authentic OCT No. 994 dated May 3,1917;

II. Whether Eleuteria Rivera Bonifacio, who allegedly assigned the subject property to Felisa D. Bonifacio, had the right and interest over the subject property, and whether Eleuteria Rivera Bonifacio was entitled to assign her alleged rights and interests over the subject property, known as Lot 23-A-4-B-2-A-3-A, Psd 706, covered by OCT No.994, to Felisa D. Bonifacio; and

III. Whether the copy of Felisa Bonifacio's TCT No. 265777/T-1325 was tampered with to fraudulently reflect that it was derived from the legitimate and authentic OCT No. 994 dated May 3, 1917.

[57] *Id.* at 13-43.

Based on the Investigation Report of the Court of Appeals, VSD's title, TCT No. T-285312, can be traced back to OCT No. 994 registered on May 3, 1917, but VSD's title was derived from Felisa Bonifacio's tampered TCT No. 265777/T-1325. Moreover, Felisa Bonifacio could not validly sell the lot to VSD because her predecessors-in-interest, Eleuteria Rivera Bonifacio and Maria de la Concepcion Vidal, did not have a legal right to the subject property, since the shares of Maria de la Concepcion Vidal in the Maysilo Estate were Lot 6 and portions of Lots 10 and 17, but not Lot 23-A from which the subject property, Lot 23-A-4-B-2-A-3-A, originated.

VSD derived its title to the disputed lot from Felisa Bonifacio through a sale on September 7, 1994. Felisa Bonifacio's title, TCT No. 265777/T-1325, was issued by the Register of Deeds of Caloocan City on March 29, 1993, pursuant to the Order dated October 8, 1992 of Judge Geronimo S. Mangay, RTC of Caloocan City, Branch 125, in LRC Case No. C-3288, entitled "*In the Matter of Petition for Authority to Segregate an Area of 5,630.1 Sq. mtrs. from Lot 23-A-4-B-2-A-3-B, Psd-706 (Psu-2345) of Maysilo Estate and Issuance of Separate Certificates of Title in the Name of Felisa D. Bonifacio*." The Order dated October 8, 1992 in LRC Case No. C-3288 is inscribed[58] in OCT No. 994 registered on May 3, 1917.

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[58] The inscription is identified as Entry No. 283598/T-994 (Exhibit X-1), *viz.*:

"Entry No. 283593/T-994 - ORDER of the Regional Trial Court, National Capital Region, Br., - - LRC Case No. C-3288 directing the Register of Deeds to issue two (2) New Titles in favor of Felisa Bonifacio base[d] on approved Plan Psd-706 without further presenting the owner's duplicate Certificate of Title thereof (PE#286677) and by virtue of which TCT Nos. T-26577**8** & 265779/T-1325 is issued for Lot 23A-4-B-2A-3-A & Lot 23A-4-B-2A-3-B Psd-760 respectively.

Date of Instrument: October 8, 1992
Date of Inscription: March 29, 1993 at 3:20 P.M.

MILA G. FLORES
Register of Deeds." (*Id.* at 14; emphasis in the original.)

The Court of Appeals reported that no new evidence was presented to establish the historical origin of Felisa Bonifacio's title. However, based on the findings contained in the Order dated October 8, 1992 of Judge Geronimo S. Mangay, RTC of Caloocan City, Branch 125, in LRC Case No. C-3288, Felisa Bonifacio's title stemmed from Eleuteria Rivera Bonifacio through a Deed of Assignment, *viz.*:

> From the evidence presented the Court finds that in Case No. 4557 for Petition for Substitution of Names, in the Court of First Instance of Rizal Branch 1, the then Presiding Judge Cecilia Munoz Palma, issued an order dated May 25, 1962 (EXHIBIT "N") substituting Maria de la Concepcion Vidal as one of the registered owners of several parcels of land forming the Maysilo Estate and covered by among others Original Certificate No. 994 of the Register of Deeds of Rizal with among others Eleuteria Rivera Bonifacio to the extent of 1/6 of 1-189/1,000 per cent of the entire Maysilo Estate. **On January 29, 1991 Eleuteria Rivera Bonifacio executed in favor of Felisa D. Bonifacio, herein petitioner a Deed of Assignment (EXHIBIT "M") assigning all her rights and interests over Lot 23-A-4-B-2-A-3-A, Psd 706 and Lot 23-A-4-B-2-A-3-B, Psd 706, both lots being covered by O.C.T[.] 994 of the Register of Deeds of Rizal.** That even prior to the execution of the Deed of Assignment but while negotiations with Eleuteria Rivera Bonifacio were going on, petitioner already requested the Lands Management Sector, Department of Environment and Natural Resources, National Capital Region, to prepare and issue the technical description of the two lots subject of this petition. As requested by petitioner, Elpidio T. de Lara, Chief, Technical Services Section, Lands Management Sector, DENR, NCR, issued on June 20, 1990 two technical descriptions (EXHIBITS "J" and "K") covering the two lots. After the issuance of the technical descriptions, the petitioner requested Geodetic Engineer Jose R. Rodriguez to prepare a sketch plan of the two lots subject of this petition. As requested, Engr. Rodriguez prepared a sketch plan (EXHIBIT "L") based from exhibits "J" and "K" which was submitted to the Land Management Services, formerly Bureau of Lands for Verification and Checking. That Mr. Benjamin V. Roque, Chief, Topographic and Special Map Section, Land Management Services, formerly Bureau of Lands, certified on July 31, 1992 that the sketch

plan (EXHIBIT "L") is a true and correct plan of Lots 23-A-4-B-2-A-3-A and 23-A-4-B-2-A-3-B both on Psd-760.[59] (Emphasis in the original)

Further, based on the entries in OCT No. 994 dated May 3, 1917, Eleuteria Rivera Bonifacio's title can be traced back to the original owners thereof, to wit:

> Entry No. 48542 File T-104230 — ORDER. **In compliance with the order of the Court of First Instance of Rizal in Case No. 4557, the name of "Maria Concepcion Vidal, x x x years of age" is hereby cancelled and in lieu thereof the following are substituted:** "1. Bartolome Rivera, widower, 1/3 of 1-189/1000 per cent; 2. **Eleuteria Rivera Bonifacio, married to Hermogenes Bonifacio — 1/6 of 1-189/1000 per cent**; Josefa R. Aquino, married to Leoncio Caiña — 1/9 of 1-189/1000 per cent; Gregorio Aquino/Rosauro Aquino married to x x x Tolentino 1/9 of the 1-189/1000 per cent; Pelagia R. Angeles, married to x x x Benedicto — 1/30 of 1-189/1000%; Modesta R. Angeles, of legal age, married 1/30 of 1-189/1000%; Venancio R. Angeles of legal age, married 1/30 of 1-189/1000%; Felipe R. Angeles of legal age, married 1/30 of 1-189/1000%; Fidela R. Angeles of legal age, single 1/30 of 1-189/1000%.
>
> Date of the instrument: May 25, 1962.
> Date of the inscription: June 1, 1962 – 9:27a.m.
> (Emphasis supplied.)
>
> x x x x x x x x x
>
> Entry No. 44905/0-994 – Issuance of Co-owner's copy: By order of the Court of the First Instance of Rizal, a co-owner's duplicate of this certificate of title No. 0-994 has been issued in favor of Maria de la Concepcion Vidal.
>
> Date of the Instrument – March 29, 1962
> Date of the Inscription – April 2, 1962 3:15 p.m.
>
> x x x x x x x x x
>
> Original Certificate of Title No. 994, Office of the Register of Deeds for the Province of Rizal, Entered pursuant to the following

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[59] *Id.* at 14-15.

Decree, "Decree No. 36455," United States of America, Court of Land Registration, "Case No. 4199," x x x Therefore, it is ordered by the Court that said land be registered in accordance with the provisions of the Land Registration Act in the name of said Isabel Gil de Sola *y* Valdez, as judicial administratrix of the estate of the deceased Gonzalo Tuason, Jose Rate *y* Tuason, Luis Vidal *y* Tuason, Concepcion Vidal *y* Tuason, Pedro Baños, **Maria de la Concepcion Vidal**, Bernardino Hernandez *y* Alvarez, Trinidad Jurado *y* Sarmiento, Aurora Tuason *y* Vicente, Isabel Tuason *y* Chua-Jap, Juan Jose Tuason *y* de la Paz, Maria Teresa Tuason *y* de la Paz, Mariano Sevaro Tuason *y* de la Paz, Demetrio Asuncion Tuason *y* de la Paz, Augusto Huberto Tuason *y* de la Paz, Maria Soterraña Tuason *y* de la Paz, Benito Legarda *y* de la Paz, Consuelo Legarda *y* de la Paz, Rita Legarda *y* de la Paz, Benito Legarda *y* Tuason, Emilia Tuason y Patiño, Maria Rocha *y* Tuason, German Franco *y* Gonzalez, Domingo Franco *y* Gonzalez, Concepcion Franco *y* Gonzalez, Vicenta Ferrer *y* Tuason, Josefa Ferrer viuda de Flores, Sofia O' Farrel *y* Patiño, Maria Eloisa O' Farrel *y* Patiño[,] Angel O' Farrel *y* Patiño, Juan O' Farrel *y* Patiño, and the Sons and Heirs of Filemon Tuason subject, however, to such of the encumbrances mentioned in article 39 of said Law as may be subsisting and to the following conditions: — **(a) that the share belonging to Maria de la Concepcion Vidal in said lands remain subject to the usufructuary rights of her mother, Mercedes Delgado, during her natural life**; (b) that the shares belonging to German Franco *y* Gonzalez, Domingo Franco *y* Gonzalez and Concepcion Franco *y* Gonzalez in said lands remain subject to the usufructuary rights of their mother Concepcion Gonzalez, during her natural life.

Witnesseth: the Honorable Norberto Romualdez, Associate, Judge of said Court, the 3rd day of December, A.D. nineteen hundred and twelve.

Issued at Manila, P.I., the 19th day of April, A.D. 1917 at 9:00 A.M.

Received for transcription at the office of the Register of Deeds for the Province of Rizal this third day of May, nineteen hundred and seventeen at 7:30 A.M.[60] (Emphasis supplied)

Thus, the Court of Appeals reported that VSD's title (TCT No. T-285312) is derived from Felisa Bonifacio's title (TCT

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

No. 265777/T-1325), who in turn derived her title from Eleuteria Rivera Bonifacio whose supposed right over Lot 23-A-4-B-2-A-3-A was derived from Maria de la Concepcion Vidal.[61]

However, the Court of Appeals stated that **Maria de la Concepcion Vidal had no right over Lot 23-A, from which the subject property, Lot 23-A-4-B-2-A-3-A, originated, because her share in the Maysilo Estate pertained to Lot 6 and portions of Lots 10 and 17**. Thus, Eleuteria Rivera Bonifacio had no right to substitute Maria de la Concepcion Vidal over Lot 23-A, and Eleuteria Rivera Bonifacio could not validly convey any right to Lot 23-A or the subject property, known as Lot 23-A-4-B-2-A-3-A, Psd-706, covered by OCT No. 994, to Felisa Bonifacio by Deed of Assignment.

The Court of Appeals said:

In *Phil-Ville Housing and Development Corporation v. Bonifacio* (2011), the Supreme Court, Third (3rd) Division already concluded that Maria de la Concepcion Vidal has no share in Lot 23-A, *viz.*:

> Moreover, the Partition Plan of the Maysilo Estate shows that **Lot 23-A was awarded, not to Maria de la Concepcion Vidal, but to Isabel Tuason, Esperanza Tuason, Trinidad Jurado, Juan O Farrell and Angel O Farrell**. What Vidal received as her share were Lot 6 and portions of Lots 10 and 17, all subject to the usufructuary right of her mother Mercedes Delgado. This was not at all disputed by respondents.

This finding is supported by the Department of Justice's August 18, 1997 Committee Report (Exhibit "20") which ascertained that Maria de la Concepcion Vidal's share in the Maysilo Estate pertains to Lot 6 and portions of Lots 10 and 17 only based on the document *Proyecto de Particion de la Hacienda de Maysilo* dated June 12, 1917.

Applying the foregoing, Felisa D. Bonifacio's claim of ownership over Lot 23-A-4-B-2-A-3-A is highly anomalous. Maria de la Concepcion Vidal did not have an interest or right over Lot 23-A

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[61] *Id.* at 17.

pursuant to the *Proyecto de Particion de la Hacienda de Maysilo*. In that regard, Eleuteria Rivera Bonifacio could not have acquired title over Lot 23-A by mere substitution. And, what Eleuteria Rivera Bonifacio did not acquire, she cannot convey by Deed of Assignment to Felisa D. Bonifacio.

Furthermore, in *Syjuco v. Bonifacio* (2015), the Supreme Court First (1st) Division, relying on the Phil-Ville case, held, *viz.*:

> The same is true in this case. The Death Certificate of Eleuteria Rivera reveals that she was 96 years old when she died on February 22, 1997. That means that she must have been born in 1901. That makes Rivera two years older than her alleged grandmother Maria de la Concepcion Vidal who was born in 1903. Hence, it was physically impossible for Eleuteria Rivera to be an heir of Maria de la Concepcion Vidal.

The foregoing pronouncement is in light of the CFI of Rizal's Order dated May 25, 1962 in LRC Case No. 4557 which allowed the substitution of Eleuteria Rivera Bonifacio, *et al.*, in lieu of Maria de la Concepcion Vidal. Considering that it is physically impossible for Eleuteria Rivera Bonifacio to be an heir of Maria de la Concepcion Vidal, this compounds the proposition that Eleuteria Rivera Bonifacio could not have validly assigned her purported rights over the subject lot to Felisa D. Bonifacio.[62] (Emphasis in the original, citations omitted)

Moreover, the Court of Appeals found that Felisa Bonifacio's TCT No. 265777/T-1325 was tampered to reflect that it was derived from the authentic OCT No. 994 registered on May 3, 1917. It reported:

TCT No. 265777/T-1325 [Exhibit "8"[]] for Baello (obtained December 5, 2012) and Exhibit "B" for VSD (no [date] specified), faithful reproductions of certified true copies of said TCT issued by the Register of Deeds of Caloocan [C]ity, were compared with the machine copy of a certified print copy of the microfilm of Certificate Title No. 265777/ T-1325 registered under the name (F)elisa Bonifacio, microfilmed on February 22, 1994 at the Register of Deeds of Caloocan City.

A comparison of TCT 265777/T-1325 presently on file in the Caloocan Registry of Deeds and the microfilmed version in the Micrographic and Computer Division of the Land Registration

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[62] *Id.* at 19-20.

Administration (LRA) yields evident alteration or tampering in the Certification of Registration portion thereof.

The certification of registration portion of the Caloocan issued TCT No. 265777/T-1325 reads:

"IT IS FURTHER CERTIFIED that said land was originally registered on the **3rd** day of **May** in the year nineteen hundred and **seventeen** in the Registration Book of the Office of the Register of Deeds of **Rizal** Volume **A-9-A** page **226** as Original Certificate of Title No. 994 pursuant to Decree No. **36455** issued in L.R.C._____ Record No. 4429 in the name of _____.

This certificate is a transfer from Original Certificate of Title No. 994 which is cancelled by virtue hereof in so far as the above-described land is concerned.

Entered at Caloocan City
Philippines on the 29th day of March
In the year nineteen hundred and ninety-three
At 3:20 p.m."

On the other hand, the certification of registration portion of the microfilm copy of TCT No. 265777/T-1325 reads:

"IT IS FURTHER CERTIFIED that said land was originally registered on the **19th** day of **April** in the year nineteen hundred and **twelve** in the Registration Book of the Office of the Register of Deeds of **Manila** Volume _____ page _____ as Original Certificate of Title No. 994 pursuant to Decree No. 36455 issued in L.R.C._____ Record No. 4429 in the name of _____.

This certificate is a transfer from original Certificate of Title No. 994 which is cancelled by virtue hereof in so far as the above-described land is concerned.

Entered at Caloocan City
Philippines on the 29th day of March
In the year nineteen hundred and ninety-three
At 3:20 p.m."[63] (Emphases and underscores in the original)

Further, the Court of Appeals stated that in his Judicial Affidavit,[64] Engr. Cortez testified and imparted his opinion on

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[63] *Id.* at 20-21.

[64] CA *rollo*, pp. 769-809.

the discrepancies between the two versions of TCT No. 265777/T-1325, to wit:

D. TAMPERING OF TITLE

44. Q: You previously mentioned that you conducted an investigation of VSD's TCT No. 285312, what was the result of your investigation, if any?

A: I found out that VSD's TCT No. 285312 is derived from Felisa Bonifacio's TCT No. 265777/T-1325. When I checked Felisa Bonifacio's TCT No. 265777/T-1325 on file with the Register of Deeds of Caloocan City, I found irregularities.

x x x x x x x x x

45. Q: What irregularities did you discover in Felisa Bonifacio's TCT No. 265777/T-1325 on file with the Register of Deeds of Caloocan City?

A: The copy of Felisa Bonifacio's TCT No. 265777/T-1325 now on file with the Register of Deeds of Caloocan City is not the same as the microfilm ofthe same title on file in the Micrographic and Computer Division of the LRA.

46. Q: How is the copy of Felisa Bonifacio's TCT No. 65777T-1325 now on file with the Register of Deeds Caloocan City different from the microfilm of the same title on file in the Micrographic and Computer Division of the LRA?

A: The microfilm of Felisa Bonifacio's TCT No. 265777/T-1325 on file in the Micrographic and Computer Division of the LRA states that the land covered by said title was originally registered on 19 April 1912 as OCT No. 994.

On the other hand, the copy of Felisa Bonifacio's TCT No. 265777/T-1325 on file with the Register of Deeds of Caloocan City indicates that the land covered by said title was originally registered on 3 May 1917 as OCT No. 994.

46.1. Q: You said that the microfilm of Felisa Bonifacio's TCT No. 265777/T-1325 on file in the Micrographic and Computer Division of the LRA and the one on file with the Register of Deeds are different. If a copy of the microfilm of Felisa Bonifacio's TCT No. 265777/T-1325 on file in the Micrographic and Computer Division of the LRA is shown to you, will you be able to identify the same?

A: Yes.

46.2. Q: I am showing to you a certified true copy of the microfilm of Felisa Bonifacio's TCT No. 265777/T-1325 on file with the Micrographic and Computer Division of the LRA consisting of two (2) pages, which is attached to this Judicial Affidavit as Exhibit "9" and made an integral part thereof. What is the relation of this document to the microfilm of TCT No. 265777/T-1325 you previously mentioned?

A: It is the same document. It is a faithful reproduction of the certified true copy of the document I mentioned.

x x x x x x x x x

47. Q: You mentioned that the copy of Felisa Bonifacio's TCT No. 265777/T-1325 now on file with the Register of Deeds and the microfilm of the same title on file with the Micrographic and Computer Division of the LRA state different dates on when the land was originally registered as OCT 994, what is the significance of the difference in dates, if any?

A: In the case of *Phil-Ville Development Housing Corp. v. Maximo Bonifacio, [et al.] and Manotok Realty, Inc., and Manotok Estate Corporation vs. CLT Realty Development Corporation*,the Supreme Court held that "that there is only one OCT No. 994" and the same "was received for transcription by the Register of Deeds on 3 May 1917." Thus, in order to guide the proceedings before the Special Division which was tasked to hear and receive evidence, the Supreme Court laid down the following definitive conclusions:

> ...First, there is only one OCT 994. As it appears on the record, that mother title was received for transcription by the Register of Deeds on 3 May 1917, and that should be the date which should be reckoned as the date of registration of the title. It may also be acknowledged, as appears on the title, that OCT No. 994 resulted from the issuance of the decree of registration on [19] April 1917, although such date cannot be considered as the date of the title or the date when the title took effect.

x x x x x x x x x

48. Q: In the course of your investigation of VSD's TCT No. 285312, what other irregularities did you find, if any?

A: In Felisa Bonifacio's TCT No. 265777/T-1325 that was reproduced from the microfilm of the same title on file with the LRA, it states that the land was originally registered in the Registration Book of the Office of the Register of Deeds of Manila and the volume and page no. are left blank. On the other hand, Felisa Bonifacio's TCT No. 265777/T-1325 now on file with the Register of Deeds of Caloocan states that the land was originally registered in the Registration Book of the Office of the Register of Deeds of Rizal and the volume and page number have corresponding entries.

In addition, in Felisa Bonifacio's TCT No. 265777/T-1325 on file with the LRA and the Register of Deeds, it states that the title was directly derived from OCT No. 994.

49. Q: Why do you say that the above entries are irregular?

A: First, they are irregular because the entries appearing in the microfilm of Felisa Bonifacio's TCT No. 265777/T-1325 on file with the LRA and the one on file with the Register of Deeds of Caloocan are not the same. Second, the microfilm of Felisa Bonifacio's TCT No. 265777/T-1325 on file withthe LRA does not have the volume and page no. as entered in the Registration Book. Lastly, it states that Felisa Bonifacio's TCT No. 265777/T-1325 was derived directly from OCT 994, which is impossible considering that Lot 23-A has already been subdivided many times.

50. Q: Why do you say that Lot 23-A has been subdivided many times?

A: One of the lots covered by OCT 994 is Lot 23-A. On the other hand, the lot covered by Felisa Bonifacio's TCT No. 265777/T-1325 is referred to as Lot 23-A-4-B-2-A-3-A. A look at the lot description, referred to as Lot 23-A-4-B-2-A-3-A, shows that it has been subdivided many times. Every time a lot is subdivided, a corresponding number and/or letter is added to the lot description and a certificate of title is issued in favor of the owner. As an illustration, when Lot 23-A referred to in OCT 994 was subdivided, a number, in this case, the number 4, was added to the lot description. When it was further subdivided, a letter was added to the lot description, in this case, the letter B. Therefore,the lot description referred to in Felisa Bonifacio's TCT No. 265777/T-1325 (Lot 23-A-4-B-2-A-3-A) shows that it has been subdivided many times. If Felisa Bonifacio's TCT No. 265777/T-1325 was indeed derived directly

from OCT 994, the lot description should have only been Lot 23-A-4.Thus, based on the lot description appearing on Felisa Bonifacio's TCT No. 265777/T-1325 itself, it is impossible that her title was directly derived from OCT 994.

51. Q: How does Lot 23-A having been subdivided many times make it impossible for Felisa Bonifacio's TCT No. 265777/T-1325 to have been directly derived from OCT 994?

A: As discussed above, since Lot 23-A has been subdivided many times, if Felisa Bonifacio's TCT No. 265777/T-1325 was indeed derived directly from OCT 994, then the lot description should have only been Lot 23-A-4. The addition of a corresponding number and/or letter to the lot description every time the lot is subdivided shows that Lot 23-A has been subdivided many times and it is impossible for Felisa Bonifacio's TCT No. 265777/T-1325 to have been derived directly from OCT 994.

52. Q: Do you know when a copy of Felisa Bonifacio's TCT No. 265777/T-1325 was microfilmed by the LRA?

A: It was microfilmed by the LRA on 22 February 1994.

53. Q: When was the decision of the Supreme Court holding that "there is only one OCT No. 994" and the same "was received for transcription by the Register of Deeds on 3 May 1917" promulgated?

A: It was promulgated on 14 December 2007 and reiterated in a Decision dated 8 June 2011.

54. Q: Do you know why the copy of Felisa Bonifacio's TCT No. 265777/T-1325 on file with the Register of Deeds of Caloocan City contains a different date as to the original registration of the property covered by said title?

A: If you look closely at the copy of Felisa Bonifacio's TCT No. 265777/T-1325, you will notice that the date 3rd May nineteen hundred and seventeen was superimposed on the date 19th April nineteen hundred and twelve. In fact, there are still faint markings of the original registration date on the face of the title. It is therefore clear that the date 3 May 1917 appearing on Felisa Bonifacio's TCT No. 265777/T-1325 was altered to make it appear that it originated from the legitimate and authentic OCT No. 994.

55. Q: Would you know the reason why the date 3rd May nineteen hundred and seventeen was superimposed on the date 19th

April nineteen hundred and twelve on the copy of Felisa Bonifacio's TCT No. 265777/T-1325?

A: The obvious reason is to avoid the consequence of the Supreme Court's rulings in Manotok Realty, Inc., and Manotok Estate Corporation vs. CLT Realty Development Corporation and PhilVille Development Housing Corp. v. Maximo Bonifacio, [et al.] that there is only one OCT No. 994 x x x and the same "was received for transcription by the Register of Deeds on 3 May 1917." As early as December 1979, complaints for recovery of possession of properties covered by OCT 994 were filed. The perpetrators of the alteration logically anticipated that their scheme will be discovered; hence, they caused the alteration make it appear that their title was derived from the legitimate and authentic OCT 994 even before the Supreme Court Decisions were promulgated.

56. Q: You mentioned that VSD's TCT No. 285312 is derived from Felisa Bonifacio's TCT No. 265777/T-1325. What date is indicated in VSD's TCT No. 285312 as the date when the property covered therein was originally registered as OCT No. 994?

A: VSD's TCT No. 285312 states that the property covered therein was originally registered as OCT No. 9[9]4 on 3rd May nineteen hundred and seventeen.[65] (Citations omitted)

According to the Court of Appeals, VSD did not offer any explanation in regard to the discrepancies in Felisa Bonifacio's TCT No. 265777/T-1325 on file with the Register of Deeds of Caloocan City and the microfilm thereof in the Micrographic and Computer Division of the LRA. However, VSD refuted Engr. Cortez's testimony insofar as he concluded that the alteration was done to evade the effects of the *Manotok* and *Phil-Ville* cases. The Court of Appeals reported:

Adopting its expert witness' testimony, (Engr. Godofredo Limbo, Jr.['s] Reply-Affidavit),VSD rebuts Engr. Cortez'[s] conclusion, to wit:

90. Q: In Answer No. 55 of his Judicial Affidavit, Engr. Cortez concluded that the reason why the dates 3rd May nineteen hundred and seventeen was supposedly superimposed on the 19th April nineteen hundred and twelve on the copy of Felisa Bonifacio's TCT No.

[65] *Id.* at 788-796.

265777/T-1325 is to allegedly avoid the consequence of the Supreme Court's ruling in *Manotok Realty, Inc. and Manotok Estate Corporation vs. CLT Realty Development Corporation*, 540 SCRA 304 (2007) and *Phil-Ville Development Housing Corp. vs. Maximo Bonifacio, et al.*,651 SCRA 327 (2011) that there is only one OCT No. 994 and the same was received for transcription by the Register of Deeds on 03 May 1917. What is your reaction to this, if any?

A: I do not agree with Engr. Cortez's conclusion. Assuming *arguendo* that there was an alteration in TCT No. 265777/T-1325 which was registered on 29 March 1993, the alteration could have only been made between 22 February 1994, the date when TCT No. 265777/T-1325 was supposedly microfilmed in the LRA, and 08 September 1994, the date when TCT No. 285312 in the name of VSD was registered. There is no issue as any alleged alteration in the title in the name of VSD.

Between 22 February and 08 September 1994, of the prevailing ruling was *Metropolitan Waterworks and Sewerage Systems vs. Court of Appeals*, 215 SCRA 783 (1992) ("the MWSS case") where it was held that the true and valid OCT No. 994 was registered on 19 April 1917, thus, there was no benefit when the date of TCT No. 265777/T-1325 was altered to reflect 03 May 1917. On the contrary, this was detrimental to Bonifacio since at that time, the true OCT No. 994 should have referred to 19 April as its registration date and not 03 May 1917.

There was no way it could have been anticipated that after almost fifteen (15) years, the Supreme Court would reverse its decision and hold that 03 May 1917 is the true date of registration of OCT No. 994.

Otherwise stated, the supposed alteration was intended to render TCT No. 265777/T-1325 invalid. However, the effect was actually opposite as it confirmed the fact that the OCT No. 994, upon which an annotation of the title is included, was actually registered on 03 May 1917.[66]

The Court of Appeals stated that VSD is insistent in pointing out three matters regarding the tampered title: (1) that the alteration or tampering is only apparent in Felisa Bonifacio's

[66] Investigation Report, pp. 28-29.

TCT No. 265777/T-1325; (2) that the tampering or alteration, which was made to reflect TCT No. 265777/T-1325 as having originated from OCT No. 994 dated May 3, 1917, was done during the period when the MWSS case (1992) was the controlling Supreme Court ruling (OCT No. 994 dated April 19, 1917 was deemed legitimate/authentic);and (3) VSD is a purchaser for value and in good faith; thus, it must be accorded protection by law.[67]

The Court of Appeals asserted that notwithstanding the parties' disquisition, it is nevertheless conclusively established that the microfilmed version of TCT No. 265777/T-1325 reflects that its derivative title is OCT No. 994 dated April 19, 1912, while the title on file with the Caloocan Registry of Deeds reflects that its derivative title is OCT No. 994 dated May 3, 1917.

The Court of Appeals averred that the foregoing discrepancy in the certification of registration entries is evident proof of tampering and/or alteration (*res ipsa loquitur*),but material evidence that would establish the author of the fraudulent act has not been adequately substantiated.

This Court agrees with the finding of the Court of Appeals that the discrepancies in the certification of registration entries in Felisa Bonifacio's title on file with the Caloocan Registry of Deeds and its microfilmed version in the Micrographic and Computer Division of the LRA are evident proof of tampering and alteration.

IV. Whether respondent Baello's TCT No. (35788) 12754 can be traced back to legitimate and authentic OCT No. 994 dated May 3, 1917.

The Court of Appeals found that respondent Baello's title to the disputed property can be traced back to the legitimate OCT No. 994 registered on May 3, 1917. It reported thus:

Baello's title to the disputed lot is evidenced by TCT No. (35788) 12754 (Exhibits "1" and "28") which was issued on September 6,

[67] *Id.* at 29.

1954. Baello derived her title from Jacoba Jacinto Galauran by way of succession as shown in Entry No. 65325 Fil. T-35788 annotated on the latter's title TCT No. 10300, to wit:

> Entry No. 65325 Fil. T-35788 — Adjudication in favor of DOLORES BAELLO, adjudicatee: Covering the parcel of land described in this certificate of title in accordance with the Project of Partition in Sp. Proc. No. 1592 of the Court of First Instance of Rizal, entitled, IN THE MATTER OF THE TESTATE ESTATE OF THE DECEASED JACOBA JACINTO GALAURAN, DOLORES BAELLO, Executrix, approved by the Court in its order dated June 11, 1954, with another order dated July 30, 1954, declaring the proceeding closed. By virtue thereof, this certificate of title is hereby cancelled, Transfer Certificate of Title No. 35788, Reg. Book T-456 having been issued in the name of said Dolores Baello.
>
> Date of Instrument – Jan. 18, 1954
> Date of Inscription – Sept. 6, 1954 – 9:45a.m.

Jacoba Jacinto Galauran's TCT No. 10300 (Exhibits "4" and "21"), issued on February 16, 1926, traces its origin from TCT No. 8318 (Exhibit "6"),issued on February 26, 1924, under the name of Teodoro Jacinto (Father of Jacoba).TCT No. 8318 contains an annotation (number illegible and contents written in Spanish) dated February 16, 1926 which, by context, cancelled said title and issued TCT No. 10300 to TCT No. 10303.

For record purposes, TCT No. 10301 (Exhibit "22") was issued in the name of Monica Jacinto Galauran, TCT No. 10302 (Exhibit "23") was issued in the name of Candido J. Galauran and TCT No. 10303 (Exhibit "24"), still in the name of Teodoro Jacinto.

Teodoro Jacinto's TCT No. 8318 in turn was derived from TCT No. 8164 (Exhibit "32"),issued on November 6, 1923, under the name of Juan Cruz Sanchez by way of *venta y restante* (Exhibit "32-A"),to wit:

x x x x x x x x x

Juan Cruz Sanchez' TCT No. 8164 in turn was derived from TCT No. 8160 (Exhibit "31"), issued on October 24, 1923, in the name of Vedasto Galino by way of *venta y restante* (Exhibit "31-A"), to wit:

x x x x x x x x x

Vedasto Galino's TCT No. 8160 in turn was derived from TCT No. 8059 (Exhibit "30"), issued on September 3, 1923, still in the name of Vedasto Galino, by reason of partial sale of his property, *venta y restante* (Exhibit "30-A"), to wit:

x x x x x x x x x

Vedasto Galino's TCT No. 8059 in turn was derived from TCT No. 8004 (Exhibit "29") issued on July 24, 1923, still in the name of Vedasto Galino, by way of partial sale of his property *venta y restante* (Exhibit "29-A"[)]. (Annotation partly illegible and written in spanish).

Vedasto Galino's TCT No. 8004 in turn was derived from OCT No. 994 (Exhibits "3","15" and "19"[)], issued on May 3, 1917. Reference to TCT No. 8004 is inscribed in OCT No. 994 (Exhibit "15-F") albeit the name of Vedasto Galino is not legible or does not appear.

On this matter, Baello cites *Phil-Ville Development and Housing Corporation v. Maximo Bonifacio, et al.,* (2011) where the Supreme Court recognizes the title of Vedasto Galino over TCT No. 8004, finding *viz.*:

> On the other hand, Vedasto Galino, who was the holder of TCT No. 8004 registered on July 24, 1923 and to whom petitioner traces its titles, was among the successful petitioners in Civil Case No. 391 entitled *Rosario Negrao, et al. v. Concepcion Vidal, et al.*, who sought the issuance of bills of sale in favor of the actual occupants of certain portions of the Maysilo Estate.

Thus, Baello's title over Lot 23-A-4-B-2-A-3-A can be traced back as follows:

(a) Baello's title: TCT No. (35788) 12754; derived from

(b) Jacoba Jacinto Galauran's title: TCT No. 10300; derived from

(c) Teodoro Jacinto's title: TCT No. 8318; derived from

(d) Juan Cruz Sanchez' title: TCT No. 8164; derived from

(e) Vedasto Galino's title: TCT No. 8160; derived from

(f) -*Idem*- :TCT No. 8059; derived from

(g) -*Idem*- :TCT No. 8004; derived from

(h) Original owners of OCT No. 994 (May 3, 1917).[68] (Citations omitted)

The Court has reviewed the evidence on record and adopts and affirms the Court of Appeals' finding that Baello's title can be traced back to the legitimate OCT No. 994 registered on May 3, 1917.

V. Whether the technical description of the title of Baello covers the subject property.

Another important issue that was not ascertained with clarity in the lower court is whether the technical description in the respective titles of petitioner VSD and respondent Baello referred to the same property in dispute. To reiterate, Article 434 of the Civil Code provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: *first*,the identity of the land claimed; and *second*,his title thereto.[69] As stated by the trial court, documentary and testimonial evidence of competent government witnesses affirmed VSD's right to the technical description of the disputed lot, while Baello failed to overcome the same. She merely asserted, without more, that the technical description in her title covered the disputed property. (She failed to adduce in evidence TCT No. 10300/T-42, which contained the full technical description [boundary measurements] of her property, and she failed to establish that the said technical description pertains to the same property in dispute.) The trial court found that a mere reading of the respective technical description in VSD's title and in Baello's title would show that they are not one and the same; hence, it held that Baello is the holder of a title over a lot entirely different and not in any way related to VSD's title and its technical

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[68] *Id.* at 30-34.

[69] *Spouses Hutchison v. Buscas, supra* note 18, at 262.

description. The trial court, among others, annulled the title of Baello. The Court of Appeals held that there was no valid ground for the trial court to annul the title of Baello; hence, Baello's title enjoys the presumption of validity. This Court affirmed the trial court's ruling, but held that the nullification of Baello's title, without proof that it was procured through fraud, was void.

In the face of documentary evidence, as well as testimonial evidence of competent government witnesses affirming VSD's right to the technical description in its title to the disputed lot, and the insistence of Baello that the respective technical description in her title and VSD's title both refer to the same parcel of land, the Court of Appeals was tasked to determine whether or not the technical description in the title of Baello covers the disputed lot.

In its Investigation Report, the Court of Appeals submitted that the technical description in the respective titles of Baello and VSD refer to the same lot, subject of the dispute. The Court of Appeals reported on the fifth issue thus:

V.

Whether the technical description of the title of Baello covers the subject property

The subject property referred to for investigation of this Court is referred to as follows:

In VSD's Title:	Lot No. 23-A-4-B-2-A-3-A of the subd. Plan Psd-706, L-R.C. Rec. No. ____), situated in Balintawak, Caloocan, Rizal.
In Baello's Title:	Lote No. 3-A del plano de subdivision Psd-706, parte del Lote 23-A, plano original Psu-2345 de la Hacienda de Maysilo, situado en al Barrio de Balintawak, Municipio de Caloocan, Provincia de Rizal.

Baello's expert witness, Engr. Felino M. Cortez examined the entries in TCT No. (35788) 12754 (Exhibit "1"). Appearing thereon is the technical description of the land which reads as follows:

"Un terreno (Lote No. 3-A del plano de subdivision Psd-706, parte del Lote No. 23-A, plano original Psu-2345 de la Hacienda de Maysilo),situado en al Barrio de Balintawak, Municipio de Caloocan, Provincia de Rizal. Linda por el NE.,con el Lote No. 3-D del plano de subdivision; per el SE. con el Lote No. 3-B del plano de subdivision; por el SO. con el Lote No. 7; y por el NO. con propiedad de Ramon Dano (Lote No. 1).x x x midiendo una extension superficial de DOS MIL OCHOCIENTOS TREINTA Y CUATRO METROS CUADRADOS CON OCHENTA DECIMETROS CUADRADOS (2,834.80) mas o menus. x x x la fecha de la medicion original, 8 al 27 Septiembre, 4 al Octubre y 17-18 de Noviembre de 1911, y la de la subdivision, 29 de Diciembre de 1924." (Full technical description appears on Transfer Certificate of Title No. 10300/T-42).

Pursuant to Baello's TCT No. (35788) 12754, the full technical description (boundary measurements) is indicated in the derivative title TCT No. 10300/T-42. According to Engr. Cortez, after comparing the full technical description in the Baello Title and TCT No. 10300 with VSD's TCT No. 285312, he concludes that the property described therein pertains to one and the same lot, to wit:

61. Q: What is your basis in saying that the lot numbers are the same?

A: The lot number of the land referred to in Ms. Baello's TCT No. (35788) 12754 is 3-A, Psd-706 part of Lot 23-A of original plan PSU-2345, Hacienda de Maysilo. It is actually an abbreviation for Lot 23-A-4-B-2-A-3-A.

62. Q: What is your basis in saying that Lot No. 3-A, Psd- 706 part of Lot 23-A of original plan PSU-2345, Hacienda de Maysilo appearing in Ms. Baello's TCT No. (35788) 12754 is actually an abbreviation of Lot 23-A-4-B-2-A-3-A?

A: Ms. Baello's TCT No. (35788) 12754 states that it refers to Lot 3-A, Psd-706 part of Lot 23-A of original plan PSU-2345, Hacienda de Maysilo. Ms. Baello's TCT No. (35788) 12754 is a derivative of TCT No. 10300, which also refers to Lot 3-A. As discussed above, TCT No. 10300 came from TCT No. 8318, which refers to "Lot No. 3 of the subdivision plan being a portion Lot No. 23-A-4-B-2-A part of Lot No. 23-A of PSU 2345-Amd-2, Maysilo Estate." This means th[a]t

the land referred to in Ms. Baello's TCT No. (35788) 12754 forms a part of Lot 3, which is described in TCT No. 8318 as a part of Lot No. 23-A-4-B-2-A. Thus, the land referred to in Ms. Baello's TCT No. (35788) 12754 can be completely described as Lot 23-A-4-B-2-A-3-A.

To prove that Baello's TCT No. (35788) 12754 and VSD's TCT No. 285312 pertain to one and the same lot, Engr. Cortez, presents a comparative table of the adjoining boundaries contained in the technical description of the aforesaid titles, to wit:

	Ms. Baello's TCT No. (35788) 12754	VSD's TCT No. 285312
Northeast/East	On the NE (Northeast) along lines 1-2 by Lot 23-A-4-B-2-A-3-D, which is the lot number of 3-D	On the E (East) along lines 1-2 by Lot 23-A-4-B-2-A-3-D, which is the lot number of 3-D
Southeast	On the SE (Southeast) along lines 2-3 by Lot 23-A-4-B-2-A-3-B, which is the lot number of lot 3-B	On the SE (Southeast) along lines 2-3 by Lot 23-A-4-B-2-A-3-B, which is the lot number of lot 3-B
Southwest	On the SW (Southwest) and NW (Northwest) along lines 3-4-1 by Lot 23-A-4-B-2-A-6, which are the lot numbers of lot 1 and lot 6, respectively	On the SW (Southwest) and NW (Northwest) along lines 3-4-1 by Lot 23-A-4-B-2-A-6, which are the lot numbers of lot 1 and lot 6, respectively

Engr. Cortez points out that Baello's TCT No. (35788) 12754 and VSD's TCT No. 285312 bear a common Point-of-Beginning which is, "N.69 deg. 07' E.,1306.21m from BLLM No. 1, Caloocan."

Furthermore, Engr. Cortez presented a table portraying that the boundary lines of the property described in the Baello and VSD titles are almost identical, to wit:

Boundary Lines	Ms. Baello's TCT No. (35788) 12754	VSD's TCT No. 285312
First Boundary Line	N. 69 deg. 07' E., 1306.21m from BLLM No. 1, Caloocan to corner 1. thence S. 1 deg. 46' W, 25.16m to point 2	N. 69 deg. 07' E., 1306.21m from BLLM No. 1, Caloocan to corner 1. thence S. 1 deg. 46' W, 25.16m to point 2. to point "2"
Second Boundary Line	**S. 65 deg. 22' W., 116.78 m. to point "3"**	**S. 65 deg. 116.78 m. to point "3"**
Third Boundary Line	N. 23 deg. 12' W., 23.85 m. to point "4"	N. 23 deg. 12' W., 23.85 m. to point "4"
Fourth Boundary Line	N. 65 deg. 57' E.,127.39 m. to point "1"	N. 65 deg. 57' E.,127.39 m. to point "1"

To further illustrate that the parties' respective title involves a common lot, Engr. Cortez plotted the technical description contained in Baello's TCT No. (35788) 127544 and TCT 10300 and offered the plan thereof for consideration of the Court (Exhibit "13").Engr. Cortez likewise plotted the technical description contained in VSD's TCT No. 285312 and offered the plan thereof for comparison (Exhibit "14").Finally, Engr. Cortez presents a common plan showing that the technical description of the property in the Baello and VSD titles refer to one and the same lot (Exhibit "12").

As is apparent on the face of the titles, Engr. Cortez pointed out that the land referred to in Baello's TCT No. (35788) 12754 and the land referred to in VSD's TCT No. 285312 are of the same area, which is 2,834.8 square meters.

He further testified that the land covered by the technical description contained in Baello's TCT No. (35788) 12754 is located at Rizal Avenue Extension, Manila, Philippines, where Uniwide Caloocan can be found while the land covered by the technical description contained in VSD's TCT No. 285312 is also located at Rizal Avenue Extension, Manila[,] Philippines, where Uniwide Caloocan can also be found.

In conclusion, Engr. Cortez posits, to wit:

74. Q: Based on your findings, what conclusion did you reach, if any?

A: Based on my findings, the land covered by the description of Ms. Baello's TCT No. (35788) 12754 is the same land covered by the technical description of VSD's TCT No. 285312.Therefore, considering that Ms. Baello's TCT No. (35788) 12754 came from TCT No. 10300, which was issued on 16 February 1926 while Felisa Bonifacio's TCT No. 265777/ T-1325, from which VSD derived its title, was issued only on 29 March 1993, there is no doubt that the technical description of Felisa Bonifacio's TCT No. 265777/T-1325 was merely copied from TCT 10300. It is significant to note TCT No. 10300 (from which Ms. Baello derived her title) predates Felisa Bonifacio's TCT No. 265777/T-1325 (from which VSD derived its title) by at least sixty[-]seven (67) years.

x x x x x x x x x

For its part, VSD opposes the findings and the conclusion reached by Engr. Cortez. It posits that the Honorable Supreme Court already made a finding that the property covered by the Baello Title is not the same as that covered by the VSD Title.

VSD contends that the VSD and the Bonifacio *(sic)*[*]Baello Titles do not have the same adjoining boundaries and that considering that VSD's TCT No. 285312 refers to Lot No. 23-A-4-B-2-A-3-A while the lot number referred to in the Baello's TCT No. (35788) 12754 is only Lot No. 3-A of subdivision plan Psd-706, part of the original plan Psd-706, necessarily, the two titles pertain to different lots.

VSD also points out that Baello's TCT No. (35788) 12754's full technical description obtained its bearings from its predecessor title, *i.e.*,TCT No. 10300 which in turn was derived from TCT No. 8318 where the description "Lot No. 3 of the subdivision plan being a portion of Lot No. 23-A-4-B-2-A part of Lot No. 23-A of Psu-2345-Amd-2, Maysilo Estate x x x" can be found.

VSD theorizes that the inclusion of Amd-2 in Psu-2345 means that the original plan had been amended twice. Being two different plans, it is possible that even if the lot numbers found in the title are the same, it may pertain to different properties.

VSD challenges the validity of Baello's title considering that upon plotting, TCT No. (35788) 12754 and its predecessor title does not constitute a closed polygon.[70] (Citations omitted, emphasis in the original)

The Court of Appeals reported thus:

After a thorough perusal of the evidence on record, the weight of evidence tilts in favor of Baello. Evidently, the plot plan for TCT No. (35788) 12754/TCT 10300 and TCT No. 285312 sufficiently demonstrated the common location of the subject lot.

The issue on whether the technical description contained in Baello's title results in a closed polygon or not is shown to be human error on the part of Engr. Cortez. However, it does not change the fact that by preponderant evidence, the lot number, adjoining boundaries, Point-of-Beginning, boundary lines, area in square meters and actual location of the property in consideration is similar. That, the Baello's TCT No. (35788) 12754 and VSD's TCT No. 285312 refer to the same property where Uniwide Caloocan is actually situated.[71]

The Court has reviewed the records of the case, and adopts and agrees with the finding of the Court of Appeals that the technical description in the respective titles of VSD and Baello indeed refer to the same lot, subject of the dispute.

In addition, the Court of Appeals said that in its memorandum, VSD prayed that the appellate court includes in its report that its (VSD's) purchase of the disputed lot was for value and made in good faith.

The Court of Appeals, however, aptly stated that VSD is not an innocent purchaser of the disputed lot, thus:

VSD is not an innocent purchaser of the subject lot. An innocent purchaser for value is one who buys the property of another without notice that some other person has a right to or interest therein and who then pays a full and fair price for it at the time of the purchase or before receiving a notice of the claim or interest of some other

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[70] Investigation Report, pp. 36-41.

[71] *Id.* at 41.

persons in the property. Buyers in good faith buy a property with the belief that the person from whom they receive the thing is the owner who can convey title to the property. Such buyers do not close their eyes to facts that should put a reasonable person on guard and still claim that they are acting in good faith.

In VSD's case, at the time it purchased the subject lot *via* Deed of Absolute Sale on September 12, 1994, the subject lot was occupied by Uniwide pursuant to a Contract of Lease it executed with Dolores Baello on July 15, 1988, or six (6) years prior. VSD cannot raise as defense that it has the right to rely on the correctness of the certificate of title. The rule, as enunciated in *Philippine National Bank v. Militar,* states, *viz.*:

> x x x, where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor. A buyer of real property which is in possession of another must be wary and investigate the rights of the latter. Otherwise, without such inquiry, the buyer cannot be said to be in good faith and cannot have any right over the property.

VSD cannot be considered an innocent purchaser for value in light of its failure to investigate the occupant's (Uniwide/Baello's) right prior its purchase of the subject lot.[72]

The Court of Appeals (Special Division) concluded its Investigation Report with this recommendation:

RECOMMENDATION

After a thorough review of the evidence on record, it has been preponderantly established that Lot 23-A-4-B-2-A-3-A is the common lot described in VSD's TCT No. 285312 and Baello's TCT No. (35788) 12754. The evidence shows that the titles of VSD and Baello can both be traced back to OCT No. 994 dated May 3, 1917. However, VSD's title was derived from Felisa D. Bonifacio's tampered TCT No. 265777/T-1325, which was already adjudged as spurious in Philville (2011) and Syjuco (2015) Supreme Court cases.[73]

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

[73] *Id.* at 42.

The Ruling of the Court

The Court adopts the Investigation Report of the Court of Appeals (Special Division).

The ultimate purpose of the inquiry undertaken by the Court of Appeals (Special Division) was to determine who is the legitimate owner of the subject property traceable to the authentic OCT No. 994 registered on May 3, 1917, and, in accordance with the nature of the case (a complaint for annulment of title and recovery of possession),whether petitioner VSD is entitled to recover possession of the subject property from respondent Baello.

The Court affirms the finding of the Court of Appeals that the technical description in the respective titles of VSD and Baello refer to the same lot, subject of the dispute.

The Court finds that VSD's claim of title over the subject property cannot be sustained.

Based on the Investigation Report of the Court of Appeals and the evidence on record, VSD's title was derived from Felisa Bonifacio's TCT No. 265777/T-1325, which was tampered with to reflect that it was derived from the legitimate and authentic OCT No. 994 registered on May 3, 1917. The certification of registration portion of the Caloocan issued TCT No. 265777/T-1325[74] states that the land was originally registered on **May 3, 1917** in the Registration Book of the Office of the Register of Deeds of **Rizal, Volume A-9-A, page 226** as OCT No. 994, while in the microfilm[75] copy of TCT No. 265777/T-1325, the said land was originally registered on **April 19, 1912** in the Registration Book of the Office of the Register of Deeds of **Manila**,with **no volume and page numbers**.[76] Indeed, the

[74] CA *rollo*, p. 868.

[75] *Id.* at 872.

[76] Emphases supplied to pinpoint the discrepancies in the certification of registration entries in Felisa Bonifacio's title (TCT No. 265777/T-1325) on file with the Registry of Deeds of Caloocan City and the microfilm thereof in the Micrographic and Computer Division of the LRA.

pinpointed discrepancies in the certification of registration entries in Felisa Bonifacio's title on file with the Registry of Deeds of Caloocan City and the microfilm thereof in the Micrographic and Computer Division of the LRA are evident proof of tampering.

Moreover, ***Phil-Ville Development and Housing Corporation v. Bonifacio, et al.***,[77] already held that Maria de la Concepcion Vidal, a co-owner of the Maysilo Estate, did not have a right over Lot 23-A, from which the disputed lot originated pursuant to the *Proyecto de Particion de la Hacienda de Maysilo*,because her shares pertained to Lot 6 and portions of Lots 10 and 17. Hence, Eleuteria Rivera Bonifacio, as heir of Maria de la Concepcion Vidal, could not acquire title over Lot 23-A by substitution and, therefore, she could not convey the disputed lot by Deed of Assignment to Felisa Bonifacio, and, likewise, Felisa Bonifacio had no legal right to validly sell the disputed lot to VSD. It also held that it was impossible for Eleuteria Rivera Bonifacio to be an heir of Maria de la Concepcion Vidal because the Death Certificate of Eleuteria Rivera Bonifacio showed that she was two years older than her alleged grandmother Maria de la Concepcion Vidal.[78]

Further, the Court takes judicial notice that in ***Syjuco, et al. v. Bonifacio, et al.***,[79] the subject property involved for quieting of title by Imelda, Leonardo, Fidelino, Azucena, Josefina, Anita and Sisa, all surnamed Syjuco *(the Syjucos)* was the other lot, Lot 23-A-4-B-2-A-3-B, Psd-706 (Psu-2345) of the Maysilo Estate, which was also titled in the name of Felisa Bonifacio as TCT No. 265778, pursuant to the same Order dated October 8, 1992 of Judge Geronimo S. Mangay, RTC of Caloocan City, Branch 125, in LRC Case No. C-3288, entitled "*In the Matter of Petition for Authority to Segregate an Area of 5,630.1 Sq. mtrs. from Lot 23-A-4-B-2-A-3-B, Psd-706 (Psu-2345) of Maysilo*

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[77] *Supra* note 44.

[78] *Id.* at 344-345.

[79] *Supra* note 50.

Estate and Issuance of Separate Certificates of Title in the Name of Felisa D. Bonifacio." In ***Syjuco***, Lot 23-A-4-B-2-A-3-B was later sold by Felisa Bonifacio to VSD. Like in this case, the respective titles of VSD and Felisa Bonifacio to the disputed lot in ***Syjuco*** were derived from Eleuteria Rivera Bonifacio and Maria de la Concepcion Vidal. However, in ***Syjuco***, the Court of Appeals and this Court found that Felisa Bonifacio's title was registered in **1912**,and the respondents therein, Felisa Bonifacio and VSD, contended that their respective titles, Felisa Bonifacio's TCT No. 265778 and VSD's TCT No. 285313, were derivatives of **OCT No. 994 registered on April 19, 1917**,[80] which the Court had already repeatedly declared to be a non-existent and invalid title; hence, the Court ruled in favor of the Syjucos.

Evidently, in ***Syjuco*** and in this case whose respective subject matters are the two lots segregated in LRC Case No. C-3288, there is inconsistency in the registration date of OCT No. 994 from which the respective titles of VSD and Felisa Bonifacio were supposedly derived. In ***Syjuco***, respondents therein, Felisa Bonifacio and VSD, contended that their respective titles to Lot 23-A-4-B-2-A-3-B were derivatives of OCT No. 994 registered on April 19, 1917, which has been declared invalid; while in this case, Felisa Bonifacio's title to the subject property (Lot 23-A-4-B-2-A-3-A) was tampered with to reflect that it was derived from the legitimate and authentic OCT No. 994 registered on May 3, 1917, and VSD's title reflects the same correct registration date.

In regard to the title (TCT No. [35788] 12754) of respondent Baello, the Investigation Report and evidence on record show that Baello's title can be traced back to the legitimate and authentic OCT No. 994 registered on May 3, 1917, and her title was derived from her predecessors-in-interest (Jacoba Jacinto Galauran, Teodoro Jacinto, Juan Cruz Sanchez and Vedasto Galino) who had validly acquired title to the subject

[80] *Id.* at 477.

property. Vedasto Galino's TCT No. 8004,[81] issued on July 24, 1923, was derived from the legitimate OCT No. 994 registered on May 3, 1917. The subject property was bequeathed to respondent Baello through a will by her adoptive mother Jacoba Jacinto Galauran whose right to the subject property is evidenced by TCT No. 10300[82] issued on February 16, 1926. Respondent Baello's TCT No. (35788) 12754 was registered on September 6, 1954, more or less forty (40) years before the registration of the same property in petitioner VSD's name on September 22, 1994 and in the name of Felisa Bonifacio on March 29, 1993. Clearly, the respective titles of respondent Baello and her predecessors-in-interest over the subject property were registered decades earlier than the respective titles of petitioner VSD and its predecessor-in-interest Felisa Bonifacio.

Based on the foregoing reasons, petitioner VSD's TCT No. T-285312, which was derived from Felisa Bonifacio's tampered TCT No. 265777/T-1325 and traced back to Eleuteria Rivera Bonifacio and Maria de la Concepcion Vidal, who acquired no right over the subject property, is hereby held to be null and void. Respondent Baello is the legitimate owner of the subject property, which was registered by Baello in her name (and also Baello's predecessors-in-interest in their respective names) decades earlier than VSD and Felisa Bonifacio.

WHEREFORE, the Motion for Reconsideration is **GRANTED.** The Decision of the Court dated October 24, 2012 is **VACATED**,and the Decision of the Court of Appeals dated May 30, 2005 and its Resolution dated December 6, 2005, reversing and setting aside the Decision of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933, and dismissing the Complaint of herein petitioner VSD Realty & Development Corporation, are hereby **AFFIRMED**.

SO ORDERED.

Leonen, Gesmundo, Reyes, J. Jr., and *Lopez, JJ.*, concur.

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[81] CA *rollo,* p. 2264.

[82] *Id.* at 2241.

SECOND DIVISION

[G.R. Nos. 204052-53. March 11, 2020]

HEIRS OF AURIO T. CASIÑO, SR., namely, PATRICIA T. CASIÑO, ESTHER C. MOSQUEDA, EVANGELINE C. RIVERA, GLORY C. MAG-ABO, AURIO T. CASIÑO, JR., MARITES C. RAMOS, ALLAN T. CASIÑO, GENESON T. CASIÑO, and ALBERT T. CASIÑO, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES, MALAYBALAY BRANCH, BUKIDNON and GREEN RIVER GOLD, INC., represented by URIEL G. BORJA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*, DEFINED; ELEMENTS, ENUMERATED. — *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action identity of parties, subject matter, and causes of action.

2. ID.; ID.; ID.; ID.; ID.; THERE IS IDENTITY OF SUBJECT MATTER; THE PROPERTY SUBJECT OF THE WRIT OF POSSESSION IN CIVIL CASE NO. 1465 AND THE PROPERTY IN THE INSTANT CASE IS THE SAME.— We agree with the CA in its conclusion that while the landholdings respectively claimed by respondents and petitioners have different technical particulars, the evidence on record would

clearly reveal that the property subject of the writ of possession issued by RTC Br. 8 is part and parcel of the property being claimed by petitioners. It must be reiterated that at the outset, Aurio himself alleged in his complaint that the property in litigation is the same property being subjected to a writ of possession by the RTC Br. 8 in Civil Case No. 1465. There would be no sense in Aurio filing a third party affidavit in Civil Case No. 1465 and subsequently filing the instant complaint for quieting of title if he himself does not believe that the property subject of the writ of possession and the property subject of the instant case are the same. x x x [T]here can be no doubt that there is indeed an identity of subject matter in the instant case, on the one hand, and Civil Case No. 1465, on the other hand, at least to the extent of the property subject of the writ of possession issued by RTC Br. 8.

3. ID.; ID.; ID.; ID.; ID.; THERE IS IDENTITY OF PARTIES IN THIS CASE AND IN CIVIL CASE NO. 1465.— [T]he CA did not err in finding that there is substantial identity of parties in this case. It was correctly held that Aurio is not only an heir of Baldomero, but may also be considered a successor-in-interest by virtue of the *Kasabotan* dated April 25, 1994[.] x x x Aurio is not only an heir of Baldomero, but is also the latter's successor-in-interest by virtue of conveyance of the subject property through the *Kasabotan* dated April 25, 1994. Therefore, Aurio and his heirs have community of interest with Baldomero who initiated Civil Case No. 1465, and thus meet the test of identity of parties.

4. ID.; ID.; ID.; ID.; ID.; THERE IS IDENTITY OF CAUSES OF ACTION; BOTH THE CIVIL CASE NO. 1465 AND THE PRESENT CASE HAVE CAUSES OF ACTION THAT INEVITABLY DEAL WITH QUIETING OF TITLE OVER THE SUBJECT PROPERTY.— We do not find any error in the CA's finding that there is identity in the cause of action. We hold that both Civil Case No. 1465 and the instant case have causes of action that inevitably deal with quieting of title over the subject property. This Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no

inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions. x x x As a rule, in an action for quieting of title, the plaintiff or complainant must demonstrate a legal or equitable title to, or an interest in the subject property. He must likewise show that the deed, claim, encumbrance, or proceeding that purportedly casts a cloud on his title is in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. x x x In Civil Case No. 1465, Baldomero assailed the validity of the real estate mortgage foreclosure proceedings dated December 28, 1975, which resulted to an auction sale that transferred ownership of the subject land among other parcels of land, to DBP as evidenced by the Sheriff's Certificate of Sale. In fact, Baldomero, in his complaint, **also prayed for quieting of title over the said land**, which is essentially the same relief sought by Aurio in the instant case. In dismissing the above complaint filed by Baldomero, the RTC Br. 8 Decision in Civil Case No. 1465 held that Baldomero lost his right to repurchase the subject land when he failed to assert such right within the statutory period. The trial court likewise held that the unregistered parcel of land covered by TD No. 01915 (the same property subject of the writ of possession issued by RTC Br. 8 that is being claimed by Aurio in the instant case) was indeed among those properties mortgaged to and eventually foreclosed upon by DBP. x x x In the instant case, Aurio is essentially asking for the same relief as Baldomero in Civil Case No. 1465, and in effect, is collaterally asking for the nullification of the real estate mortgage of Baldomero with the DBP and the subsequent foreclosure proceedings.

5. ID.; ID.; ID.; ID.; TWO CONCEPTS OF *RES JUDICATA*, ENUMERATED; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT, EXPLAINED AND APPLIED; THE WRIT OF POSSESSION ISSUED IN CIVIL CASE NO. 1465 CANNOT BE REGARDED AS A CLOUD UPON THE ALLEGED TITLE CONSIDERING THAT SAID WRIT WAS NOT SHOWN TO BE "IN FACT INVALID, INEFFECTIVE, VOIDABLE, OR UNENFORCEABLE."— It bears stressing that the doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment. The second concept which is conclusiveness of judgment states that a fact or question which was in issue in a former suit and was judicially passed upon

and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point question, a former judgment between the same parties or their privies wil1 be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. In this case, identity of cause of action is not required, but merely identity of issues. Applying the foregoing to the instant case, the validity of the real estate mortgage and the subsequent foreclosure sale can no longer be attacked in a new complaint for quieting of title, more so because the Decision in Civil Case No. 1465 has become final and an entry of judgment has already been entered in our books. x x x Moreover, the writ of possession that was issued as a result of the proceedings in Civil Case No. 1465 cannot be regarded as a cloud upon the alleged title of Aurio, as the said writ and/or the proceedings in Civil Case No. 1465 were not shown to be "in fact invalid, ineffective, voidable or unenforceable." It is the claimant or plaintiff who has the burden of proof as a general principle of due process, and in this case, Aurio has fell short in discharging his burden when he failed to prove neither his alleged title to the subject property nor anything that could constitute a cloud upon that title. Thus, it is clear that the Decision of RTC Br. 8, which was affirmed by the CA and this Court, constitutes *res judicata* to the extent of their property subject of the writ of possession, which is part and parcel of petitioners' claimed property. x x x By allowing this case to prosper and granting relief to the Heirs of Aurio, the proceedings in Civil Case No. 1465, which lasted for about 13 years from the filing of the complaint up until its finality, would essentially be for naught. Considering that *res judicata* is applicable in the instant case, public policy dictates that the same must be dismissed.

6. ID.; ID.; APPEALS; RULE 45 PETITION; NO REVERSIBLE ERROR ON THE PART OF THE COURT OF APPEALS WHEN IT HELD THAT RTC BRANCH 10 COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING THE MOTION FOR EXECUTION PENDING APPEAL; THE JURISPRUDENCE AFFIRMING THE GRANT OF A DISCRETIONARY MOTION FOR EXECUTION PENDING APPEAL BY REASON OF ADVANCED AGE DOES NOT APPLY IN THE PRESENT CASE; ADVANCED AGE ALONE IS NOT CONSIDERED A GOOD REASON BY ITSELF AS IT MUST BE SUPPORTED BY SPECIAL REASONS.— We cannot find any reversible error on the part of the CA when it ruled that the RTC Br. 10 acted with grave abuse of discretion in granting the motion for execution pending appeal in favor of Aurio. x x x Jurisprudence has held that there is grave abuse of discretion when the lower court acted capriciously and whimsically. x x x The records would show that the RTC Br. 10 acted in such manner. While it may be true that the RTC Br. 10 based its order granting the motion for execution pending appeal on alleged facts, such extraordinary writ of execution must still be based on **good reasons.** x x x In this case, the RTC Br. 10 granted the motion for execution pending appeal primarily based on the advanced age of Aurio's spouse, Patricia, who was supposed to be sixty-five (65) years old at the time. While there is indeed jurisprudence wherein this Court has affirmed the granting of a discretionary motion for execution pending appeal on the reason of advanced age, such jurisprudence does not apply in the instant case. In fact, the circumstances in *Republic represented by the Department of National Defense v. Hon. Barroso, Jr.* (Saligumba case) which was cited by the RTC Br. 10 to justify its order, are not similar with the present case. As correctly pointed out by the respondents, the plaintiffs in the Saligumba case were aged 84 and 81 years old respectively and were both clearly in the twilight of their lives. On the other hand, Patricia was around sixty-five (65) years old at the time the motion for execution pending appeal was granted and there was even no allegation, much less proof, that she had any life-threatening illnesses. x x x [E]ven assuming that Patricia was indeed of advanced age, such will not be considered as a good reason by itself, since it must be supported by special reasons, which were not provided in this case. Verily, the RTC Br. 10 committed grave abuse of discretion when it allowed execution pending appeal not based on good reasons.

APPEARANCES OF COUNSEL

Abundio L. Okit for petitioners.
Jeoffrey C. Sayson for respondent DBP.
Gabriel Q. Enriquez for respondent intervenor Green River Gold, Inc.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the February 16, 2012 Decision[1] and October 11, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 01367-MIN & CA-G.R. SP No. 01949-MIN.

The facts of the case as summarized by the CA are as follows:

On December 28, 1975, spouses Baldomero and Leonarda Casiño (Spouses Casiño) obtained a loan from [the Development Bank of the Philippines (DBP)] in the amount of [One Hundred Thirty Thousand Pesos] (₱130,000.00), secured by a real estate mortgage over three parcels of land situated within the municipalities of Valencia and Lantapan, Bukidnon, respectively covered by Original Certificates of Title (OCT) Nos. P-372 and P-1652, and Tax Declaration (TD) No. 01915.

After [Spouses Casiño] failed to settle their loan obligation, [DBP] caused the extrajudicial foreclosure of the mortgage on March 24, 1977. In the auction sale, [DBP] made the winning bid, and was issued a Sheriff Certificate of Sale dated July 17, 1977. The [said] certificate of sale was subsequently registered with the Register of Deeds of Bukidnon on September 16, 1977.

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[1] *Rollo*, pp. 39-54; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Carmelita Salandanan Manahan and Pedro B. Corales.

[2] *Id.* at 60-67; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Renato C. Francisco and Ma. Luisa Quizano Padilla.

Upon failure of the [Spouses Casiño] to redeem the properties within the prescribed redemption period, [DBP] finally caused the consolidation of the title of the properties in its name. Consequently, OCT Nos. P-372 and P-1652 were cancelled and were replaced by Transfer Certificates of Title (TCT) Nos. T-13478 and T-13479. Similarly, [TD] No. 01915 was cancelled, and was replaced by TD No. 06596.[3]

Baldomero later filed a complaint against [DBP] for annulment of real estate mortgage and foreclosure proceedings, quieting of title, redemption, and damages before the Regional Trial Court (RTC Br. 8) Branch 8, Malaybalay, Bukidnon, docketed as Civil Case No. 1465.

After due proceedings, the RTC Br. 8 rendered a decision dated August 3, 1990 dismissing the complaint. Baldomero appealed the dismissal, but this Court affirmed *in toto* the assailed decision [issued on May 30, 1995]. Unperturbed, Baldomero went to this Court *via* [P]etition for [R]eview on *[C]ertiorari*, but it was denied in a Resolution dated 10 July 1996.[4]

Meanwile, Baldomero executed a document denominated as *Kasabotan* dated 25 April 1994, where he relinquished to his son, Aurio [T. Casiño (Aurio)], all his rights over the three properties, including the land at Sitio Kibulay, Barrio Cawayan, Municipality of Lantapan, consisting of an area of one hundred twenty (120) hectares. On the other hand, on January 13, 1997, [DBP] sold the Kibulay property in favor of Green River Gold, Inc. (Green River).

Subsequently, on February 20, 1997, [DBP] and Green River, [the latter] in its capacity as intervenor, filed before the RTC Br. 8 an *ex-parte* petition for issuance of a writ of possession [over the Kibulay property]. x x x [A] writ of possession was [eventually] issued [by the RTC Br. 8 in favor of DBP and Green River, however] the court sheriff was unable to enforce [the same due to alleged threats of several armed men employed by Aurio].

On March 20, 1997 Aurio filed with the RTC Br. 8 an affidavit of third-party claim, alleging that he is the owner and possessor of the [Kibulay property] parcel of land [subject of the writ of possession earlier issued by the RTC Br. 8].

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[3] *Id.*

[4] *Id.* at 42.

The following day, on March 21, 1997, Aurio filed [the instant complaint for quieting of title with the Regional Trial Court Branch 10 in Malaybalay City, Bukidnon (RTC Br. 10), alleging, among other things,] that he is the true, lawful, and absolute owner of [a certain property situated in Bukidnon].

In [response, DBP filed an a nswer arguing that Aurio's complaint is already barred by *res judicata*, as the former already has ownership over the subject property through an extrajudicial foreclosure sale held as valid in a decision dated August 3, 1990, and affirmed by the CA and even this Court. Moreover, DBP argued] that the complaint is defective for failure to implead Green River, a real party-in-interest, to which it later sold the [subject] property in litigation.

On May 9, 1997, Green River filed an answer-in-intervention, adopting substantially the affirmative defenses raised by [DBP] in its answer, among others: (a) the complaint states no cause of action; (b) it is barred by laches and prescription; (c) the [RTC Br. 10] has no jurisdiction to review the decree of the RTC Br. 8, a co-equal court, in issuing a writ of possession; and (d) the complaint is bereft of factual and legal consideration.

[In the] meantime, [DBP] and Green River filed anew, in Civil Case No. 1465, an *ex-parte* petition for an *alias* writ of possession, which the RTC Br. 8 granted on December 3, 2001. Aurio, [at] this time already deceased and represented by his heirs, moved for reconsideration but the motion was denied.

[Ruling of the Regional Trial Court-Br. 10 in Civil Case No. 2685-97)

[On July 4, 2006, the RTC Br. 10 rendered a Judgment, which declared that the subject property being claimed by Aurio] is different from that being claimed by [DBP) and Green River. [It also held] that the Decision in Civil Case No. 1465 is not binding on Aurio or his heirs because they were not parties to [the said case. The RTC Br. 10 also] directed Green River to vacate the premises [of the subject property] and not to disturb Aurio's possession of the [same. Attorney's fees and litigation expenses were also ordered to be paid jointly and solidarity by DBP and Green River to Aurio].

[DBP] and Green River separately filed their [own] motions for reconsideration, while Aurio, [who died pending proceedings and was now represented by his heirs], filed a motion for execution of judgment pending appeal. [The RTC Br. 10] denied the motions for

reconsideration and granted the motion for execution pending appeal [in an Order dated January 4, 2007].

Aggrieved, [DBP] and Green River [filed] separate appeals [with the CA, which were eventually consolidated.] [DBP also filed a Petition for *Certiorari* under Rule 65 of the Rules of Court, asserting that the RTC Br. 10, acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it issued the Order dated January 4, 2007 granting Aurio's motion for execution pending appeal.][5]

Ruling of the Court of Appeals:

On February 16, 2012, the CA granted the appeals of respondents, vacated and set aside the Judgment of the Regional Trial Court Branch 10 (RTC Br. 10) of Malaybalay City, Bukidnon dated July 4, 2006 and ruled that Aurio's complaint lacks merit and is indeed barred by *res judicata*.[6] The CA also granted DBP's Petition for *Certiorari*, holding that the RTC Br. 10 committed grave abuse of discretion when it granted Aurio's motion for execution pending appeal.[7] Aurio filed a Motion for Reconsideration[8] to challenge the said Decision of the CA, reiterating his arguments and further alleging that the appellate court erred in its statement of facts when it included Civil Case No. 1465, as the said case, according to Aurio, was alien and foreign to the instant case.

On October 11, 2012, the CA issued a Resolution[9] denying Aurio's Motion for Reconsideration, ruling that it did not err in including Civil Case No. 1465 as the same was intimately related to the instant case an in fact, the writ of possession issued in the Baldomero case against Aurio might have been the reason behind him filing the instant complaint.

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[5] *Id.* at 41-45.

[6] *Id.* at 53.

[7] *Id.*

[8] CA *rollo* (CA-G.R. CV No. 01367-MlN), pp. 491-504.

[9] *Rollo*, pp. 60-67.

Issues

Adversely affected by the Decision and Resolution of the CA, Aurio filed the instant Petition with this Court, in effect alleging the following assignment of errors:

1) Whether or not the [Court of Appeals] erred in its opening statement of facts in that instead of stating the fact of the main case, which is on appeal, quieting of title Civil Case No. 2685-97 filed by the plaintiffs-appellees, the Honorable Court of Appeals centered its attention to December 28, 1975, about a loan which is alien to and foreign to the main case. It is as if the said case is the one subject of appeal;

2) Whether or not the Court of Appeals erred in holding that tax declarations are not evidence of ownership and that plaintiffs appellees have no cause of action;

3) Whether or not the Court of Appeals erred in holding that *res judicata* has set in this case; and

4) Whether or not the Court of Appeals erred in holding that public respondent committed grave abuse of discretion in granting [the] Motion for Execution pending appeal.[10]

Our Ruling

The petition is not meritorious.

At the crux of the controversy is the determination of whether or not *res judicata* bars the filing of Civil Case No. 2685-97.

Civil Case No. 1465 *vis-a-vis* Civil Case No. 2685-97

As discussed earlier, Civil Case No. 1465, lodged before the RTC Br. 8 of Malaybalay City, Bukidnon, involved a complaint for annulment of real estate mortgage and foreclosure proceedings, quieting of title, redemption, and damages filed by Baldomero, Aurio's father, against DBP, in response to DBP's

[10] *Id.* at 15-16.

extrajudicial foreclosure of three parcels of land mortgaged by the Spouses Casiño due to the latter's failure to settle their loan obligation with the former. After due proceedings, the RTC Br. 8 rendered a decision dated August 3, 1990 dismissing the complaint.[11] Baldomero appealed the decision to the CA, which denied the appeal and affirmed *in toto* the decision of the RTC Br. 8 in a decision dated May 30, 1995.[12] Thereafter, this Court denied Baldomero's Petition for Review on *certiorari* challenging the CA's decision in a Resolution dated July 10, 1996.[13]

The records of the case would reveal that the Spouses Casiño first instituted Civil Case No. 1465 before the RTC Br. 8 in Malaybalay City, Bukidnon. They prayed for the nullity of the foreclosure proceedings conducted on March 24, 1977, among others.[14] Notably, the Casiños also included in their complaint an action for quieting of title over the parcels of land in question.[15]

On August 3, 1990, the RTC Br. 8 issued a Decision dismissing the Spouses Casiño's complaint, thereby upholding the validity of the real estate mortgage and the foreclosure proceedings, and effectively denying their action for quieting of title, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, plaintiff's Complaint and/or Amended Complaint is hereby ordered DISMISSED. The counterclaim of defendants DBP and spouses Juanito and Leontina Lavina are also DISMISSED. No costs.
>
> SO ORDERED.[16]

The Spouses Casiño appealed said decision to the CA. On May 30, 1995, the appellate court issued a Decision dismissing the appeal, the dispositive portion of which reads:

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[11] CA *rollo* (CA G.R. CV No. 01367-MIN), pp. 83-89.

[12] Records, pp. 123-138.

[13] *Id.* at 139.

[14] See CA Decision, *rollo*, pp. 40-54 at 41.

[15] *Id.*

[16] CA *rollo* (CA-G.R. CV No. 01367-MIN), pp. 88-89.

WHEREFORE, judgment is hereby rendered, affirming, *in toto*, the Decision of the Court a quo appealed from. With costs against Appellant.

SO ORDERED.[17]

Aggrieved, the Spouses Casiño then sought relief from this Court.

On July 10, 1996, the Court's Second Division issued a Resolution denying the petition of the Spouses Casiño for its failure to sufficiently show that the CA had committed any reversible error in the questioned judgment.[18] Consequently, since no further motion or pleading was filed by either party, an Entry of Judgment was issued by this Court, certifying that the Resolution dated July 10, 1996 has become final and executory on September 4, 1996.[19]

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[20] *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[21]

The elements of *res judicata* are:

(1) the judgment sought to bar the new action must be final;

(2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;

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[17] Records, p. 137.

[18] *Id.* at 139.

[19] See *rollo*, of G.R. No. 121340, *Casiño, Sr. v. Court of Appeals*, p. 197.

[20] *Spouses Torres v. Medina*, 629 Phil. 101, 110 (2010).

[21] *Id.*

(3) the disposition or the case must be a judgment on the merits; and

(4) there must be as between the first and second action identity of parties, subject matter, and causes of action.[22]

In their Petition, the Heirs of Aurio do not dispute the presence of the first three elements, and merely reiterated the RTC Br. 10's discussion regarding the fourth element in its Judgment dated July 4, 2006.[23] Particularly, the Heirs of Aurio adopted the RTC Br. 10's view that *res judicata* does not apply in the instant case as the issues raised in Civil Cas No. 1465 are not identical with the instant case, as the land mortgaged by Baldomero to DBP and subsequently sold to Green River is covered by a different tax declaration with boundaries not identical to the subject property being claimed by Aurio.[24]

This Court is not persuaded.

There is identity of subject matter

We agree with the CA in its conclusion that while the landholdings respectively claimed by respondents and petitioners have different technical particulars, the evidence on record would clearly reveal that the property subject of the writ of possession issued by RTC Br. 8 is part and parcel of the property being claimed by petitioners.

It must be reiterated that at the outset, Aurio himself alleged in his complaint that the property in litigation is the same property being subjected to a writ of possession by the RTC Br. 8 in Civil Case No. 1465.[25] There would be no sense in Aurio filing a third party affidavit in Civil Case No. 1465 and subsequently filing the instant complaint for quieting of title, if he himself does not believe that the property subject of the writ of possession and the property subject of the instant case is not the same.

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[22] *Id.*

[23] *Rollo*, pp. 22-23.

[24] *Id.*

[25] Records, p. 2.

Moreover, the trial court's commissioned surveyor, Engr. Dimas S. Sario (Engr. Sario), clearly stated in his survey report that: (a) the property claimed by the Bank which was sold to Green River "exists on the ground identified as Lot No. 2528, Cad. 653, Lantapan Cadastre";[26] (b) the property of Aurio covered by TD No. 06532 existing on the ground covers Lot No. 2528, among other lots, all of Cad. 653, Lantapan Cadastre; and (c) the property sold by the Bank to Green River is enclosed in Red, which is a portion of Aurio's claimed property enclosed in Green.[27]

Records would further reveal that Engr. Sario, in his testimony in open court, clarified and confirmed that the land covered by TD No. 01915 and subject of a writ of possession issued by RTC Br. 8 indeed exists on the ground (contrary to the erroneous conclusion of the RTC Br. 10) as Lot No. 2528, Cad. 653, Lantapan Cadastre pursuant to No. 3 of Survey Report. The said testimony went as follows:

Q: Alright, look again the survey conducted by Wenefredo Agripo, what are the boundaries there?
A: The boundaries there, on the North is by Public Land, on the East by Cawayan Creek, on the South, by Manupale River and on the West by Kibulay Creek.

Q: And these boundaries exist?
A: Yes, your Honor.

Q: And this is identified as Lot No. 2528, correct?
A: Unnumbered lot.

Q: Do you know Geodetic Engr. Ricarte Abriol?
A: Yes, I knew him.

Q: Now by the way Engr. Sario, you stated earlier that you gave notices to the parties and that you verified the records from the DENR?
A: Yes Sir.

Q: Before you went to the area?
A: Yes Sir.

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[26] CA *rollo* (SP. No. 01944-MIN), p. 52.

[27] *Id.*

Q: Did you come across a survey done by Engr. Ricarte Abriol, do you have that?
A: None.

Q: Then what did you do, what records did you verify? I will show you the record which is already marked and presented by DBP and the Intervenor. This Exhibit "14," [is] this record must be there in the DENR dated 1996?
A: As far as I know, this sketch prepared by Engr. Ricarte Abriol, this was a plan prepared by Ricarte Abriol but the same found in the records of the Cadastral survey.

Q: And this lot really exists in the name of Baldomero Casiño?
A: Yes Sir.

Q: The person who mortgaged to the Development Bank of the Philippines (DBP)?
A: Yes Sir.

Q: And this is Lot No. 2528?
A: Yes Sir.

Q: Mentioned also in the order of the Hon. Court, designating the Office of the DENR to conduct the survey?
A: Yes Sir.

Q: And this is identical to the survey which you have shown to me done by Wenefredo Agripo?
A: This is basically a portion.

Q: Yes, but the boundaries are the same?
A: Yes Sir.

Q: And the area is the same?
A: Yes Sir.[28]

From the foregoing, there can be no doubt that there is indeed an identity of subject matter in the instant case, on the one hand, and Civil Case No. 1465, on the other hand, at least to the extent of the property subject of the writ of possession issued by RTC Br. 8.

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[28] TSN, February 17, 2005, pp. 38-41.

There is identity of parties

Likewise, the CA did not err in finding that there is substantial identity of parties in this case.[29] It was correctly held that Aurio is not only an heir of Baldomero, but may also be considered a successor-in-interest by virtue of the *Kasabotan* dated April 25, 1994, to wit:

> Although the parties involved in the two cases are not exactly the same, there is substantially an identity of parties for purposes of *res judicata*. The fundamental rule is that for *res judicata* to apply, only substantial, not absolute, identity of parties is required. In fact, there is identity of parties not only where the parties are the same but also those in privity with them, as between their successor-in-interest by title subsequent to the commencement of the action, litigating for the same thing and in the same capacity, or where there is substantial identity of parties. In the present case, Aurio is not only an heir of his father Baldomero, who instituted the first quieting of title case; Aurio is also considered a successor-in-interest by title of Baldomero by virtue of the conveyance of the subject property through the Kasabotan dated April 25, 1994.[30]

In *Guerrero v. Director, Land Management Bureau*,[31] We held that:

> There is identity of parties not only when the parties in the cases are the same, but also between those in privity with them, such as between their successors-in-interest. Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient.
>
> Private respondents in this case, as successors-in-interest of Marcelo and Angelina Bustamante, who initiated the first case that was ultimately decided by this Court as *Republic v. Guerrero*, have a community of interest with the latter and, thus, meet the [test] of identity of parties. Private respondents are bound by the previous ruling under the criterion

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[29] *Rollo*, p. 51; CA Decision, p. 13.

[30] *Id.*

[31] 759 Phil. 99 (2015).

of "privity of interest." They have no more right to reopen an already terminated case.[32]

Similar to the above, Aurio is not only an heir of Baldomero, but is also the latter's successor-in-interest by virtue of conveyance of the subject property through the *Kasabotan* dated April 25, 1994. Therefore, Aurio and his heirs have community of interest with Baldomero who initiated Civil Case No. 1465, and thus meet the test of identity of parties.

There is identity in the cause of action

For the last requirement, We do not find any error in the CA's finding that there is identity in the cause of action.[33] We hold that both Civil Case No. 1465 and the instant case have causes of action that inevitably deal with quieting of title over the subject property.

This Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.[34]

The governing rule in this case is Article 476 of the Civil Code which provides:

> Whenever there is cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

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[32] *Id.* at 113 citing *Republic v. Guerrero*, 520 Phil. 296 (2006).

[33] *Rollo*, pp. 51-52.

[34] *Spouses Torres v. Medina*, *supra* note 20 at 112.

As a rule, in an action for quieting of title, the plaintiff or complainant must demonstrate a legal or equitable title to, or an interest in the subject property.[35] He must likewise show that the deed, claim, encumbrance, or proceeding that purportedly casts a cloud on his title is in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[36]

In his complaint, Aurio alleged that he is the true, lawful, and absolute owner of the property being subjected to a writ of possession by the RTC Br. 8 in Civil Case No. 1465.

Any affirmative relief that this Court may grant on said cause of action would necessarily affect the validity of the real estate mortgage foreclosure proceedings and the resulting sale of the property subject of Civil Case No. 1465; issues which could no longer be revived, as the same have already been settled. Consequently, the rights of ownership and possession over such property would also be affected.

In Civil Case No. 1465, Baldomero assailed the validity of the real estate mortgage foreclosure proceedings dated December 28, 1975, which resulted to an auction sale that transferred ownership of the subject land, among other parcels of land, to DBP as evidenced by the Sheriff's Certificate of Sale. In fact, Baldomero, in his complaint, **also prayed for quieting of title over the said land**, which is essentially the same relief sought by Aurio in the instant case.[37]

In dismissing the above complaint filed by Baldomero, the RTC Br. 8 Decision in Civil Case No. 1465 held that Baldomero lost his right to repurchase the subject land when he failed to assert such right within the statutory period.[38] The trial court likewise held that the unregistered parcel of land covered by TD No. 01915 (the same property subject of the writ of possession issued by RTC Br. 8 that is being claimed by Aurio

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[35] *Mananquil v. Moico*, 699 Phil. 120 (2012).

[36] *Id.* at 127.

[37] Records, pp. 116-122.

[38] *Id.* at 119.

in the instant case) was indeed among those properties mortgaged to and eventually foreclosed upon by DBP.[39] The dispositive portion reads:

> WHEREFORE, in view of the foregoing, plaintiffs Complaint and/or Amended Complaint is hereby ordered DISMISSED. The counterclaim of defendants DBP and spouses Juanito and Leontina Lavina are also DISMISSED. No costs.
>
> SO ORDERED.[40]

As mentioned earlier, the above Decision was affirmed by the CA and this Court. Thus, there is no dispute that the Decision of the RTC Br. 8, categorically dismissing Baldomero's complaint and/or amended complaint is final and executory.

In the instant case, Aurio is essentially asking for the same relief as Baldomero in Civil Case No. 1465, and in effect, is collaterally asking for the nullification of the real estate mortgage of Baldomero with the DBP and the subsequent foreclosure proceedings.

It bears stressing that the doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.[41]

The second concept which is conclusiveness of judgment states that a fact or question which was in issue in a former suit and was judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular

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[39] *Id.* at 120.

[40] CA *rollo* (CA-G.R. CV No. 01367-MIN), pp. 88-89.

[41] *Spouses Torres v. Medina*, *supra* note 20 at 113.

matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. In this case, identity of cause of action is not required, but merely identity of issues.[42]

Applying the foregoing to the instant case, the validity of the real estate mortgage and the subsequent foreclosure sale can no longer be attacked in a new complaint for quieting of title, more so because the Decision in Civil Case No. 1465 has become final and an entry of judgment has already been entered in our books. To put it simply, we have already ruled, in effect, that DBP is the owner of the subject property as it was acquired by it through a valid foreclosure sale. Granting the reliefs sought by Aurio and his heirs would be inconsistent with the ruling in Civil Case No. 1465 and will disturb the final and executory Decision in the said case.

Moreover, the writ of possession that was issued as a result of the proceedings in Civil Case No. 1465 cannot be regarded as a cloud upon the alleged title of Aurio, as the said writ and/or the proceedings in Civil Case No. 1465 were not shown to be "in fact invalid, ineffective, voidable or unenforceable." It is the claimant or plaintiff who has the burden of proof as a general principle of due process, and in this case, Aurio has fell short in discharging his burden when he failed to prove neither his alleged title to the subject property nor anything that could constitute a cloud upon that title.

Thus, it is clear that the Decision of RTC Br. 8, which was affirmed by the CA and this Court, constitutes *res judicata* to the extent of the property subject of the writ of possession, which is part and parcel of petitioners' claimed property.

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[42] *Id.*

In this regard, We held in *FELS Energy, Inc. v. The Province of Batangas*,[43] that *res judicata*, as a ground for dismissal, is based on two grounds, *to wit*:

> (1) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *republicae ut sit litium*; and (2) the hardship on the individual of being vexed twice for the same cause — *nemo debet bis vexari er eadem causa*.
>
> A conflicting doctrine would subject the public peace and quiet to the will and dereliction of individuals and prefer the regalement of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.[44]

By allowing this case to prosper and granting relief to the Heirs of Aurio, the proceedings in Civil Case No. 1465, which lasted for about 13 years from the filing of the complaint up until its finality, would essentially be for naught. Considering that *res judicata* is applicable in the instant case, public policy dictates that the same must be dismissed.

The Court of Appeals did not err in including the proceedings in Civil Case No. 1465 in its statement of facts.

Since the instant case is primarily hinged on quieting of title, it is crucial for the CA to ascertain all facts relevant to such cause of action.

It is elementary that in a case for quieting of title, there are two elements involved, namely: (1) a legal or equitable title over the subject property; and (2) a document, instrument, or proceeding that constitutes a cloud on said title.[45]

In the instant case, it is clear that the proceedings in Civil Case No. 1465 must be discussed because such proceedings were the root of the RTC Br. 8's order to issue a writ of possession over the Kibulay property, which is the property claimed by Aurio that he has a title thereto as admitted in his complaint.

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[43] 545 Phil. 92 (2007).

[44] *Id.* at 109.

[45] *Mananquil v. Moico*, see note 35.

Thus, contrary to Aurio's claims, the proceedings in Civil Case No. 1465 were not alien and foreign to the main case. The determination of whether or not RTC Br. 8's order to issue a writ of possession constituted a cloud on Aurio's alleged title would necessarily hinge upon the validity of such order, which would in turn necessitate the examination of the proceedings that led to issuance of such order.

Moreover, while it is generally true that the lower courts' or tribunals' findings of fact must be accorded high respect by the appellate courts or tribunals, such findings of fact are not binding upon the higher courts and may be reversed on appeal.

In this case, the CA did not err in including the proceedings of Civil Case No. 1465 in its finding of facts as the same is entirely within its jurisdiction, most especially since DBP and Green River Gold raised mixed questions of fact and law in its appeal, specifically challenging the findings of RTC Br. 10.

Nevertheless, even if the factual circumstances of Civil Case No. l465 can be found in the records, the CA just deemed it appropriate to lay down such facts in determining the instant case.

Thus, We do not see any cogent reason to disturb the CA's findings of facts as they are based on the evidence on record. This Court is a trier of law and not of fact. In any event, this Court deems it appropriate that a discussion of the proceedings in the Baldomero case is necessary in the proper adjudication of the case at hand, given that the main issue here is the applicability of *res judicata*. Verily, the CA did not commit any reversible error when it included said proceedings in the statement of facts.

Tax Declarations, by themselves, are not conclusive evidence of ownership

While it is true that tax declarations may be considered as evidence of ownership, particularly with regard to the possession in the concept of an owner, such tax declarations do not, by themselves, prove ownership over the subject land.

It has been consistently held by this Court that tax declarations are merely indicia of a claim of ownership and are not considered conclusive evidence of ownership.

In *Titong v. The Honorable Court of Appeals (4th Division)*,[46] the petitioner therein anchored his claim of ownership "on the survey plan prepared upon his request, the tax declaration in his name, the commissioner's report on the relocation survey, and the survey plan,"[47] similar to Aurio in the instant case. We ruled that the tax declaration issued in his name is not even persuasive evidence of his claimed ownership over the subject land in that case, to wit:

> Similarly, petitioner's tax declaration issued under his name is not even persuasive evidence of his claimed ownership over the land in dispute. A tax declaration, by itself, is not considered conclusive evidence of ownership. It is merely an indicium of a claim of ownership. Because it does not by itself give title, it is of little value in proving one's ownership. x x x[48]

Given this, the CA has correctly held that:

> x x x At any rate, petitioner anchors his claim merely on the survey plan prepared upon his request and the tax declaration that was unilaterally made out in his name. These documents do not conclusively demonstrate "title" over the subject property. A survey plan is nothing more than a paper containing a statement of courses, distances, and quantity of land, and refers only to a delineation of possession. It is not conclusive as to ownership, nor is it considered a conveyance or a mode of acquiring ownership. The same thing goes with TD No. 06532 in Aurio's name. It is settled that a tax declaration is merely an indicium of a claim of ownership, and is not, by itself, a conclusive evidence of ownership. Because a tax declaration does not give title, it is only of little value in proving one's ownership. On the whole, Aurio's tax declaration under his name lends no evidentiary support to his claimed ownership over the land in dispute. Besides, the gaping gap in the land areas pictured in the tax declaration and in the commissioner's report is much too glaring to ignore. TD No. 06532 states that Aurio's property has an area of 163.3817 hectares while the commissioned Geodetic Engineer's Survey Report shows that the

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[46] 350 Phil. 544 (1998).

[47] *Id.* at 557.

[48] *Id.* at 558.

land area is 192.700 hectares. Notably, there is an apparent discrepancy of 29.3183 hectares. x x x[49]

Thus, the submitted TD No. 06532 of Aurio, even when coupled with the Survey Plan (commissioned by Aurio himself for his own benefit), has little evidentiary weight compared to the evidence submitted by DBP, particularly a final and executory court decision, affirmed by this Court itself, declaring that DBP has, in effect, rights of ownership and possession over the parcel of land covered by TD No. 06532.

In fact, when the evidence on record is considered, it is as if Aurio's Tax Declaration is seemingly the "cloud" that should be removed from the title of DBP (now transferred to Green River Gold).

It must be reiterated that in civil cases, preponderance of evidence is the quantum of proof observed, meaning that the party who has presented pieces of evidence that have more evidentiary weight shall prevail. In this case, Aurio, being the plaintiff, failed to present evidence of such weight as to overcome the evidence presented by DBP, and thus failing to discharge the burden of proof required in his chosen cause of action, which is quieting of title.

The Court of Appeals did not commit any error when it held that the RTC Br. 10 committed grave abuse of discretion in granting the motion for execution pending appeal in favor of Aurio.

Given the foregoing findings, We cannot find any reversible error on the part of the CA when it ruled that the RTC Br. 10 acted with grave abuse of discretion in granting the motion for execution pending appeal in favor of Aurio.

Cruz v. People of the Philippines[50] discussed the purpose of a *writ of certiorari*, to wit:

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[49] *Rollo*, pp. 48-49.

[50] 812 Phil. 166 (2017).

The writ of *certiorari* is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction. x x x[51]

Jurisprudence has held that there is grave abuse of discretion when the lower court acted capriciously and whimsically. In *Yu v. Judge Reyes-Carpio*,[52] the Court explained:

x x x The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x[53]

The records would show that the RTC Br. 10 acted in such manner. While it may be true that the RTC Br. 10 based its order granting the motion for execution pending appeal on alleged facts, such extraordinary writ of execution must still be based on **good reasons**.

Section 2(a), Rule 39 of the Rules of Court provides:

SEC. 2. Discretionary execution. –

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[51] *Id.* at 171.

[52] 667 Phil. 474 (2011).

[53] *Id.*

(a) *Execution of a judgment or a final order pending appeal*. – On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

In *Abenion v. Pilipinas Shell Petroleum Corporation*,[54] this Court reiterated that the trial court's discretion in allowing execution pending appeal must be strictly construed and explained that the grant must be grounded on the existence of good reason, to wit:

In now declaring that the execution pending appeal was unsupported by sufficient grounds, the Court restates the rule that the trial court's discretion in allowing execution pending appeal must be strictly construed. Its grant must be firmly grounded on the existence of "good reasons," which consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. "The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity."[55]

In this case, the RTC Br. 10 granted the motion for execution pending appeal primarily based on the advanced age of Aurio's spouse, Patricia, who was supposed to be sixty-five (65) years old at the time.

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[54] 805 Phil. 167 (2017).

[55] *Id.* at 201 citing *Florendo v. Paramount Insurance Corp.*, 624 Phil. 373, 381 (2010).

While there is indeed jurisprudence wherein this Court has affirmed the granting of a discretionary motion for execution pending appeal on the reason of advanced age, such jurisprudence does not apply in the instant case. In fact, the circumstances in *Republic represented by the Department of National Defense v. Hon. Barroso, Jr.*[56] (Saligumba case) which was cited by the RTC Br. 10 to justify its order,[57] are not similar with the present case.

As correctly pointed out by the respondents, the plaintiffs in the Saligumba case were aged 84 and 81 years old respectively and were both clearly in the twilight of their lives. On the other hand, Patricia was around sixty-five (65) years old at the time the motion for execution pending appeal was granted and there was even no allegation, much less proof, that she had any life-threatening illnesses. It must be also noted that the Saligumba case was decided *via* an unsigned Resolution, hence, only binding on the parties therein.

Citing again the abovementioned *Abenion* case, We explained what is considered as "good reasons" particularly with respect to the advanced age of the plaintiff, to wit:

> The sufficiency of "good reasons" depends upon the circumstances of the case and the parties thereto. Conditions that are personal to one party, for example, may be insufficient to justify an execution pending appeal that would affect all parties to the case and the property that is the subject thereof. Thus, in *Florendo, et al. v. Paramount Insurance Corp.*, the Court ruled that the execution pending appeal, which was supposedly justified by the old age and life-threatening ailments of merely one of several parties to the case, was unsupported by special reasons. As the Court sustained the CA's reversal of the execution, it explained:
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> > The Florendos point out that Rosario is already in her old age and suffers from life threatening ailments. But the trial court has allowed execution pending appeal for all of the Florendos, not just for Rosario whose share in the subject lands had not

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[56] G.R. No. 156257, October 8, 2003 (unsigned resolution).

[57] CA *rollo* (SP No. 01949-MIN), pp. 211-212.

> been established. No claim is made that the rest of the Florendos are old and ailing. Consequently, the execution pending appeal was indiscreet and too sweeping. All the lands could be sold for ₱42,000,000, the value mentioned in the petition, and distributed to all the Florendos for their enjoyment with no sufficient assurance that they all will and can return such sum in case the CA reverses, as it has in fact done, the RTC decision. Moreover, it is unclear how much of the proceeds of the sale of the lands Rosario needed for her old age.[58]

Given the abovementioned case, even assuming that Patricia was indeed of advanced age, such will not be considered as a good reason by itself, since it must be supported by special reasons, which were not provided in this case. Verily, the RTC Br. 10 committed grave abuse of discretion when it allowed execution pending appeal not based on good reasons.

In any event, the RTC Br. 10 clearly had no authority or jurisdiction to disturb the final and executory decision dated August 3, 1990 of the RTC Br. 8, a co-equal court, in Civil Case No. 1465. We have held that the "various trial courts of a province or city, having the same or equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments."[59] Despite this, the RTC Br. 10 acted capriciously and overstepped its jurisdiction when it ordered the execution pending appeal merely by reason of Patricia's alleged old age. Verily, the apparent old age of the Patricia would certainly not override the doctrine that a court cannot and should not disturb the orders or judgments of a co-equal court, especially since the said decision is already final and executory.

Therefore, the totality of circumstances considered, We see no error in the ruling of the CA that the RTC Br. 10 committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted petitioners' motion for execution pending appeal.

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[58] *Abenion v. Pilipinas Shell Petroleum Corporation, supra* note 54 at 201-202.

[59] *Barroso v. Judge Omelio*, 771 Phil. 199, 207 (2015).

WHEREFORE, the Petition is **DENIED.** The Decision dated February 16, 2012 and Resolution dated October 11, 2012 of the Court of Appeals, in CA-G.R. CV No. 01367-MIN & SP No. 01949-MIN, are hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 210975. March 11, 2020]

PO1 APOLINARIO BAYLE *y* JUNIO, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE AND DEFENSE OF A RELATIVE; ELEMENTS.— It is settled that to prove the justifying circumstance of self-defense, the accused must establish the following requisites, to wit: (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person claiming self-defense. Similarly, to prove defense of a relative, the following requisites must concur, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.

2. ID.; ID.; ID.; REQUISITES THEREOF ARE PRESENT IN THIS CASE; THAT THE VICTIM ARMED WITH A KNIFE RUSHED TOWARD THE ACCUSED AND HIS PREGNANT WIFE CLEARLY SHOW NOT ONLY ACTUAL PHYSICAL ASSAULT BUT ALSO A THREAT TO INFLICT REAL IMMINENT INJURY; THUS, ACCUSED IN SHOOTING THE VICTIM DID NOT EXCEED THE NECESSARY FORCE TO REPEL THE ATTACK.— The Court also rules that the requisites for the justifying circumstance of defense of a relative were present when Apolinario shot Crisanto. Unlawful aggression is present, not only when there is actual physical assault, but also when there is a threat to inflict real imminent injury. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. In this case, there was unlawful aggression when Lorico, knife in hand, with eyes blazing, and shouting, rushed towards Apolinario and Jessica. It must be stressed that Lorico's threat to inflict harm came just moments after Apolinario was able to repel Crisanto's unlawful aggression. In fact, Jessica was then still lying on the floor and was in no position to defend herself from further unlawful assault. Thus, when Lorico appeared and was about to attack them, even ignoring his command to stop his advance, Apolinario had no reason to believe that the former was only threatening them. To his mind, the threat posed by Lorico is real and serious and he had to act swiftly in order to repel it. Clearly, there was unlawful aggression on the part of Lorico. Likewise, contrary to the position of the trial court, Apolinario, in shooting Lorico, did not exceed the necessary force to repel the former's attack. The determination of whether the accused exceeded the reasonable necessity of the means employed to repel unlawful aggression depends on various factors such as the nature and quality of the weapons used, the physical condition and size of the aggressor and the person defending himself, as well as other circumstances surrounding the particular case. The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense. This is a matter that depends on the circumstances. It must be reiterated that Apolinario and Jessica have just been through a life-threatening situation when Lorico suddenly appeared and was ready to deliver fatal blows. Jessica was in no condition to defend herself. As such, it was up to

Apolinario to fend off the sudden aggression. Again, the weapon which was available to Apolinario at that time was his service pistol. In such a scenario, to insist that Apolinario could have disabled Lorico by shooting the latter's arm or leg would certainly be excessive. Such suggestion would entail for Apolinario to shoot with accuracy and good concentration, which the Court does not believe he was capable to or was in condition to do at that time. In any case, Apolinario declared that he was a police officer and ordered Lorico to stop, yet the latter still proceeded with his assault. Lastly, there was no sufficient provocation on the part of Apolinario. It has been held that provocation is sufficient when it is proportionate to the aggression, that is, adequate enough to impel one to attack the person claiming self-defense. Apolinario admitted that he cursed back at Lorico. Nevertheless, the Court is not convinced that such curses are sufficient enough for Lorico and Crisanto to invade a home and harm the people therein. Apolinario's expletives may have been offensive, but it certainly could not be considered a sufficient inducement for its recipient to act violently and attack with bladed weapons.

3. ID.; ID.; ID.; THE ACCUSED IS REQUIRED ONLY TO PROVE THE JUSTIFYING CIRCUMSTANCE HE HAS INVOKED BY CLEAR AND CONVINCING EVIDENCE.— [I]t must be stressed that the defense is not required to prove, with absolute certainty, the facts constituting its defense. The accused is required only to prove, by clear and convincing evidence, the justifying circumstances he has invoked. Clear and convincing evidence has been described as more than mere preponderance, but the proof required is less than that required of proof beyond reasonable doubt. In this regard, the Court holds that the defense was able to demonstrate that Apolinario acted in defense of a relative when he shot Crisanto. He also acted in self-defense and defense of a relative when he shot Lorico, which unfortunately resulted in the latter's death.

CAGUIOA, *J., concurring opinion*:

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; DEFENSE OF A RELATIVE; ELEMENTS, PRESENT IN THIS CASE; GIVEN THAT THE ACCUSED'S PREGNANT WIFE WAS BEING STRANGLED TO DEATH AND THE

ONLY WEAPON WITHIN HIS REACH WAS HIS SERVICE GUN, THE REASONABLE AND NATURAL THING FOR HIM TO DO WAS TO SHOOT THE VICTIM. — For defense of a relative to prosper, the following requisites must concur, namely: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation. I agree with the *ponencia* that all of the abovementioned requisites for defense of a relative were present in the shooting of Crisanto by Apolinario. *First*, there was unlawful aggression by the victim, Crisanto. Unlawful aggression is equivalent to assault or at least threatened assault of an immediate and imminent kind. There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon. In the instant case, it cannot be denied that Crisanto's act of strangling Jessica is an actual physical assault that posed a clear and imminent danger to the life of Jessica and her unborn child. *Second*, the question as to the "reasonable necessity" for the use of the means employed is one of the facts to be determined in accordance with the particular facts proven in each case. Although Apolinario used a gun, while Crisanto was unarmed, looking into the totality of the situation, I agree with the *ponencia* that the means employed by Apolinario to repel Crisanto's attack was reasonably necessary. That Apolinario used his service pistol while Crisanto was unarmed at the time Apolinario shot the latter is of no consequence. x x x Given that Apolinario's pregnant wife was being strangled to death and the only weapon Apolinario had within his reach and in his possession was his service gun, the reasonable and natural thing for him to do under the circumstances was to fire at Crisanto, and thus make sure that his wife and unborn baby were kept safe. In predicaments like this, human nature does not act upon the processes of formal reason, but in obedience to the instinct of self-preservation. When it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction that act or to mitigate his liability.

2. **ID.; ID.; SELF-DEFENSE AND DEFENSE OF A RELATIVE; PROVEN IN CASE AT BAR.—** Article 11 (1) of the Revised Penal Code provides the elements of self-defense as a justifying

circumstance, thus: 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. It cannot be disputed that there was unlawful aggression when Lorico, armed with a knife, ran towards Jessica and Apolinario. There was a real and imminent danger to the life and limb of Jessica and Apolinario. x x x The second element of self-defense and defense of a relative is also present. The trial court insists that Apolinario could have repelled the attack of Lorico in a manner that would not have caused the latter's life, such as by disabling the latter by shooting his arm or leg. However, this theory is hardly acceptable. As stressed by the *ponencia*, at the time that Lorico rushed towards Apolinario and his wife, Apolinario was helping Jessica stand up from the floor after just having been attacked by Crisanto. Thus, Apolinario and Jessica were not in the position to defend themselves. Given that Lorico was rushing towards Apolinario and his wife and the chaotic situation they were in, Apolinario could not have been expected to still reflect coolly as to which part of the body of Lorico to shoot. x x x The last element of self-defense and defense of a relative was also sufficiently proven by the defense. Although Apolinario cursed back at Lorico, this is not the sufficient provocation that is contemplated by law. The provocation, in the language of the law, must be "sufficient," that is, it should be proportionate to the act of aggression and adequate to stir the aggressor to its commission. In the present case, it can hardly be said that the shouting of expletives by Apolinario at Lorico constitute a sufficient cause for the latter to attack Apolinario and his wife. Since the defense was able to prove all the elements of self-defense and defense of a relative, the shooting by Apolinario of Crisanto and the killing of Lorico is justified.

APPEARANCES OF COUNSEL

Donato Zarate & Rodriguez for petitioner.
The Solicitor General for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated June 14, 2013 and the Resolution[2] dated January 22, 2014, of the Court of Appeals (CA) in CA-G.R. CR No. 32524, which affirmed *in toto* the Decision[3] dated September 30, 2008 and the Order[4] dated February 24, 2009 of the Regional Trial Court of Makati City, Branch 143 (RTC) in Criminal Cases Nos. 04-3391 to 3392, which found herein petitioner Police Officer 1 (PO1) Apolinario Bayle *y* Junio (Apolinario) guilty beyond reasonable doubt for the crimes of Homicide and Frustrated Homicide, respectively.

The Facts

On October 19, 2004, Apolinario was charged in two Information with the crimes of Homicide and Frustrated Homicide, respectively committed against Lorico R. Lampa (Lorico) and Crisanto L. Lozano (Crisanto). The inculpatory allegations of the two Information respectively read:

Criminal Case No. 04-3391 (Homicide)

That on or about the 17th day of October 2004, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, without justifiable motives, did then and there willfully, unlawfully and feloniously shot one LORICO LAMPA Y RAYRAY, thereby inflicting upon the latter mortal wounds which directly caused his death.

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan, concurring; *rollo*, pp. 48-76.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Hakim S. Abdulwahid and Fernanda Lampas Peralta, concurring; *id.* at 79.

[3] Penned by Presiding Judge Zenaida T. Galapate-Laguilles; *id.* at 81-102.

[4] *Id.* at 104-108.

CONTRARY TO LAW.[5]

Criminal Case No. 04-3392 (Frustrated Homicide)

That on or about the 17th day of October 2004, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, without justifiable motives, did then and there willfully, unlawfully and feloniously shot one CRISANTO LOZANO Y LAMPA with a gun[,] thus[,] performing all the acts of execution which would have produced the crime of homicide as a consequence but nevertheless, did not produce said crime by reason of cause or causes independent of his will, that is due to the timely and able medical assistance rendered to said Crisanto Lozano y Lampa, which prevented his death.

CONTRARY TO LAW.[6]

On November 9, 2004, Apolinario, duly assisted by counsel, was arraigned and pleaded not guilty to the charges against him.[7] Thereafter, trial on the merits ensued.

Evidence for the Prosecution

The prosecution presented five witnesses, namely: Crisanto himself, Ricardo Lampa (Ricardo), Lorico's father, Daniel Mercado, Jr. (Daniel), PO1 Nildo Orsua (PO1 Orsua), and Dr. Teresita R. Sanchez (Dr. Sanchez). The prosecution also presented rebuttal evidence wherein they presented two more witnesses, namely: Estrellita A. Laguimin and Maria Concepcion B. Alawaddin. As could be gathered from the RTC Decision, the relevant testimonies could be summarized, as follows:

On October 17, 2004, at around 7:00 p.m., Crisanto was at home watching television[8] when he heard his cousin, Lorico, shouting. He immediately went outside to see what was

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[5] Records, p. 2.

[6] *Id.* at 4.

[7] *Id.* at 71.

[8] TSN, April 26, 2005, p. 7.

happening. He saw Lorico outside of 190-D 21st Avenue, Barangay East Rembo, Makati City engaged in a heated verbal exchange with a man,[9] later identified to be Apolinario.[10] He then approached Lorico to pacify him. But as soon as he approached, three drunk persons, who appear to be Apolinario's companions, blocked his path.[11] Apolinario then went up his house, apparently to get his gun. While inside his house, the man was being pacified by his wife, later identified to be PO2 Jessica T. Bayle (Jessica). However, Jessica's efforts failed as Apolinario went down again.[12]

Meanwhile, Ricardo was watching television inside his house when one of his sons, Reynaldo Lampa (Reynaldo), called him out and told him that his other son, Lorico, was outside having an altercation with Apolinario.[13] Thus, Ricardo went outside to look for Lorico. Outside, Ricardo was beside Lorico when he noticed Apolinario descending from the stairs. Apolinario stopped at the middle of the stairs and pointed his gun at Crisanto.[14] Scared, Crisanto ran away, but Apolinario still shot him hitting him at the left side of his back. Immediately after, Apolinario shot Lorico hitting the latter at his upper left chest.[15] After shooting Lorico, Apolinario poked his gun at Ricardo and told him "*ikaw, gusto mo sumunod?*"[16] Thereafter, Jessica descended from the stairs and told Apolinario to get inside their house.[17]

Ricardo then shouted for help and sought the assistance of the people nearby.[18] Ricardo, Daniel, and a certain Neil Garlan

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[9] TSN, March 22, 2005, pp. 13-15; TSN, April 26, 2005, p. 8.

[10] TSN, April 26, 2005, p. 10.

[11] *Id.* at 11.

[12] *Id.* at 12.

[13] TSN, February 8, 2005, pp. 9-10.

[14] *Id.* at 11-12.

[15] TSN, March 22, 2005, pp. 17-18; TSN, April 26, 2005, pp. 12-13.

[16] TSN, February 8, 2005, p. 16; TSN, March 22, 2005, pp. 18-19.

[17] TSN, March 22, 2005, pp. 21-22.

[18] TSN, February 8, 2005, p. 17; TSN, March 22, 2005, p. 23.

carried Lorico beside the road. From there, Lorico was brought to the Ospital ng Makati through a taxi;[19] Ricardo followed to the hospital after.[20] Unfortunately, Lorico was declared dead-on-arrival. As to Crisanto, he was also brought to the Ospital ng Makati with the help of his sister-in-law. Upon arriving at the hospital, Crisanto was rushed to the emergency room where an operation was performed on him. He stayed at the Ospital ng Makati until October 23, 2004.[21]

A few minutes after the incident, several policemen, including PO1 Orsua, arrived and started their investigation. After asking for the identity and whereabouts of the assailant, the investigators proceeded to Apolinario's house.[22] After a while, another group of police officers arrived at the scene.[23] The police officers then proceeded in front of Apolinario's house and introduced themselves as policemen. Jessica came out of the house and also introduced herself as a police officer. She then stated that she and Apolinario will go with the police officers peacefully. Apolinario also turned his firearm to the arresting officers peacefully. Thereafter, Apolinario was put in handcuffs and was brought to the police precinct.[24]

Dr. Sanchez testified that she examined the cadaver of Lorico on October 17, 2004 at the Ospital ng Makati, but admitted that she was not the one who conducted the autopsy.[25] Her observations were recorded in the Medico-Legal Report she prepared.[26] She noted a gunshot wound, the point of entry of which was at the left side of the anterior chest, upper

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[19] TSN, February 8, 2005, p. 18; TSN, March 22, 2005, p. 25.

[20] TSN, March 14, 2005, p. 14.

[21] TSN, April 26, 2005, pp. 13-14.

[22] TSN, March 22, 2005, pp. 27-28; TSN, July 11, 2005, pp. 11-12.

[23] TSN, July 11, 2005, p. 13.

[24] *Id.* at 14-18.

[25] TSN, October 3, 2005, pp. 7-8, 22.

[26] Records, p. 360.

portion.[27] There was no exit wound, although there was a huge bulge at the lumbar area of the vertebrae.[28] On cross-examination, she opined that the assailant was at a higher position than Lorico when he was shot due to the trajectory of the bullet.[29] Dr. Sanchez also examined Crisanto.[30] Her observations were recorded in a Medico-Legal Report.[31] She noted that Crisanto sustained a gunshot wound, the point of entry of which was on the left side of his body and exited more or less near the armpit.[32] She opined that the shooter shot Crisanto at his back.[33] On cross-examination, Dr. Sanchez stated that aside from the gunshot wound, she also noted that Crisanto suffered from a lacerated wound which may have been caused by a blunt object or from physical confrontation with another person. The doctor observed that the lacerated wound may have been possibly inflicted at the same time or around the time when Crisanto was shot.[34]

Ricardo further testified that Lorico was 27 years old when he died.[35] Before his death, Lorico was working as a senior craftsman in Libya[36] earning US$500.00 a month.[37] Ricardo recalled that Lorico was just spending his vacation with them at that time.[38] For his part, Crisanto testified that he and his family spent a total of ₱39,640.00 for his hospital and medical

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[27] TSN, October 3, 2005, p. 10.

[28] *Id.* at 12-13.

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

[30] *Id.* at 14.

[31] Records, p. 359.

[32] TSN, October 3, 2005, p. 15.

[33] *Id.* at 18.

[34] *Id.* at 29-32.

[35] TSN, February 8, 2005, pp. 34-35.

[36] *Id.* at 24.

[37] *Id.* at 28.

[38] *Id.* at 27.

expenses. This was supported by various receipts offered in evidence.[39]

Evidence for the Defense

The defense sought to establish the justifying circumstances of self-defense and defense of a relative. The defense presented eight witnesses, namely: Apolinario himself, his wife Jessica, Loreto P. Flores (Loreto), Redentor M. Orpiano (Redentor), Lolita delos Reyes (Lolita), Dr. Ma. Cristina B. Freyra[40] (Dr. Freyra), Dr. Sanchez, and Police Senior Inspector Armin A. Guerrero (PSI Guerrero). As could be gleaned from the RTC Decision, the defense's version of the incident could be summarized, as follows:

On September 20, 2004, Apolinario and Jessica, both police officers, rented from Redentor an apartment unit located at the second floor of 190-D 21st Avenue, East Rembo, Makati City.[41] At that time, Jessica was almost eight months pregnant, as in fact, she gave birth on November 15, 2004.[42] On October 17, 2004, they were at the rented unit together with two friends, Loreto and one Benjamin Reinedo (Benjamin).[43] Meanwhile, there was a party at the compound owned by the Lampas, which was located in front of their apartment, apparently to celebrate a baptismal and also because of the arrival of a certain *balikbayan*.[44] There were also men having a drinking spree inside the Lampa compound.[45]

Inside the apartment, Apolinario and their friends were chatting and laughing while waiting for Jessica's brother

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[39] TSN, April 26, 2005, pp. 14-18.

[40] Also referred to as "Dr. Ma. Cristina B. Freira" or "Dr. Ma. Cristina D. Freyra" in some parts of the records.

[41] TSN, January 17, 2006, pp. 8-10; TSN, December 11, 2006, p. 12.

[42] TSN, January 17, 2006, pp. 10-11.

[43] *Id.* at 15-16.

[44] TSN, January 17, 2006, pp. 20-21; TSN, December 11, 2006, p. 22.

[45] TSN, January 17, 2006, p. 22.

Christopher Tupas (Christopher),[46] when Lorico shouted outside of their apartment uttering the following: "*mga walang hiya kayo, ang yayabang ninyo, kabago-bago pa lang ninyo dito ang iingay ninyo, pagpapatayin ko kaya kayo diyan*." Apolinario retorted with a curse. Jessica then tried to pacify her husband.[47] A few minutes later, however, someone from the Lampa compound shouted again and hurled curses.[48] Jessica then went to the door and told the man who was shouting "*pasensya na po, bukas na natin pag-usapan kung ano man yan*." As Jessica was about to close the door, however, the door swung open causing her to fall down with her nose hitting the floor. Then, Crisanto and a certain Allan Lampa (Allan), both armed with bladed weapons, entered the house. Crisanto attacked Jessica, but Apolinario jumped over him,[49] while Allan attacked Benjamin and Loreto. Benjamin was grappling with Allan for the knife while Loreto was repeatedly kicking Allan. Because of the kicks, Allan fell down the stairs together with Benjamin who did not let go of the knife.[50]

Meanwhile, Crisanto and Apolinario wrestled with each other, the former even injuring the latter's neck when the tip of the knife grazed his neck.[51] However, Apolinario was able to successfully free himself from Crisanto and even disarmed him. Apolinario then proceeded to their room to get his gun. Crisanto tried to follow Apolinario, but Jessica grabbed and took hold of his leg. At that moment, Apolinario came out of their room and saw Crisanto strangling his wife. Thus, Apolinario shot

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[46] TSN, January 17, 2006, p. 25; TSN, December 11, 2006, p. 24.

[47] TSN, January 17, 2006, pp. 30-33; TSN, March 7, 2006, pp. 14-17; TSN, December 11, 2006, pp. 25-27.

[48] TSN, January 17, 2006, p. 34; TSN, March 7, 2006, p. 18.

[49] TSN, January 17, 2006, pp. 35-36, 46-47; TSN, March 7, 2006, pp. 19-27; TSN, December 11, 2006, pp. 28-31.

[50] TSN, January 17, 2006, pp. 35-36, 46-47; TSN, March 7, 2006, pp. 19-27.

[51] TSN, January 17, 2006, pp. 38-39; TSN, December 11, 2006, pp. 32-34.

Crisanto to prevent further danger to the lives of his wife and unborn child.[52] After getting shot, Crisanto fled. Apolinario tried to stop him, but Crisanto was able to jump out of the door, going out of the house and running past Loreto.[53] Apolinario then tried to help Jessica, but before she could even stand up, Lorico, armed with a knife, came running towards them, shouting and with eyes blazing. Apolinario shouted "*tigil, pulis ako*," but Lorico did not stop, prompting Apolinario to shoot him.[54] Jessica recounted that Lorico was shot when the latter was one step away from the door;[55] while Apolinario recalled that he shot Lorico when the latter was already two arm's-length from them.[56]

After being hit, Lorico fell down from the stairs.[57] After that, Christopher arrived and pleaded to Jessica to let him in.[58] After letting her brother inside, Jessica closed the door of their apartment before going with Apolinario and Redentor inside the latter's own apartment downstairs.[59] Benjamin and Loreto were already at Redentor's apartment when they came in.[60] A few minutes later, several policemen arrived. Apolinario and Jessica peacefully went with the policemen to the police precinct.[61] Afterwards, as Jessica's nose was bleeding and due

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[52] TSN, January 17, 2006, pp. 41-42; TSN, December 11, 2006, pp. 33, 42-43.

[53] TSN, January 17, 2006, p. 43; TSN, February 7, 2006, p. 6; TSN, March 7, 2006, pp. 29-30; TSN, December 11, 2006, p. 45.

[54] TSN, January 17, 2006, pp. 43-45; TSN, December 11, 2006, pp. 45-49.

[55] TSN, January 17, 2006, p. 52.

[56] TSN, December 11, 2006, p. 48.

[57] TSN, January 17, 2006, p. 49; TSN, March 7, 2006, pp. 32-33.

[58] TSN, January 17, 2006, p. 52.

[59] TSN, January 17, 2006, pp. 55-56; TSN, April 3, 2006, pp. 18-19; TSN, December 11, 2006, p. 52.

[60] TSN, January 17, 2006, p. 57; TSN, March 7, 2006, p. 38.

[61] TSN, January 17, 2006, pp. 57-59; TSN, March 7, 2006, p. 39; TSN, December 11, 2006, pp. 54-56.

to the injury sustained by Apolinario, the police officers brought them to the Ospital ng Makati.[62]

Dr. Freyra testified that she was the medico-legal officer who conducted the autopsy on Lorico's cadaver.[63] Her findings were recorded in the Anatomical Sketch[64] and Medico-Legal Report No. M-399-04 dated October 17, 2004.[65] She testified that the bullet which caused Lorico's death entered the left infra lobecular region which is the left side of the body just below the collarbone, while the bullet was recovered at the vertebra region at the back or at the center of the body at the back of the spinal cord.[66] Dr. Freyra further confirmed that the bullet that killed Lorico traveled in a downward trajectory. She clarified, however, that there are two possibilities for this downward trajectory: either the assailant was positioned on a higher ground than the victim, or they are on the same level, but the victim was stooping down or that the upper part of his body was slightly bending.[67]

Dr. Sanchez, who was also presented as an expert witness for the prosecution, testified that Apolinario and Jessica have also been examined at the Ospital ng Makati on October 17, 2004,[68] and that the findings on them have been reduced to writing in separate Medico-Legal Reports which she prepared.[69] Dr. Sanchez testified that based on hospital records, Apolinario suffered abrasions on his neck and right hand, which may have been caused by a blunt or sharp object.[70] On the other

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[62] TSN, January 17, 2006, pp. 60-61; TSN, December 11, 2006, pp. 60-61.

[63] TSN, May 9, 2006, p. 15.

[64] Records, p. 378.

[65] *Id.* at 376.

[66] TSN, May 9, 2006, pp. 17-18.

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

[68] TSN, May 28, 2007, pp. 13-14.

[69] Records, pp. 370-371.

[70] TSN, May 28, 2007, pp. 17-18, 22.

hand, Jessica suffered contusion or hematoma at the bridge of her nose.[71]

In further support of the claim that there was unlawful aggression on the part of Lorico and Crisanto, the defense also presented photographs showing the injuries sustained by Apolinario on his neck and hands.[72] They also attached photographs of the apartment where the incident happened. The photographs showed an outdoor seven-step concrete staircase leading to the apartment rented by the Bayles, with the seventh step directly connected to the unit's doorway.[73]

Ruling of the RTC

In its Decision dated September 30, 2008, the RTC found Apolinario guilty beyond reasonable doubt of the crimes of Homicide, for the killing of Lorico, and Frustrated Homicide, for the injuries sustained by Crisanto. The trial court stressed that whenever the justifying circumstance of self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was legally justified. The trial court ruled that Apolinario failed to establish the elements of self-defense.

With respect to Crisanto, the trial court opined that while he was the aggressor in the beginning, his aggression towards Apolinario ceased to exist when he turned his attention towards Jessica. Thus, self-defense could not be appreciated. The trial court also continued that while Jessica may have been exposed to danger, the same was not life-threatening. It reasoned that Crisanto's shift of attention to Jessica, no matter how brief, could have given Apolinario an opportunity to deliberate on what action to take.

Likewise, the trial court ruled that no justifying circumstance attended the killing of Lorico. It emphasized that unlawful aggression, as an element of self-defense, is not merely a

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[71] *Id.* at 18.

[72] Records, p. 369.

[73] *Id.* at 367.

threatening or intimidating attitude. It held that while Lorico may have been rash, bold and visibly irate when he barged into the unit of the Bayles armed with a knife, there was no imminent danger on their lives or limbs especially considering that, as police officers, a firearm was available in their dwelling for their defense. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered finding accused PO1 Apolinario Bayle GUILTY beyond reasonable doubt of the crime of Homicide in Criminal Case No. 04-3391 and he is hereby sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day of *Prision Mayor* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *Reclusion Temporal*, as maximum. He is likewise ordered to pay the heirs of the victim Lorico Lampa the sum of Php50,000.00 as civil indemnity *ex-delicto* and loss of earning capacity in the sum of Six Million Forty-nine Thousand Eight Hundred Seventy-two Pesos (Php6,049,872.00), and to pay the costs.
>
> Judgment is likewise rendered in Criminal Case No. 04-3392 finding accused PO1 Apolinario Bayle GUILTY of the crime of Frustrated Homicide and he is hereby sentenced to suffer an indeterminate prison term of six (6) months and one (1) day of [*Prision Correccional*] as minimum, to six (6) years and one (1) day of [*Prision Mayor*] as maximum. He is likewise ordered to indemnify Crisanto Lozano the sum of Thirty-nine Thousand Six Hundred Forty Pesos (Php39,640.00) representing actual damages, and to pay the costs.
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> SO ORDERED.[74]

Apolinario moved for reconsideration, but the same was denied by the RTC in its Order dated February 24, 2009.

Aggrieved, Apolinario elevated an appeal to the CA.

Ruling of the CA

In its Decision dated June 14, 2013, the CA affirmed the conviction of Apolinario. The appellate court ruled that there was no unlawful aggression on the part of Crisanto. It noted that Apolinario only sustained scratches on his neck and hands which, according to Dr. Sanchez, may have been caused by

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[74] *Rollo*, p. 102.

contact with a rough surface. The appellate court found these scratches to be inconclusive to support the existence of a struggle between Apolinario and Crisanto. It also noted that the allegation of strangulation by Crisanto was not supported by physical evidence considering that the defense failed to show that Jessica sustained injuries on her throat or inside her mouth. It further pointed out that the defense failed to present in evidence the knife allegedly used by Crisanto in his unlawful assault. For the appellate court, without the presentation of the said weapon, the claim of self-defense could not be believed.

The appellate court likewise ruled that Apolinario shot Lorico without the attendance of any justifying circumstance. It stated that Apolinario's claim that Lorico attempted to stab him and his wife from the stairs is highly unbelievable considering the difficulty of mounting such an attack considering the steepness and narrowness of the stairs. The appellate court emphasized that based on the medical findings, the bullet which killed Lorico struck him at his shoulder and to the middle of his back trajecting "*posteriorwards, downwards and medialwards*." According to the appellate court, this only shows that Lorico was shot at a very steep angle and the person who shot him was standing on a much higher ground, which is consistent with the testimonies of the prosecution witnesses. It also pointed out the apparent inconsistencies between the physical evidence and the testimonies of the defense witnesses. The appellate court also stated that it was highly unlikely for the victims to deliberately attack Apolinario and Jessica considering the fact that the spouses are police officers who are necessarily armed with service pistols. It opined that no person in his right mind would deliberately create an altercation with them. The dispositive portion of the decision states:

> WHEREFORE, the instant Appeal is hereby DISMISSED. The assailed Decision of the Regional Trial Court dated 30 September 2008 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[75]

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[75] *Id.* at 76.

Apolinario moved for reconsideration, but the same was denied by the CA in its Resolution dated January 22, 2014.

Hence, this petition.[76]

The Issue

WHETHER THE TRIAL AND [THE] APPELLATE COURTS ERRED WHEN THEY RULED THAT PETITIONER APOLINARIO BAYLE FAILED TO ESTABLISH THE EXISTENCE OF THE JUSTIFYING CIRCUMSTANCES OF SELF-DEFENSE AND DEFENSE OF A RELATIVE.

The Court's Ruling

The version of the defense was more consistent with the evidence.

It is settled that findings of facts and assessment of credibility of witnesses are matters best left to the trial court.[77] As such, it is also the trial court which could best address the issue of the determination of the identity of the unlawful aggressor considering that it is also a factual matter.[78] While the trial court adjudged Apolinario guilty beyond reasonable doubt for the criminal charges against him, the trial court nevertheless considered the defense's version of the incident to be more believable.

In its September 30, 2008 Decision, the trial court has this to say, thus:

> It is clear from the foregoing that at the time the accused saw his wife Jessica being strangled by Crisanto, the attention of the latter was focused on what he was doing at that precise moment. There was no showing that Crisanto was armed all the time; neither was there a showing that while strangling Jessica, the former was still armed. In fact, accused admitted having grabbed the knife from Crisanto.

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

[77] *People v. An*, 612 Phil. 476, 488 (2009).

[78] *Rugas v. People*, 464 Phil. 493, 503 (2004).

While Crisanto was inceptually the aggressor, the aggression against the accused ceased to exist when the former turned his ire to Jessica. Aggression, if not continuous, does not constitute aggression warranting self-defense. Also, this momentary shift of attention to Jessica could have given the accused also an opportunity, no matter how brief, to deliberate on what action to take. While his wife was certainly exposed to danger at that point, the danger, to a certain extent, was not life-threatening. And certainly, there was no immediate or imminent danger to the person of the accused at that precise point by reason of Crisanto's momentary focus on Jessica. And more, Crisanto was shot at the left side of his back; which only indicates that the latter at that point was no longer the aggressor of the accused. Shooting Crisanto with a .45 caliber revolver firearm at a considerably close distance, even on the stretched assumption that there was indeed unlawful aggression on his part does not satisfy the requirement of "reasonable necessity of the means employed to prevent or repel that unlawful aggression."

x x x The Court takes note that the accused recounted that Lorico came fast ascending the stairs with his eyes blazing (*"nanlilisik"*) with a knife in hand. The deceased allegedly shouted "ahhhhhhh. . ." and still rushed towards the accused and his wife despite warning from the accused. This Court opines that even if the deceased at that point was poised to inflict a deadly blow, the accused could still have repelled him in a manner that may not cost his (Lorico's) life, "such as disabling the latter by shooting his arm or leg." After all, the accused was, and still is, a policeman who from his own account, was trained in the handling and firing of a firearm.[79]

A thorough review of the records of the case gives more light on why the trial court found the version of the defense more credible. The records of the case confirm that the findings of facts by the trial court are sufficiently supported by the evidence and testimonies presented by the defense.

The testimonies of the defense witnesses are consistent with the physical evidence. The Court observes that Apolinario, Jessica, and Loreto all testified that as Jessica was closing the door of their apartment unit, two men suddenly forced the door open hitting her and slamming her nose to the floor in the process. That Jessica sustained injuries on her nose was confirmed by

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[79] *Rollo*, pp. 98-100.

the Medico-Legal Report which was prepared by Dr. Sanchez based on the records of the Ospital ng Makati. Moreover, Apolinario and Jessica testified that the former wrestled with Crisanto for the possession of a knife. During the struggle, Crisanto was able to injure Apolinario's neck with the tip of the knife. Again, that Apolinario sustained injury on his neck is supported by the Medico-Legal Report which was prepared by Dr. Sanchez based on the records of the Ospital ng Makati.

During her cross-examination when she was presented as an expert witness for the defense, Dr. Sanchez even corrected the prosecution when the latter tried to imply that Apolinario's abrasions on the neck and hand were caused only by a blunt object, thus:

ATTY. VILLAREAL:

Q: Earlier on, you also testified that with respect to the medico[-] legal report of Apolinario J. Bayle, the contusion and the multiple abrasion on the right arm could have been caused by a blunt object?

A: **Or sharp object**.[80] (Emphasis supplied)

Further, the version of the defense is actually consistent with the physical evidence presented by the prosecution, as well as with the testimony of their expert witness.

It must be recalled that the Medico-Legal Report as to Crisanto revealed that aside from the gunshot wound, he also sustained a lacerated wound on his left arm. The said report provides:

PERTINENT PHYSICAL EXAMINATION:

1. Gunshot wound, #2 1 cm., axillary area, left.
2. **Lacerated wound, 1.5 cm., anterior aspect, proximal third, arm, left.**
3. Gunshot wound, 0.5 cm., inferior aspect, scapular area, left.[81] (Emphasis supplied)

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[80] TSN, May 28, 2007, p. 22.

[81] *Supra* note 31.

When asked for clarification regarding Crisanto's lacerated wound, Dr. Sanchez testified that the said wound may have been caused by a blunt object or from physical confrontation with another person, thus:

ATTY. ZARATE:

Q: What is this Lacerated wound Madam Witness, can you please describe this?
A: It is an irregular wound, open wound caused by a [blunt] object.

Q: What is a [blunt] object, Madam Witness?
A: Anything that is not sharp [sic] pointed.

Q: Not sharp?
A: Yes like a hand may be a hard object like wood. Like in the gun, may be the other portions of the gun, other than the bullet. If you are hit, that is also considered a [blunt] object.

Q: How deep was the wound, Madam Witness?
A: About 1.5 centimeters.

Q: And then when you examined the wound, is it still fresh?
A: Yes, sir.

Q: So, it is very possible that the wound was inflicted almost at the same time or around the same time when the gun was also fired at him?
A: Yes, sir.

Q: And it is possible that this wound was [sic] resulted from a body confrontation with another person?
A: Yes, sir.[82]

The fact that Jessica and Apolinario sustained injuries on different parts of their bodies, and the fact that Crisanto sustained a lacerated wound, aside from the points of entry and exit of the bullet which hit him, is consistent with the version of the defense that prior to the actual shooting, there was a physical struggle or confrontation between, at the very least, Apolinario and Jessica on the one hand, and Crisanto on the other. It must be recalled that in the prosecution's version of the incident,

[82] TSN, October 3, 2005, pp. 30-31.

there was no such physical confrontation. According to the prosecution, Apolinario shot Crisanto and then Lorico after a heated verbal exchange. This version, however, fails to explain how Apolinario, Jessica, and Crisanto sustained their respective wounds.

Considering that the trial court discussed only the defense's version of the incident in its final analysis of the facts of the case, and considering further that the version of the defense is more consistent with the physical evidence presented in court, the Court opines that what was upheld by the trial court was indeed the defense's version of the facts.

Nevertheless, the CA, in its June 14, 2013 Decision, casted doubt on the narration of the incident by the defense. It declared that the claim that Crisanto attacked them with a knife is seriously doubtful. It noted that while Apolinario claimed that he was able to disarm Crisanto, the knife allegedly used by the latter was not presented in evidence. The appellate court also belittled the wounds on the neck and hands of Apolinario stating that such injuries were only scratches which are insufficient to prove that he was subjected to any unlawful aggression.

It also observed that the defense's claim that Lorico, armed with a knife, attempted to attack Apolinario and Jessica from the stairs was highly unbelievable due to the difficulty of mounting such attack. It stressed that the physical evidence shows that Apolinario was on a much higher ground when he shot Lorico. Lastly, the appellate court claimed that it was highly unlikely that the victims could have deliberately attacked the Bayles in their apartment unit considering that they were police officers who are often armed with pistols.

The Court opines that the submissions made by the appellate court did not necessarily destroy the credibility of the evidence presented by the defense.

First, the case of *Rugas v. People*,[83] the authority cited by the appellate court when it ruled that Apolinario should have

[83] *Supra* note 78.

presented the knives allegedly used by Crisanto and Lorico, should not be strictly applied in this case. The failure of the accused in *Rugas* to present the knife allegedly used by the victim in his unlawful aggression was only one of the considerations which impelled the Court to rule for his conviction. It must be noted that in *Rugas*, the accused failed to offer sufficient corroborating evidence in support of his factual proposition. It must further be noted that in the same case, the accused did not allege nor show proof that he suffered any injury as a result of the victim's unlawful aggression. More importantly, in the said case, the trial court found that the accused was indeed the unlawful aggressor.

The same could not be said in this case. As already stated, the defense's testimonial evidence and the physical evidence from both the prosecution and the defense sufficiently established the presence of a physical confrontation between Apolinario and Jessica, and Crisanto. Again, that Apolinario was subjected to an attack with a knife has been sufficiently shown by the Medico-Legal Report prepared by Dr. Sanchez and the photographs of his injuries. Moreover, the trial court itself recognized the unlawful aggression by Crisanto, although it ruled that such aggression ceased.

Second, the appellate court's statement that the injuries sustained by Apolinario were "only scratches" contradicts the evidence presented. Indeed, the Medico-Legal Report prepared by Dr. Sanchez noted that the injuries sustained by Apolinario were abrasions, which term could be synonymous to scratches. Nevertheless, it must be stressed that Dr. Sanchez clarified and was consistent in her testimony that these abrasions may have been caused not only by a blunt object, but also by a sharp object. Thus, it is possible that a knife caused Apolinario's injuries.

Third, while the CA is correct that it may be difficult for a person to mount an attack from the stairs, it is not impossible. This is especially true in this case which involves a staircase consisting of seven steps only. Further, the fact that the bullet which killed Lorico had a downward trajectory is not inconsistent

with the theory of the defense. It must be recalled that Jessica testified that Lorico was one step away from their door when Apolinario shot him. On the other hand, Apolinario testified that Lorico was then at a distance of two arm's-length from them when he pulled the trigger. Taking these testimonies into consideration together with the photograph of the staircase and the apartment unit, it is safe to conclude that Lorico, at the time he was shot, was at the sixth step of the subject staircase. This is definitely at a lower level from the floor of the apartment unit which directly adjoins the seventh step of the staircase. Again, this is still consistent with the physical evidence of the prosecution.

Lastly, the CA's statement that it was highly unlikely for the victims to attack the Bayles as they were police officers is obviously fallacious. Police officers are definitely not immune from the felonious acts of the vile elements of society. Furthermore, it has not been shown that the Lampas knew the Bayles to be police officers at the time of the incident. In fact, Ricardo testified that they were not aware that the Bayles were police officers.[84]

From the foregoing, the Court reiterates that although it convicted Apolinario, the trial court appears to have adopted the defense's version of the incident as its factual findings, which findings have not been sufficiently contradicted by the appellate court. As such, the said findings subsist. Thus, the Court will determine the presence or absence of the justifying circumstances claimed by Apolinario on the basis of such findings by the trial court.

The defense was able to show that Apolinario acted in self-defense and in defense of a relative.

It is settled that to prove the justifying circumstance of self-defense, the accused must establish the following requisites, to wit: (1) unlawful aggression on the part of the victim, (2)

[84] TSN, March 14, 2005, p. 58.

reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person claiming self-defense.[85] Similarly, to prove defense of a relative, the following requisites must concur, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.[86]

As already stated, the Court is convinced that the defense was able to prove, by clear and convincing evidence, the requisites of self-defense and defense of a relative.

The justifying circumstance of defense of a relative was present when Apolinario shot Crisanto.

The Court holds that the requisites for the justifying circumstance of defense of a relative were present when Apolinario shot Crisanto.

There was unlawful aggression on the part of Crisanto without any provocation on the part of Jessica. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.[87] In this case, unlawful aggression was present when Crisanto was strangling Jessica — there was an actual physical assault by Crisanto against Jessica. As already pointed above, this fact has been recognized by the trial court in its decision, albeit with a different conclusion, thus:

It is clear from the foregoing that at the time the accused saw his wife Jessica being strangled by Crisanto, the attention of the latter was focused on what he was doing at that precise moment. x x x **While Crisanto was inceptually the aggressor, the aggression against**

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[85] *People v. Aglipa,* 391 Phil. 879, 882 (2000).

[86] *Napone, Jr. v. People,* G.R. No. 193085, November 29, 2017, 847 SCRA 63, 78.

[87] *People v. Macaraig,* 810 Phil. 931, 937 (2017).

the accused ceased to exist when the former turned his ire to Jessica. x x x **Also, this momentary shift of attention to Jessica could have given the accused also an opportunity, no matter how brief, to deliberate on what action to take**. While his wife was certainly exposed to danger at that point, the danger, to a certain extent, was not life-threatening. And certainly, there was no immediate or imminent danger to the person of the accused at that precise point by reason of Crisanto's momentary focus on Jessica.[88] (Emphases supplied)

At this juncture, the Court expresses its dismay on how the trial court did not consider that Apolinario was acting in defense of his wife, or that there was clearly an aggression against Jessica at that time. It must be readily observed that the trial court only discussed how there was no longer any aggression against Apolinario; there was no discussion whatsoever on the presence or absence of the circumstance of defense of a relative. Despite recognition that Crisanto strangled Jessica and that she was exposed to danger, the trial court merely dismissed the same and even contradicted itself when it stated that the strangling exposed Jessica to danger, but the danger was "not life-threatening" to "a certain extent." Perhaps the trial court was not aware that preventing a person from breathing by blocking or restricting air from flowing into the lungs through the throat could be fatal to any person. It must also be considered that Jessica was eight months pregnant at that time which would make her condition even more delicate. In any case, it is clear that there was clear and imminent danger to Jessica and the child in her womb due to Crisanto's unlawful aggression.

Further, the means employed by Apolinario to repel Crisanto's unlawful aggression against Jessica was reasonably necessary.

It is settled that reasonable necessity does not mean absolute necessity. It is not the indispensable need, but the rational necessity which the law requires.[89] Thus, reasonable necessity is satisfied when the one making the defense or repelling the

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[88] *Rollo*, pp. 99-100.

[89] *Jayme v. People*, 372 Phil. 796, 803-804 (1999).

attack used the weapon available to him, even if the said weapon is technically disproportionate to the weapon of the unlawful aggressor.[90]

Here, Apolinario already had his service pistol in his hand when he saw his wife being strangled by Crisanto. The gun, therefore, was already available to him at that time, and he could use it to repel the danger to his wife and unborn child, as he did. It was instinct which impelled Apolinario to fire his gun in order to save his wife and to prevent further harm to their unborn child. Thus, Apolinario could not be faulted when he failed to consider other means to ward off Crisanto's assault.

The justifying circumstance of self-defense and defense of a relative were present when Apolinario shot Lorico.

The Court also rules that the requisites of the justifying circumstances of self-defense and defense of a relative were present in the killing of Lorico.

Unlawful aggression is present, not only when there is actual physical assault, but also when there is a threat to inflict real imminent injury. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury.[91]

In this case, there was unlawful aggression when Lorico, knife in hand, with eyes blazing, and shouting, rushed towards Apolinario and Jessica. It must be stressed that Lorico's threat to inflict harm came just moments after Apolinario was able to repel Crisanto's unlawful aggression. In fact, Jessica was then still lying on the floor and was in no position to defend herself from further unlawful assault. Thus, when Lorico appeared and was about to attack them, even ignoring his command to stop his advance, Apolinario had no reason to believe that the former was only threatening them. To his mind,

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[90] *Lacson v. Court of Appeals*, 183 Phil. 145, 152-153 (1979).

[91] *People v. Escobal*, G.R. No. 206292, October 11, 2017, 842 SCRA 432, 445.

the threat posed by Lorico is real and serious and he had to act swiftly in order to repel it.[92] Clearly, there was unlawful aggression on the part of Lorico.

Likewise, contrary to the position of the trial court, Apolinario, in shooting Lorico, did not exceed the necessary force to repel the former's attack.

The determination of whether the accused exceeded the reasonable necessity of the means employed to repel unlawful aggression depends on various factors such as the nature and quality of the weapons used, the physical condition and size of the aggressor and the person defending himself, as well as other circumstances surrounding the particular case.[93] The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense. This is a matter that depends on the circumstances.[94]

It must be reiterated that Apolinario and Jessica have just been through a life-threatening situation when Lorico suddenly appeared and was ready to deliver fatal blows. Jessica was in no condition to defend herself. As such, it was up to Apolinario to fend off the sudden aggression. Again, the weapon which was available to Apolinario at that time was his service pistol. In such a scenario, to insist that Apolinario could have disabled Lorico by shooting the latter's arm or leg would certainly be excessive. Such suggestion would entail for Apolinario to shoot with accuracy and good concentration, which the Court does not believe he was capable to or was in condition to do at that time. In any case, Apolinario declared that he was a police officer and ordered Lorico to stop, yet the latter still proceeded with his assault.

Lastly, there was no sufficient provocation on the part of Apolinario. It has been held that provocation is sufficient when it is proportionate to the aggression, that is, adequate enough

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[92] *People v. Viernes*, 331 Phil. 146, 159 (1996).

[93] *People v. Viernes*, *id.* at 161; *Jayme v. People*, *supra* note 89, at 804.

[94] *Velasquez v. People*, 807 Phil. 438, 451 (2017).

to impel one to attack the person claiming self-defense.[95] Apolinario admitted that he cursed back at Lorico. Nevertheless, the Court is not convinced that such curses are sufficient enough for Lorico and Crisanto to invade a home and harm the people therein. Apolinario's expletives may have been offensive, but it certainly could not be considered a sufficient inducement for its recipient to act violently and attack with bladed weapons.

In any case, it must be stressed that the defense is not required to prove, with absolute certainty, the facts constituting its defense. The accused is required only to prove, by clear and convincing evidence, the justifying circumstances he has invoked.[96] Clear and convincing evidence has been described as more than mere preponderance, but the proof required is less than that required of proof beyond reasonable doubt.[97] In this regard, the Court holds that the defense was able to demonstrate that Apolinario acted in defense of a relative when he shot Crisanto. He also acted in self-defense and defense of a relative when he shot Lorico, which unfortunately resulted in the latter's death.

WHEREFORE, the present Petition for Review on *Certiorari* is **GRANTED**. The Decision dated June 14, 2013, and the Resolution dated January 22, 2014, of the Court of Appeals in CA-G.R. CR No. 32524 are **REVERSED** and **SET ASIDE**. Petitioner PO1 Apolinario Bayle *y* Junio is hereby **ACQUITTED**. If detained, he is **ORDERED** immediately **RELEASED**, unless he is confined for any other lawful cause.

SO ORDERED.

Lazaro-Javier, Lopez, and *Gaerlan,*[*] *JJ.*, concur.

Caguioa, J. (Acting Chairperson), see concurring opinion.

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[95] *Id.* at 452.

[96] *PO1 Celso Tabobo v. People*, 811 Phil. 235, 246 (2017).

[97] *Pangasinan v. Almazora,* 762 Phil. 492, 507-508 (2015).

[*] Additional member per Raffle dated February 12, 2020 in lieu of Chief Justice Diosdado M. Peralta.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* that the accused-petitioner PO1 Apolinario Bayle (Apolinario) should be acquitted of the crimes of Homicide and Frustrated Homicide. The *ponencia* correctly ruled that the defense was able to establish the existence of the justifying circumstances of self-defense and defense of a relative.

Brief review of the facts

On September 20, 2004, there was a party at the compound owned by the Lampas, which was located in front of the apartment of Apolinario. There were also men having a drinking spree inside the Lampa compound.

Meanwhile, Apolinario and his wife, PO2 Jessica T. Bayle (Jessica) were chatting and laughing with their friends inside their apartment while waiting for Jessica's brother, Christopher Tupas (Christopher) when Lorico R. Lampa (Lorico) shouted from outside of their apartment uttering the following: "*mga walang hiya kayo, ang yayabang ninyo, kabagobago pa lang ninyo dito ang iingay ninyo, pagpapatayin ko kaya kayo diyan.*"[1] Apolinario retorted with a curse. Jessica then tried to pacify her husband. A few minutes later, someone shouted again and hurled curses. Jessica then opened the door and told the man who was shouting, "*pasensya na po, bukas na lang natin pag-usapan kung ano man yan.*"[2] As Jessica was about to close the door, the door swung open causing her to fall down with her nose hitting the floor. Then, Crisanto L. Lozano (Crisanto) and Allan Lampa (Allan), both armed with bladed weapons, entered the house. Crisanto attacked Jessica, but Apolinario jumped over Crisanto, while Allan attacked Benjamin Reinedo (Benjamin) and Loreto Flores (Loreto). Crisanto and Apolinario wrestled with each other. However, Apolinario was able to

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[1] *Rollo,* p. 87.

[2] *Id.*

successfully free himself from Crisanto and even disarmed him. Apolinario then proceeded to their bedroom to get his gun. Crisanto tried to follow Apolinario, but Jessica grabbed and took hold of Crisanto's leg. At that moment, Apolinario came out of their room and saw Crisanto strangling his wife. Thus, Apolinario shot Crisanto to prevent further danger to the lives of his pregnant wife and unborn child. After getting shot, Crisanto fled. Apolinario tried to stop him, but Crisanto was able to jump out of the door, going out of the house and running past Loreto. Apolinario then tried to help Jessica, but before she could even stand up, Lorico, armed with a knife, came running towards them, shouting and with eyes blazing. Apolinario shouted, "*tigil pulis ako*,"[3] but Lorico did not stop, prompting Apolinario to shoot him. Jessica recounted that Lorico was shot when the latter was one step away from the door, while Apolinario recalled that he shot Lorico when the latter was already two arm's length from them. After being hit, Lorico fell down from the stairs.

The Regional Trial Court (RTC) and Court of Appeals (CA) found Apolinario guilty beyond reasonable doubt of the crimes of Homicide and Frustrated Homicide. The RTC and CA held that the defense was not able to prove the elements of self-defense and defense of a relative.

The *ponencia* now rules that Apolinario should be acquitted of the crimes charged.

I concur with the *ponencia*.

All the elements of the justifying circumstance of defense of a relative were proven by the defense in the shooting of Crisanto.

For defense of a relative to prosper, the following requisites must concur, namely: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or

[3] *Id.* at 89.

repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.[4]

I agree with the *ponencia* that all of the abovementioned requisites for defense of a relative were present in the shooting of Crisanto by Apolinario.

First, there was unlawful aggression by the victim, Crisanto. Unlawful aggression is equivalent to assault or at least threatened assault of an immediate and imminent kind.[5] There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon.[6] In the instant case, it cannot be denied that Crisanto's act of strangling Jessica is an actual physical assault that posed a clear and imminent danger to the life of Jessica and her unborn child.

Second, the question as to the "reasonable necessity" for the use of the means employed is one of the facts to be determined in accordance with the particular facts proven in each case.[7] Although Apolinario used a gun, while Crisanto was unarmed, looking into the totality of the situation, I agree with the *ponencia* that the means employed by Apolinario to repel Crisanto's attack was reasonably necessary. That Apolinario used his service pistol while Crisanto was unarmed at the time Apolinario shot the latter is of no consequence.

In *People v. Encomienda*,[8] the Court held:

x x x "Reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent

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[4] *Medina, Jr. v. People*, 724 Phil. 226, 237 (2014).

[5] *People v. Alconga and Bracamonte*, 78 Phil. 366, 374 (1947).

[6] *People v. Crisostomo*, 195 Phil. 162, 172 (1982).

[7] *United States v. Mack*, 8 Phil. 701, 710 (1907).

[8] 150-B Phil. 419 (1972).

danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury x x x"[9]

In addition, the ancient common law rule in homicide was denominated "*retreat to the wall*." This doctrine makes it the duty of a person assailed to retreat as far as he can before he is justified in meeting force with force. However, this principle has now given way in the United States to the "*stand ground when in the right*" rule.[10] This rule was further explained in *Erwin v. State:*[11]

"The defendant was where he had the right to be, when the deceased advanced upon him in a threatening manner, and with a deadly weapon; and if the accused did not provoke the assault and had at the time reasonable grounds to believe and in good faith believed, that the deceased intended to take his life or do him great bodily harm, he was not obliged to retreat, nor consider whether he could safely retreat, **but was entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, was necessary to save his own life or to protect himself from great bodily injury**."[12] (Emphasis supplied)

Thus, the trial court's ruling that Apolinario could have carefully deliberated on what action to take due to the fact that Crisanto's attention was momentarily shifted to Jessica is quite absurd.[13] Apolinario was clearly in the right when he used his service gun to shoot Crisanto. Given that Apolinario's pregnant wife was being strangled to death and the only weapon Apolinario had within his reach and in his possession was his

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[9] *Id.* at 433-434.

[10] *United States v. Domen*, 37 Phil. 57, 59 (1917).

[11] 29 Ohio St., 186 (1876) cited in *id.* at 59-60.

[12] *United States v. Domen*, *id.* at 60.

[13] *Ponencia*, p. 17.

service gun, the reasonable and natural thing for him to do under the circumstances was to fire at Crisanto, and thus make sure that his wife and unborn baby were kept safe. In predicaments like this, human nature does not act upon the processes of formal reason, but in obedience to the instinct of self-preservation. When it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction that act or to mitigate his liability.[14]

All the elements of the justifying circumstances of self-defense and defense of a relative were proven by the defense in the killing of Lorico.

I likewise agree with the *ponencia* that the defense was able to prove all the elements of self-defense and defense of a relative as to the killing of Lorico by Apolinario.

Article 11 (1) of the Revised Penal Code provides the elements of self-defense as a justifying circumstance, thus: 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.

It cannot be disputed that there was unlawful aggression when Lorico, armed with a knife, ran towards Jessica and Apolinario. There was a real and imminent danger to the life and limb of Jessica and Apolinario. The determination of Lorico to harm Apolinario and Jessica is bolstered by the fact that although Apolinario shouted, "*tigil pulis ako*," Lorico simply ignored him and continued charging towards them. Thus, Apolinario was cornered into a position wherein he had no other choice but to shoot Lorico.

The second element of self-defense and defense of a relative is also present. The trial court insists that Apolinario could

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[14] *People v. Samson*, 768 Phil. 487, 500 (2015).

have repelled the attack of Lorico in a manner that would not have caused the latter's life, such as by disabling the latter by shooting his arm or leg.[15]

However, this theory is hardly acceptable. As stressed by the *ponencia*, at the time that Lorico rushed towards Apolinario and his wife, Apolinario was helping Jessica stand up from the floor after just having been attacked by Crisanto. Thus, Apolinario and Jessica were not in the position to defend themselves. Given that Lorico was rushing towards Apolinario and his wife and the chaotic situation they were in, Apolinario could not have been expected to still reflect coolly as to which part of the body of Lorico to shoot. In this relation, the Court, in a number of cases, has held that the person defending is not expected to control his blow.

In *United States v. Mojica*,[16] the Court ruled:

> x x x And if it was necessary for the appellant to use his revolver, he could hardly, under the circumstances, be expected to take deliberate and careful aim so as to strike a point less vulnerable than the body of his adversary.[17]

Similarly, in *United States v. Macasaet*,[18] the Court held:

> "The fact that the accused struck one more blow than once was absolutely necessary to save his own life, or that he failed to hold his hand so as to avoid inflicting a fatal wound where a less severe stroke might have served the purpose, would not negative self-defense, because the accused, in the heat of an encounter at close quarters, was not in a position to reflect coolly or to wait after each blow to determine the effects therof."[19]

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[15] *Ponencia*, p. 11.

[16] 42 Phil. 784 (1922).

[17] *Id.* at 787, citing *United States v. Mack, supra* note 7; *United States v. Domen, supra* note 10.

[18] 35 Phil. 226 (1916) cited in Luis B. Reyes, *THE REVISED PENAL CODE*, BOOK ONE, Art. 11, 187 (18th ed., 2012).

[19] *Id.*

Thus, Apolinario cannot be faulted for inflicting a mortal wound on Lorico.

The last element of self-defense and defense of a relative was also sufficiently proven by the defense. Although Apolinario cursed back at Lorico, this is not the sufficient provocation that is contemplated by law. The provocation, in the language of the law, must be "sufficient," that is, it should be proportionate to the act of aggression and adequate to stir the aggressor to its commission.[20] In the present case, it can hardly be said that the shouting of expletives by Apolinario at Lorico constitute a sufficient cause for the latter to attack Apolinario and his wife.

Since the defense was able to prove all the elements of self-defense and defense of a relative, the shooting by Apolinario of Crisanto and the killing of Lorico is justified. Thus, Apolinario must perforce be acquitted of the crimes charged.

Based on these premises, I vote to **GRANT** the Petition.

FIRST DIVISION

[G.R. No. 212717. March 11, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner*, *vs.* **ARIEL S. CALINGO and CYNTHIA MARCELLANA-CALINGO,** *respondents*.

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; PSYCHOLOGICAL INCAPACITY, DEFINED AND

[20] *People v. Alconga and Bracamonte, supra* note 5, at 373.

EXPLAINED.— Jurisprudence defined psychological incapacity to no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that must concomitantly be assumed and discharged by the parties to the marriage. It ought to pertain to only the most serious cases of personality disorders that clearly demonstrate the party's/parties' utter insensitivity or inability to give meaning and significance to the marriage. To be accurate, such incapacity must be characterized by gravity, juridical antecedence, and incurability: The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage, and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

2. ID.; ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY, NOT ESTABLISHED IN THIS CASE; BEING *"MABUNGANGA"* AND ACTS OF UNFAITHFULNESS ARE NOT SUFFICIENT INDICATORS OF A PSYCHOLOGICAL DISORDER.— Cynthia's sexual infidelity is not a satisfactory proof of psychological incapacity. To be a ground to nullify a marriage based on Article 36 of the Family Code, it must be shown that the acts of unfaithfulness are manifestations of a disordered personality which makes him/her completely unable to discharge the essential obligations of marriage. As discussed, there was no evidence which proved that such raised to the level of psychological incapacity within the meaning of Article 36 of the Family Code, warranting the severance of Cynthia and Ariel's marital bonds. Unequivocally, psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of the marital obligations; it is not enough that a party prove that the other failed to meet the responsibility and duty of a married person. Hence, contrary to CA's decision, the fact that Cynthia is "*mabunganga*" and had extra-marital affairs are *not* sufficient indicators of a psychological disorder.

CAGUIOA, *J., concurring opinion*:

1. CIVIL LAW; FAMILY CODE; MARRIAGE; PSYCHOLOGICAL INCAPACITY, CONCEPT OF;

GUIDELINES SET IN *MOLINA* FOR THE APPLICATION AND INTERPRETATION OF ARTICLE 36 OF THE FAMILY CODE, REITERATED.— Article 36 of the Family Code details the concept of psychological incapacity in the context of marriage. It reads: ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. In *Republic v. Molina* (*Molina*), the Court set the guidelines for the application and interpretation of the foregoing provision on the basis of the discussions and written memoranda of *amici curiae* Reverend Oscar V. Cruz and Justice Ricardo C. Puno, thus: (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. x x x (2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. x x x (3) **The incapacity must be proven to be existing at "the time of the celebration" of the marriage**. x x x (4) **Such incapacity must also be shown to be medically or clinically permanent or *incurable*.** x x x (5) **Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage.**

2. **ID.; ID.; ID.; ID.; ID.; *MOLINA* GUIDELINES SERVE ONLY AS A GUIDE TO DETERMINE PSYCHOLOGICAL INCAPACITY AND ARE NOT MEANT TO STRAIGHTJACKET ALL PETITIONS FOR DECLARATION OF NULLITY OF MARRIAGE; ACTIONS OF THIS KIND MUST BE RESOLVED ON A CASE-TO-CASE BASIS THROUGH THE EVALUATION OF THE TOTALITY OF EVIDENCE ON RECORD.—** As the nomenclature suggests, the *Molina* guidelines only serve as a guide in determining the existence of psychological incapacity. The *Molina* guidelines are *not* meant to "straightjacket all petitions for declaration of nullity of marriage." **To stress, actions for declaration of nullity filed under Article 36 should be**

resolved "on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of Church tribunals which, although not binding on the civil courts, may be given persuasive effect since [Article 36] was taken from Canon Law." Verily, an allegation of psychological incapacity, like any other allegation, must be supported by proof. Proof, in turn, requires the presentation of sufficient evidence. In this regard, actions filed under Article 36 must be resolved through the evaluation of the totality of evidence on record. When the totality of evidence fails to establish that the alleged psychological incapacity is characterized by gravity, incurability and juridical antecedence, it does not assume the nature of psychological incapacity which Article 36 contemplates. These guidelines, "strict" as they are, stem from the law itself. Courts and litigants are thus bound to respect these guidelines until a subsequent law is passed espousing a contrary legislative intent.

3. ID.; ID.; ID.; ID.; THE WIFE'S PSYCHOLOGICAL INCAPACITY, NOT ESTABLISHED IN THIS CASE; MARITAL INFIDELITY AND HOSTILE TENDENCIES ARE NOT SUFFICIENT BASIS TO DISSOLVE A MARRIAGE.— [T]he totality of evidence presented by petitioner Ariel S. Calingo (Ariel) is not sufficient to sustain a finding that his wife, Cynthia Marcellana-Calingo (Cynthia) suffers from psychological incapacity to fulfill the essential obligations of marriage. Ariel's petition for declaration of nullity is based on the psychological evaluation and testimony of Dr. Arnulfo Lopez (Dr. Lopez), and Ariel's own testimony alluding to Cynthia's unfaithfulness and hostile tendencies. The psychological evaluation of Dr. Lopez states that Cynthia is afflicted with Borderline Personality Disorder with Histrionic Personality Disorder Features. In assessing the sufficiency of these findings, a distinction must be made between the credibility of Dr. Lopez's medical assessment and the credibility of the facts upon which such assessment is based. To recall, Dr. Lopez found that Cynthia suffers from Borderline Personality Disorder with Histrionic Personality Features rooted on her disorderly filial relationship as she was subjected to physical abuse and abandonment. That disorderly filial relationship may give rise to Borderline Personality Disorder is an established fact that is not disputed in this case, inasmuch as this finding falls well

within the expertise of Dr. Lopez as an expert in the field of psychology. However, Cynthia's alleged disorderly relationship with her parents and exposure to physical abuse and abandonment do not appear to be supported by the evidence on record. **While these circumstances were relayed by Ariel and the couple's friends, Francisca Bilaso and Ruben Kalaw, during the course of Dr. Lopez's assessment, none of them claim to have personal knowledge of Cynthia's childhood circumstances and filial relationship. In the absence of corroborating evidence, the information relayed by Dr. Lopez's informants cannot be taken as established facts, but merely uncorroborated allegations.** Moreover, as aptly observed by the *ponencia*, Ariel's allegations of marital infidelity and hostile tendencies, even if true, do not serve as sufficient basis to warrant the severance of his marriage with Cynthia.

LAZARO-JAVIER, *J.*, *dissenting opinion*:

1. CIVIL LAW; FAMILY CODE; MARRIAGE; PSYCHOLOGICAL INCAPACITY; TOTALITY OF THE WIFE'S ACTS IN THIS CASE CONSTITUTE PSYCHOLOGICAL INCAPACITY; THERE IS NO MARRIAGE TO PRESERVE WHERE THE SPOUSES HAVE NOT BEEN IN CONTACT FOR 36 YEARS. –– Cynthia's sexual infidelity, by itself, is sufficient to constitute psychological incapacity given that she committed it not just once, but multiple times. In fact, she bore, not just a child but twins with a man other than her husband; in addition, she harbored a half-naked man under their maternal bed; she was verbally abusive, as she often got angry at Ariel and shouted curses at him; she had aggressive tendencies towards others and would pick fights with neighbors and landlords because of constant gossiping, causing them to transfer residence five (5) times in just three (3) years of life together as husband and wife; and she had, on separate occasions, thrown knives and other deadly objects at Ariel. If this is not psychological incapacity, what is? x x x True, each action or omission which Cynthia has done or incurred, taken singly, may constitute a mere ground for legal separation. Taken together, however, they constitute a solid ground for psychological incapacity. How can a seemingly incurable adulteress who is unapologetically verbally and physically abusive still be able to comply with her duties as a

wife? Are her acts those of love, respect, and fidelity? x x x We also cannot ignore the fact that Ariel and Cynthia have not been in contact since their separation in 1984 or for thirty-six (36) years now. What marriage, therefore, do we seek to preserve here? If these manifestations, taken together, do not establish psychological incapacity, what more are we looking for?

2. ID.; ID.; ID.; ID.; IT IS HIGH-TIME AND APT TO ABANDON THE PREVAILING INSISTENCE ON PROOF OF CLINICALLY-IDENTIFIED PERSONALITY DISORDER AS THE SOLE ELEMENTAL SOURCE OF PSYCHOLOGICAL INCAPACITY AS WELL AS THE REQUIREMENT OF JURIDICAL ANTECEDENCE.— The remedy of psychological incapacity, as the prototypical and prevailing doctrine understands it to be, does not work as well in practice as it is in theory. There are real needs and actual mischief that the remedy seeks to address – the dysfunctional marriage and the decaying family that the latter breeds. To make the remedy responsive and relevant, some adjustments have to be written to the prototypical and prevailing doctrine. For one, proof by an expert of the existence of a personality disorder should only be one of the means of proving by presumption the existence of psychological incapacity. For another, it is high-time to abandon the prevailing insistence on proof of clinically-identified personality disorders as the sole elemental source of psychological incapacity. It should also be enough to prove mental state or state of mind of an inability to fulfil the marital and parental duties as a trigger to the ascription of psychological incapacity to a spouse. It is also apt to abandon the requirement of juridical antecedence so that the trigger mental states or states of mind that develop post-marriage can be accounted for. To be sure, it is not illogical or contrary to common experience that love blinds only for so long, and thereafter, when emotions have subsided and the dynamics of having to interact with another breathes a life of its own, the mind has stopped to function in the marital partnership and duties are no longer being fulfilled, there is no love and respect but screaming silence, violence and poison, these experiences are relevant to a finding of psychological incapacity and should not be shut off only because they happen post-marriage. Lastly, incurability or permanence should now be seen and analyzed in terms of a spouse's failure to reconcile with the other despite *bona fide* endeavours to do so.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Alfonso M. Paredes for respondent Ariel S. Calingo.

D E C I S I O N

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

Assailed in this Petition for Review[1] are the Decision[2] dated September 9, 2013 and Resolution[3] dated May 29, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 94407 which declared null and void the marriage between Ariel S. Calingo (Ariel) and Cynthia Marcellana-Calingo (Cynthia).

The Relevant Antecedents

As culled from the records, the facts of the case are as follows:

In 1978, Ariel and Cynthia met when the latter was still the girlfriend of the former's friend. After a while, Cynthia and his then boyfriend broke up. From the conclusion of such relationship, there sprung a new one. After developing a strong sense of sexual desire and physical attraction towards each other, Ariel and Cynthia became a couple.[4]

On February 5, 1980, Ariel and Cynthia decided to get married civilly. The couple initially lived in Paco, Manila; and later on transferred to several places because of the alleged aggressive behavior of Cynthia.[5]

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[1] *Rollo*, pp. 14-46.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring; *id.* at 51-64.

[3] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Priscilla J. Baltazar-Padilla and Samuel H. Gaerlan (now a Member of this Court), concurring; *id.* at 66-67.

[4] *Id.* at 167.

[5] *Id.*

As they lived together, Ariel narrated that Cynthia kept herself occupied by gossiping and reading comic books. Once, he asked Cynthia to limit her visitation to their neighbors to gossip, but Cynthia got mad and told him there was nothing much to do in their house.[6]

Despite their marital problems, Ariel and Cynthia had their church wedding on February 22, 1998. At the time of their church celebration, Cynthia was five months pregnant. Ariel claimed that Cynthia's behavior was no different even after their second rites. She continued to gossip and pick fights with their neighbors.[7]

According to Ariel, not only did Cynthia showed aggressive behavior during their union, but she likewise exhibited unfaithfulness. Ariel recalled that Cynthia's first instance of marital infidelity was with Noli, their neighbor, who became close to them. When Ariel found out about the affair, he forgave Cynthia, who allegedly showed no remorse.[8]

Noli later on revealed to him that their twin children were not really Ariel's children, but his own. Ariel then remembered one incident between him and Cynthia wherein the latter told him "*hindi mo anak yan,*" as she got mad because Ariel spanked one of their children.[9]

Cynthia's second affair involved Louie, who was also their neighbor. Ariel testified that he discovered Louie hiding under their marital bed and wearing his pants only.[10]

Not long after, Ariel reached his peak and left their conjugal abode after Cynthia threw a knife at him, which fortunately hit the wall. Premised on Cynthia's irritable and irascible attitude,

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[6] *Id.* at 168.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

Ariel narrated that the same took place after he asked Cynthia to check the pressure cooker; and in the course thereof, the pressure cooker exploded. Surprised, Cynthia got so angry and started throwing curses at Ariel. Allegedly, Cynthia threw a knife against him which hit the wall.

Ariel filed a petition for declaration of nullity of marriage.

To support his petition, Ariel secured the psychological evaluation of Dr. Arnulfo Lopez (Dr. Lopez). The result thereof shows that Ariel possesses an emotionally disturbed personality, but not severe enough to constitute psychological incapacity.[11] Dr. Lopez likewise conducted an assessment on Cynthia; and the same revealed that Cynthia is suffering from Borderline Personality Disorder with Histrionic Personality Disorder Features.[12]

In a Decision[13] dated August 3, 2009, the Regional Trial Court of Quezon City, Branch 107 (RTC), denied the petition. Finding insufficiency of evidence, the RTC stressed that the totality of evidence presented did not exhibit Cynthia's psychological incapacity as there was absolutely no showing that her traits were already present at the inception of the marriage or that they were incurable. The *fallo* thereof reads:

> **WHEREFORE**, the instant petition for declaration of void marriage is denied. The above-entitled case is dismissed.
>
> **SO ORDERED.**[14]

Ariel's motion for reconsideration was denied in a Resolution[15] dated October 19, 2009.

Raising a lone error, Ariel filed an appeal before the CA and insisted that the RTC erred in denying the petition for the

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[11] *Id.*

[12] *Id.* at 169.

[13] *Id.* at 167-171.

[14] *Id.* at 171.

[15] *Id.* at 185-187.

evidence presented adequately established Cynthia's psychological incapacity.[16]

In a Decision dated September 9, 2013, the CA reversed the ruling of the RTC and granted the petition for declaration of nullity of marriage. Hinged on Cynthia's attitude of being "*mabunganga*" and having relationships with other men coupled with the diagnosis of Dr. Lopez, the CA was convinced that Cynthia is psychologically incapacitated to fulfill her essential marital obligations to Ariel. The dispositive portion reads:

> **WHEREFORE**, the appeal is **GRANTED**. The Decision dated August 3, 2009 and Resolution dated October 19, 2009 of the Regional Trial Court, Branch 107, Quezon City, in Civil Case No. Q-06-57906 are **REVERSED and SET ASIDE**. The marriage of Ariel S. Calingo and Cynthia Marcellana-Calingo is declared **NULL and VOID *AB INITIO***.
>
> **SO ORDERED.**[17]

Hence, this petition.

Defending the sanctity of marriage, the Republic, through the Office of the Solicitor General (OSG) filed this petition.

In essence, the OSG was resolute in propounding Ariel's failure to provide sufficient evidence to demonstrate Cynthia's psychological incapacity within the ambit of Article 36 of the Family Code.[18]

In his Comment,[19] Ariel reiterated that Cynthia's Histrionic Personality Disorder is a psychological incapacity which warrants the nullity of their marriage.

In its Reply,[20] the OSG pointed out that Ariel failed to justify in his Comment sufficient basis to justify the denial of the instant petition.

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[16] *Id.* at 199.

[17] *Id.* at 64.

[18] *Id.* at 26-44.

[19] *Id.* at 268-271.

[20] *Id.* at 296-301.

The Issue

Whether or not the marriage between Ariel and Cynthia should be declared null on the basis of psychological incapacity under Article 36 of the Family Code.

The Court's Ruling

While marriage is considered by our fundamental law as an inviolable social institution, our laws allow the nullity of marriage entered into between parties who are incognizant of their obligations on the ground of psychological incapacity. Specifically, Article 36 of the Family Code provides:

> Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

Marriage nullified based on such justification is considered as void from the outset.

Jurisprudence defined psychological incapacity to no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that must concomitantly be assumed and discharged by the parties to the marriage.[21] It ought to pertain to only the most serious cases of personality disorders that clearly demonstrate the party's/parties' utter insensitivity or inability to give meaning and significance to the marriage.[22]

To be accurate, such incapacity must be characterized by gravity, juridical antecedence, and incurability:

> The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage,

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[21] *Mendoza v. Republic of the Philippines*, 698 Phil. 241 (2012).

[22] *Republic of the Philippines v. Tecag*, G.R. No. 229272, November 19, 2018.

and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[23]

In this case, Ariel presented the medical assessment of Dr. Lopez who found that Cynthia is suffering from Borderline Personality Disorder with Histrionic Personality Disorder Features rooted on her disorderly filial relationship as she was subjected to physical abuse and abandonment.[24] Such findings were based on the testimony of Ariel and their friends, Francisca Bilason (Bilason) and Ruben Kalaw (Kalaw).

However, this Court refuses to accept as credible the assessment of Dr. Lopez as there was no other evidence which established the juridical antecedence, gravity, and incurability of Cynthia's alleged incapacity. While jurisprudence recognizes the dispensability of personal examination of the party alleged to be suffering from psychological incapacity, it is but necessary to provide corroborative evidence to exhibit the required legal parameters.[25]

To recall, the report itself cited the testimonies of Ariel and their friends, Bilason and Kalaw as bases for the findings. However, in the same report, it displayed that Bilason and Kalaw are friends with the couple for more or less thirty years, and the same does not show that they have known Cynthia longer than such period of time so as to have personal knowledge of her circumstances. Neither was it shown that Ariel likewise had personal knowledge of Cynthia's family background. Thus, they could not have known Cynthia's childhood nor the manner as to how she was raised.

Likewise, Cynthia's sexual infidelity is not a satisfactory proof of psychological incapacity. To be a ground to nullify a marriage based on Article 36 of the Family Code, it must be shown that the acts of unfaithfulness are manifestations of a

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[23] *Santos v. Court of Appeals*, G.R. No. 112019, January 4, 1995, 240 SCRA 20, 24.

[24] *Rollo*, pp. 122 and 125.

[25] *Del Rosario v. Del Rosario*, G.R. No. 222541, February 15, 2017.

disordered personality which makes him/her completely unable to discharge the essential obligations of marriage.[26]

As discussed, there was no evidence which proved that such raised to the level of psychological incapacity within the meaning of Article 36 of the Family Code, warranting the severance of Cynthia and Ariel's marital bonds.

Unequivocally, psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of the marital obligations; it is not enough that a party prove that the other failed to meet the responsibility and duty of a married person.[27]

Hence, contrary to CA's decision, the fact that Cynthia is "*mabunganga*" and had extra-marital affairs are *not* sufficient indicators of a psychological disorder.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Decision dated September 9, 2013 and Resolution dated May 29, 2014 of the Court of Appeals in CA-G.R. CV No. 94407 are **REVERSED and SET ASIDE**.

The petition for declaration of nullity of marriage is **DISMISSED** for lack of merit.

SO ORDERED.

Peralta, C.J. (Chairperson) and *Gesmundo,*[*] *J.,* concur.

Caguioa, J., see concurring opinion.

Lazaro-Javier, J., see dissenting opinion.

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[26] *Supra* note 22.

[27] *Supra* note 25.

[*] Additional member per Raffle dated February 12, 2020 in lieu of Associate Justice Mario V. Lopez.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

Article 36 of the Family Code details the concept of psychological incapacity in the context of marriage. It reads:

> ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

In *Republic v. Molina*[1] *(Molina)*, the Court set the guidelines for the application and interpretation of the foregoing provision on the basis of the discussions and written memoranda of *amici curiae* Reverend Oscar V. Cruz and Justice Ricardo C. Puno, thus:

> (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.
>
> The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence*, *inviolability* and *solidarity*.
>
> (2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts, and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court

[1] 335 Phil. 664 (1997).

that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) **The incapacity must be proven to be existing at "the time of the celebration" of the marriage**. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) **Such incapacity must also be shown to be medically or clinically permanent or *incurable***. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) **Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage**. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s)

must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

> "The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.[2] (Emphasis Supplied)

As the nomenclature suggests, the *Molina* guidelines only serve as a guide in determining the existence of psychological

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[2] *Id.*

incapacity. The *Molina* guidelines are *not* meant to "straightjacket all petitions for declaration of nullity of marriage."[3] **To stress, actions for declaration of nullity filed under Article 36 should be resolved "on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of Church tribunals which, although not binding on the civil courts, may be given persuasive effect since [Article 36] was taken from Canon Law."**[4]

Verily, an allegation of psychological incapacity, like any other allegation, must be supported by proof. Proof, in turn, requires the presentation of sufficient evidence. In this regard, actions filed under Article 36 must be resolved through the evaluation of the totality of evidence on record. When the totality of evidence fails to establish that the alleged psychological incapacity is characterized by gravity, incurability and juridical antecedence, it does not assume the nature of psychological incapacity which Article 36 contemplates. These guidelines, "strict" as they are, stem from the law itself. Courts and litigants are thus bound to respect these guidelines until a subsequent law is passed espousing a contrary legislative intent.

Here, the totality of evidence presented by petitioner Ariel S. Calingo (Ariel) is not sufficient to sustain a finding that his wife, Cynthia Marcellana-Calingo (Cynthia) suffers from psychological incapacity to fulfill the essential obligations of marriage.

Ariel's petition for declaration of nullity is based on the psychological evaluation and testimony of Dr. Arnulfo Lopez (Dr. Lopez), and Ariel's own testimony alluding to Cynthia's unfaithfulness and hostile tendencies.

The psychological evaluation of Dr. Lopez states that Cynthia is afflicted with Borderline Personality Disorder with Histrionic

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[3] *Republic v. Javier*, G.R. No. 210518, April 18, 2018.

[4] Alicia V. Sempio-Diy, *HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES* (1998), p. 37.

Personality Disorder Features. In assessing the sufficiency of these findings, a distinction must be made between the credibility of Dr. Lopez's medical assessment and the credibility of the facts upon which such assessment is based.

To recall, Dr. Lopez found that Cynthia suffers from Borderline Personality Disorder with Histrionic Personality Features rooted on her disorderly filial relationship as she was subjected to physical abuse and abandonment.

That disorderly filial relationship may give rise to Borderline Personality Disorder is an established fact that is not disputed in this case, inasmuch as this finding falls well within the expertise of Dr. Lopez as an expert in the field of psychology. However, Cynthia's alleged disorderly relationship with her parents and exposure to physical abuse and abandonment do not appear to be supported by the evidence on record. **While these circumstances were relayed by Ariel and the couple's friends, Francisca Bilaso and Ruben Kalaw, during the course of Dr. Lopez's assessment, none of them claim to have personal knowledge of Cynthia's childhood circumstances and filial relationship. In the absence of corroborating evidence, the information relayed by Dr. Lopez's informants cannot be taken as established facts, but merely uncorroborated allegations**.

Moreover, as aptly observed by the *ponencia*, Ariel's allegations of marital infidelity and hostile tendencies, even if true, do not serve as sufficient basis to warrant the severance of his marriage with Cynthia.

Time and again, the Court has ruled that sexual infidelity, by itself, is not sufficient proof of psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which render the party completely unable to discharge the essential obligations of marriage.[5] Moreover, "irreconcilable differences x x x, emotional immaturity and irresponsibility, and the like, do not by

[5] See generally *Villalon v. Villalon*, 512 Phil. 219 (2005).

themselves warrant a finding of psychological incapacity, as [these] may only be due to a person's difficulty, refusal, or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses."[6]

For these reasons, I vote to **GRANT** the Petition.

DISSENTING OPINION

LAZARO-JAVIER, *J.*:

The ***ponencia*** reverses the Court of Appeals' Decision dated September 9, 2013[1] *viz.*:

> However, this Court refuses to accept as credible the assessment of Dr. Lopez as there was no other evidence which established the juridical antecedence, gravity, and incurability of Cynthia's alleged incapacity, it is but necessary to provide corroborative evidence to exhibit the required legal parameters.
>
> x x x x x x x x x
>
> Likewise, Cynthia's sexual infidelity is not a satisfactory proof of psychological incapacity. To be a ground to nullify a marriage based on Article 36 of the Family Code, it must be shown that the acts of unfaithfulness are manifestations of a disordered personality which makes him/her completely unable to discharge the essential obligations of marriage.
>
> As discussed, there was no evidence which prove that such rises to the level of psychological incapacity within the meaning of Article 36 of the Family Code, warranting the severance of Cynthia and Ariel's marital bonds.
>
> Unequivocally, psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of the marital obligations; it is not enough that a party prove that the other failed to meet the responsibility and duty of a married person.

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[6] See generally *Republic v. Tecag*, G.R. No. 229272, November 19, 2018, citing *Toring v. Toring*, 640 Phil. 434 (2010).

[1] CA-G.R. CV No. 94407.

Hence, contrary to CA's decision, the fact that Cynthia is "*mabunganga*" and had extra-marital affairs are *not* sufficient indicators of a psychological disorder.[2]

I dissent.

I.

First. Dr. Arnulfo V. Lopez's assessments were not unsubstantiated. They were based not only on his interview with Ariel himself but also on his interviews with Francisca A. Bilason[3] and Ruben Kalaw.[4] Although Bilason and Kalaw themselves did not testify in court, Dr. Lopez personally testified on the questions he asked of these witnesses and their corresponding answers. It cannot be said, therefore, that the narratives of these persons which Dr. Lopez himself examined and evaluated are hearsay.

The good doctor also factored in Cynthia's family background in his diagnosis. He, too, considered veritable facts on record pertaining to the character of the parties, their psychological profiles, their behavior, the people's perception of them *vis-à-vis* the criteria of antecedence, incurability, and gravity of Cynthia's supposed psychological incapacity. Ultimately, Dr. Lopez came out with his expert opinion that Cynthia was psychologically incapacitated to perform her essential marital obligations to her husband.

Notably, Dr. Lopez is the same doctor whose evaluations the Court had given credence to in cases where we granted petitions for declaration of nullity of marriage on ground of psychological incapacity, *viz.*:

Aside from Maria Teresa, **Dr. Arnulfo V. Lopez (Dr. Lopez), a clinical psychologist, was presented as an expert witness**. Dr. Lopez testified that he conducted an in-depth interview with Maria Teresa

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[2] *Ponencia,* pp. 5-6; citations omitted.

[3] A head therapist who has known both Ariel and Cynthia for more than 30 years.

[4] Friend of both Ariel and Cynthia both for longer than 25 years.

to gather information on her family background and her marital life with Rodolfo, and subjected her to a battery of psychological tests. Dr. Lopez also interviewed Rodolfo's best friend.

x x x x x x x x x

Dr. Lopez diagnosed Rodolfo with "paranoid personality disorder manifested by [Rodolfo's] damaging behavior like reckless driving and extreme jealousy; his being distrustful and suspicious; his severe doubts and distrust of friends and relatives of [Maria Teresa]; his being irresponsible and lack of remorse; his resistance to treatment; and his emotional coldness and severe immaturity."

Dr. Lopez stated that Rodolfo's disorder was one of the severe forms of personality disorder, even more severe than the other personality disorders like borderline and narcissistic personality disorders. Dr. Lopez explained that Rodolfo's personality disorder was most probably caused by a pathogenic parental model. Rodolfo's family background showed that his father was a psychiatric patient, and Rodolfo might have developed psychic contamination called double insanity, a symptom similar to his father's. Dr. Lopez further claimed that Rodolfo's disorder was serious and incurable because of his severe paranoia.

Dr. Lopez recommended that Maria Teresa and Rodolfo's marriage be annulled due to Rodolfo's incapacity to perform his marital obligations.

(***De La Fuente v. De La Fuente***, G.R. No. 188400, March 8, 2017; emphases supplied, citations omitted)

In support of his petition, petitioner presented Dr. Dante Herrera Abcede (Dr. Abcede, a psychiatrist, and **Dr. Arnulfo V. Lopez (Dr. Lopez), a clinical psychologist**, who stated, based on the tests they conducted, that petitioner was essentially a normal, introspective, shy and conservative type of person. On the other hand, they observed that respondent's persistent and constant lying to petitioner was abnormal or pathological. It undermined the basic relationship that should be based on love, trust and respect. They further asserted that respondent's extreme jealousy was also pathological. It reached the point of paranoia since there was no actual basis for her to suspect that petitioner was having an affair with another woman. They **concluded based on the foregoing that respondent was psychologically incapacitated to perform her essential marital obligations**.

x x x x x x x x x

The other witness, Dr. Lopez, was presented to establish not only the psychological incapacity of respondent, but also the psychological capacity of petitioner. He concluded that respondent "is [a] pathological liar, that [she continues] to lie [and] she loves to fabricate about herself."

These two witnesses based their conclusions of psychological incapacity on the case record, particularly the trial transcripts of respondent's testimony, as well as the supporting affidavits of petitioner. While these witnesses did not personally examine respondent, the Court had already held in *Marcos v. Marcos* that personal examination of the subject by the physician is not required for the spouse to be declared psychologically incapacitated. **We deem the methodology utilized by petitioner's witnesses as sufficient basis for their medical conclusions**. Admittedly, Drs. Abcede and Lopez's common conclusion of respondent's psychological incapacity hinged heavily on their own acceptance of petitioner's version as the true set of facts. However, since the trial court itself accepted the veracity of petitioner's factual premises, **there is no cause to dispute the conclusion of psychological incapacity drawn therefrom by petitioner's expert witnesses**.

(***Antonio v. Reyes***, G.R. No. 155800, March 10, 2006; emphases supplied, citations omitted)

Second. There was allegedly no evidence showing that Cynthia's psychological incapacity is *within the level required* by Article 36 of the Family Code.

But what evidence can be more convincing, nay, credible, than the detailed account of Ariel himself who experienced his wife's psychological incapacity up close on countless occasions? Ariel testified, *viz.*:

FISCAL

x x x x x x x x x

Q But then you stated that you kept on transferring from one place to another. What was the reason?

A Because Cynthia **was very quarrelsome** if not with the neighborhood with the landlady or the landlord.

x x x x x x x x x

Q Mr. witness, you said that after your civil wedding you also had your church wedding?

A Yes, ma'am, after a year.

Q Who suggested of having a church wedding?

A It was suggested by her auntie.

Q Did it bring you more blessings?

A Not really, it became worst *(sic)*, ma'am.

Q Now, you said in paragraph 10 of your Affidavit that after your church wedding, **Cynthia's quarrelsome behavior became more pronounced by her madly shouting, cursing and throwing stuffs *(sic)* to you?**

A Yes, ma'am.

x x x x x x x x x

Q So, she would be the type who is **the violent type** and not the silent type?

A Yes, ma'am, and in fact, she **already became scandalous**.

x x x x x x x x x

Q Mr. Witness, in paragraph 13, you stated that your wife, again, fooled around the second time with another male neighbor a certain Louie, is that correct?

A Yes, ma'am.

Q How did you now this?

A There was one time when I went home earlier, because I used to go on overtime, I found Louie naked under my bed hiding from me.

Q Mr. Witness, you stated in paragraph 14 of your affidavit about your wife's **deceptive**, **sex-maniacal behavior**. What do you mean by that?

A Promiscuous.

Q Not with you?

A Not really. I think with any man *na matipuhan niya*.

Q By the way, Mr. Witness, how long did you stay together as husband and wife?

A We stayed together for about 3 years.

Q For only 3 years?

A Yes, ma'am.

Q So, you **separated in 1984**.

A Yes, ma'am.

x x x x x x x x x

Q For how long have you been separated with the respondent?

A **More than 20 years, ma'am.**

x x x x x x x x x

Q So, after the total separation in 1984 you have no more contact with your wife?

A **Completely no contact.**

x x x x x x x x x[5]

(Emphases supplied)

Equally important is the reputation and credibility of Dr. Lopez as a psychologist whose findings the Court had accorded credence and reliance in various cases.

Third. According to the *ponencia*, the Court of Appeals erred when it deemed Cynthia's sexual infidelity and being "*mabunganga*" sufficient to warrant the nullity of her marriage to Ariel.

As it was, however, the Court of Appeals did not hinge its rulings on these grounds alone. In truth, there are many more, *viz.*:

His wife's being "mabunganga" and having relationships with other men, are strong indications of a psychological disorder.

x x x x x x x x x

[5] *Rollo*, pp. 92-99.

Cynthia's quarrelsome attitude, and the incessant bickerings with neighbors and the spouses' landlords, which force the spouses to transfer from one place to another can be traced back to her [Histrionic Personality Disorder]. In addition, her being "mabunganga" is clearly an indication that she would not listen to reason in discussion and would be enraged for no apparent reason at all.

The totality of evidence all boils down to the fact that the marriage is doomed from the start.

Cynthia's sexual infidelity, by itself, is sufficient to constitute psychological incapacity given that she committed it not just once, but multiple times. In fact, she bore, not just a child but twins with a man other than her husband; in addition, she harbored a half-naked man under their maternal bed; she was verbally abusive, as she often got angry at Ariel and shouted curses at him;[6] she had aggressive tendencies towards others and would pick fights with neighbors and landlords because of constant gossiping, causing them to transfer residence five (5) times in just three (3) years of life together as husband and wife;[7] and she had, on separate occasions, thrown knives and other deadly objects at Ariel. If this is not psychological incapacity, what is?

II.

The Court has clarified that the guidelines in ***Republic v. Molina***[8] **are <u>not meant</u> to straightjacket all petitions for declaration of nullity of marriage**. The merits are determined **on a <u>case-to-case basis</u>**, as no case is on all fours with another.[9]

In ***Ngo Te v. Yu-Te***,[10] we ruled that the parties' marriage was void on the basis of psychological incapacity and noted:

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[6] *Rollo*, p. 118.

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

[8] 335 Phil. 664-693 (1997).

[9] *Republic v. Javier*, G.R. No. 210518, April 18, 2018, 861 SCRA 683, 691, citing *Bier v. Bier, et al.*, 570 Phil. 442, 448-449 (2008).

[10] 598 Phil. 666, 695-698 (2009).

In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in Molina, in resolving all cases of psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the OSG's exaggeration of Article 36 as the "most liberal divorce procedure in the world." The unintended consequences of Molina, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. **Far from what was intended by the Court, Molina has become a straightjacket, forcing all sizes to fit into and be bound by it.** Wittingly or unwittingly, the Court, in conveniently applying Molina, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to **continuously debase and pervert the sanctity of marriage**.

x x x x x x x x x

In dissolving marital bonds on account of either party's psychological incapacity, the Court is **not demolishing the foundation of families, but it is actually protecting the sanctity of marriage**, because **it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond.** It may be stressed that the infliction of physical violence, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly are manifestations of a sociopathic personality anomaly. **Let it be noted that in Article 36, there is no marriage to speak of in the first place, as the same is void from the very beginning.** To indulge in imagery, the declaration of nullity under Article 36 will simply provide a decent burial to a stillborn marriage. (Emphasis supplied; Citations omitted)

In ***Republic v. Javier***[11] for instance, respondent Martin Javier testified on his own behalf and presented the psychological findings of Dr. Elias D. Adamos. Based on her Psychological Report on Martin and Psychological Impression Report on Michelle Mercado-Javier, Martin and Michelle had Narcissistic Personality Disorder.

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[11] G.R. No. 210518, April 18, 2018, 861 SCRA 683, 686.

In his petition for declaration of nullity of marriage, Martin testified that Michelle was confrontational even before their marriage, she always challenged his opinions on what was proper, and acted recklessly without consideration of his feelings. Dr. Adamos corroborated this and noted that Michelle's disorder was a result of her childhood trauma. He also added that she constantly lied to Martin and openly had extra-marital affairs.

Martin's disorder, on the other hand, was found to have been rooted in his traumatic childhood experiences with his violent and abusive father. He thus had unrealistic values and standards on his own marriage, proposed unconventional sexual practices, and often quarreled with Michelle. Worse, he had inflicted physical harm on her. He was found to be self-entitled, immature, and self-centered.

Taken together, the Court found these manifestations as proof of psychological incapacity and upheld the declaration of the marriage as void *ab initio*.

Here, records show that: (1) Ariel himself suffered an emotionally disturbed personality; (2) Cynthia was diagnosed with Borderline Personality Disorder with Histrionic Personality Disorder Features; (3) She was unfaithful to him and even once admitted that her children were not his; (4) He caught her with another man; (5) She was verbally abusive against him; and (6) She has attempted to take his life by throwing knives at him on different occasions.

Article 68 of the Family Code, under Rights and Obligations between Husband and Wife provides:

> Art. 68. The husband and wife are obliged **to live together, observe mutual love, respect and fidelity**, and **render mutual help and support**. (109a)

True, each action or omission which Cynthia has done or incurred, taken singly, may constitute a mere ground for legal separation. Taken together, however, they constitute a solid ground for psychological incapacity. How can a seemingly incurable adulteress who is unapologetically verbally and

physically abusive still be able to comply with her duties as a wife? Are her acts those of love, respect, and fidelity?

III.

The remedy of psychological incapacity, as the prototypical and prevailing doctrine understands it to be, does not work as well in practice as it is in theory. There are real needs and actual mischief that the remedy seeks to address — the dysfunctional marriage and the decaying family that the latter breeds. To make the remedy responsive and relevant, some adjustments have to be written to the prototypical and prevailing doctrine.

For one, proof by an expert of the existence of a personality disorder should only be one of the means of proving by presumption the existence of psychological incapacity. For another, it is high-time to abandon the prevailing insistence on proof of clinically-identified personality disorders as the sole elemental source of psychological incapacity. It should also be enough to prove mental state or state of mind of an inability to fulfil the marital and parental duties as a trigger to the ascription of psychological incapacity to a spouse.

It is also apt to abandon the requirement of juridical antecedence so that the trigger mental states or states of mind that develop post-marriage can be accounted for. To be sure, it is not illogical or contrary to common experience that love blinds only for so long, and thereafter, when emotions have subsided and the dynamics of having to interact with another breathes a life of its own, the mind has stopped to function in the marital partnership and duties are no longer being fulfilled, there is no love and respect but screaming silence, violence and poison, these experiences are relevant to a finding of psychological incapacity and should not be shut off only because they happen post-marriage.

Lastly, incurability or permanence should now be seen and analyzed in terms of a spouse's failure to reconcile with the other despite *bona fide* endeavours to do so.

A final note. We also cannot ignore the fact that Ariel and Cynthia have not been in contact since their separation in 1984 or for thirty-six (36) years now. What marriage, therefore, do we seek to preserve here? If these manifestations, taken together, do not establish psychological incapacity, what more are we looking for?

I, therefore, vote to **DISMISS** the petition and **AFFIRM** the dispositions of the Court of Appeals granting the petition for declaration of nullity of marriage.

FIRST DIVISION

[G.R. No. 222958. March 11, 2020]

PHILIPPINE BANK OF COMMUNICATIONS, *petitioner, vs.* **THE REGISTER OF DEEDS FOR THE PROVINCE OF BENGUET,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 41 PETITION; DISMISSAL OF A PETITION ON THE GROUND OF *RES JUDICATA* IS A FINAL ORDER THAT COMPLETELY DISPOSES OF THE CASE AND IS THUS APPEALABLE.— A Rule 65 petition for *certiorari* is not the correct remedy to challenge the dismissal of the second petition. Rule 41 of the Rules of Court governs ordinary appeals from the Regional Trial Courts, *viz.*: SECTION 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or a particular matter therein when declared by these Rules to be appealable. x x x. In *Medina v. Spouses Lozada*, the Court explained: An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other

words, the order or judgment ends the litigation in the lower court. An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff ['except when otherwise provided,] is to appeal the order. Applying the foregoing, there is no question that (1) a dismissal on the ground of *res judicata* is a final order that completely disposes of the case and leaves nothing more to be done in the RTC, and (2) such dismissal does not fall within the enumeration of orders from which no appeal may be taken. In fact, a dismissal on the ground of *res judicata* is expressly declared to be appealable under Rule 16, Section 1 in relation to Section 5 x x x. Evidently therefore, appeal — and not a special civil action for *certiorari* — was the correct remedy to challenge the dismissal of the second petition on the ground of *res judicata*. *United Alloy Phils. Corp. v. United Coconut Planters Bank* has unequivocally stated, "if the reason for the dismissal is based on paragraphs (f), (h), or (i) (*i.e.*, *res judicata*, prescription, extinguishment of the claim or demand, or unenforceability under the Statute of Frauds) the dismissal, under Section 5 of Rule 16, is *with prejudice* and the remedy of the aggrieved party is to appeal the order granting the motion to dismiss."

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL NOT PROSPER EVEN IF THE GROUND THEREFOR IS GRAVE ABUSE OF DISCRETION WHERE APPEAL, OR OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE COURSE OF LAW IS AVAILABLE, AS THE REMEDIES OF APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE AND NOT ALTERNATIVE OR SUCCESSIVE.— As appeal was available, PBCOM's Rule 65 petition would not prosper even if the ground therefor was grave abuse of discretion. In *Chingkoe v. Republic*, the Court explained: x x x Pursuant to Rule 65 of the Rules of Court, a special civil action for *certiorari* could only be availed of when a tribunal "acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment as to be said to be equivalent to lack of jurisdiction" or when it acted without or in excess of its x x x jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course

of law. It is settled that the Rules precludes recourse to the special civil action of *certiorari* if appeal by way of a [Notice of Appeal or a] Petition for Review is available, as the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.

3. ID.; ID.; DISMISSAL OF ACTIONS; A COURT MAY *MOTU PROPRIO* DISMISS A CASE ON GROUND OF *RES JUDICATA;* TECHNICAL RULES OF PROCEDURE, RELAXED IN THE INTEREST OF SUBSTANTIAL JUSTICE IN CASE AT BAR.— [T]he CA cannot be faulted for having dismissed the petition for *certiorari*. PBCOM's contention that a Rule 65 petition was proper as the Order dismissing the second petition was void for lack of due process is untenable. Rule 9, Section 1 of the Rules of Court expressly allows the *motu proprio* dismissal of cases on the ground, among others, of *res judicata* x x x. In *Katon v. Palanca, Jr.*, citing *Gumabon v. Larin*, the Court explained: "x x x [T]he *motu proprio* dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, *failed to prosecute his action for an unreasonable length of time* or neglected to comply with the rules or with any order of the court. Outside of these instances, any *motu proprio* dismissal would amount to a violation of the right of the plaintiff to be heard. Except for qualifying and expanding Section 2, Rule 9, and Section 3, Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure brought about no radical change. *Under the new rules, a court may motu proprio dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter*; when there is another cause of action pending between the same parties for the same cause, or *where the action is barred by a prior judgment or by statute of limitations* x x x." **Nevertheless**, in the interest of substantial justice, the Court finds it proper to relax the technical rules of procedure if only to resolve the novel issue presented before the Court.

4. CIVIL LAW; THE PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. [P.D.] 1529); CERTIFICATE OF TITLE; SERVES AS EVIDENCE OF AN INDEFEASIBLE AND INCONTROVERTIBLE TITLE TO THE PROPERTY IN FAVOR OF THE PERSON

WHOSE NAME APPEARS THEREIN; EXPLAINED.— It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It is conclusive evidence with respect to the ownership of the land described therein. In *The Heirs of Alfredo Cullado v. Gutierrez*, the Court explained: Indeed, the bedrock of the Torrens system is the indefeasibility and incontrovertibility of a land title where there can be full faith reliance thereon. Verily, the Government has adopted the Torrens system due to its being the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. To the registered owner, the Torrens system gives him complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land. On the part of a person transacting with a registered land, like a purchaser, he can rely on the registered owner's title and he should not run the risk of being told later that his acquisition or transaction was ineffectual after all, which will not only be unfair to him, but will also erode public confidence in the system and will force land transactions to be attended by complicated and not necessarily conclusive investigations and proof of ownership.

5. **ID.; ID.; OWNER'S DUPLICATE CERTIFICATE OF TITLE; NO VOLUNTARY TRANSACTION AFFECTING THE LAND WILL BE REGISTERED AND THUS, BIND THIRD PERSONS, WITHOUT THE PRESENTATION OF THE OWNER'S DUPLICATE CERTIFICATE OF TITLE.—** In other words, ownership of registered land is evidenced by the certificate of title, which is indefeasible and incontrovertible. Presidential Decree No. (P.D.) 1529 or the "Property Registration Decree" mandates the issuance of this certificate of title in **duplicates** — the original certificate of title, which is either an original certificate of title or TCT to be kept by the Register of Deeds and an owner's duplicate certificate of title to be kept by the registered owner. P.D. 1529 provides: x x x. x x x. SEC. 41. *Owner's duplicate certificate of title.* – **The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative.** x x x. Based on the foregoing, there is no doubt that the owner's duplicate certificate of title is a fundamental aspect of the Torrens system.

While a registered owner is free to exercise and enjoy all manner of rights over his/her property [*i.e.*, (1) *Jus possidendi* or the right to possess; (2) *Jus utendi* or the right to use and enjoy; (3) *Jus fruendi* or the right to the fruits; (4) *Jus accessionis* or right to accessories; (5) *Jus abutendi* or the right to consume the thing by its use; (6) *Jus disponendi* or the right to dispose or alienate; and (7) *Jus vindicandi* or the right to vindicate or recover] and non-registration thereof does not affect the validity of said acts as between the parties, no voluntary transaction affecting the land will be registered (and thus bind third persons) without the presentation of the owner's duplicate certificate of title as mandated by P.D. 1529.

6. ID.; ID.; ID.; REPLACEMENT OF LOST DUPLICATE CERTIFICATE OF TITLE; A REGISTERED OWNER HAS A SUBSTANTIVE RIGHT TO OWN AND POSSESS THE OWNER'S DUPLICATE CERTIFICATE OF TITLE AND TO REPLACE THE SAME IN CASE OF LOSS OR DESTRUCTION; A REGISTERED OWNER OF LAND CANNOT BE BARRED BY *RES JUDICATA* FROM FILING A SECOND PETITION TO REPLACE ITS OWNER'S DUPLICATE CERTIFICATE OF TITLE IN CASE OF LOSS OR DESTRUCTION OF THE ORIGINAL DUPLICATE.— The requirement that the owner's duplicate certificate of title be presented for voluntary transactions is precisely what gives the registered owner "security" and "peace of mind" under the Torrens system. Without the owner's duplicate certificate of title, transfers and conveyances like sales and donations, mortgages, and leases, and agencies and trusts while valid, will not bind the registered land. As such, the owner's duplicate certificate of title safeguards ownership. At the same time, the owner's duplicate certificate of title is also crucial to the full and effective exercise of ownership rights over registered land. Hence, a registered owner has a substantive right to own and possess the owner's duplicate certificate of title and to replace the same in case of loss or destruction. **In view of the foregoing, the Court finds that PBCOM, as the undisputed registered owner of the land covered by TCT No. 21320 on file with the Register of Deeds, cannot be barred by *res judicata* from filing a second petition to replace its owner's duplicate certificate of title in case of loss or destruction of the original duplicate.**

7. ID.; ID.; ID.; REGISTERED OWNER'S SUBSTANTIVE RIGHT TO POSSESS AND SEEK A REPLACEMENT OF AN OWNER'S DUPLICATE CERTIFICATE OF TITLE THAT HAS BEEN LOST OR DESTROYED, GIVEN PRIMACY; A REGISTERED OWNER WOULD BE LEFT WITH NO OTHER REMEDY UNDER THE LAW TO EXERCISE FULL OWNERSHIP RIGHTS OVER ITS OWN PROPERTY WHERE IT IS BARRED FROM FILING A SECOND PETITION TO REPLACE ITS OWNER'S DUPLICATE TRANSFER CERTIFICATE OF TITLE THAT HAS BEEN LOST OR DESTROYED, SIMPLY BECAUSE IT FAILED TO PROVE THE FACT OF LOSS OR DESTRUCTION THEREOF IN ITS FIRST PETITION.— Rule 1, Section 4 of the Rules of Court expressly provides that the Rules of Court apply to land registration cases only by analogy, in a suppletory character, and whenever practicable and convenient x x x. [T]he nature and purpose of the Torrens system and the absolute indispensability of the owner's duplicate certificate of title mandates that the Court give primacy to the registered owner's substantive right to possess and accordingly, to seek a replacement of an owner's duplicate certificate of title that has been lost or destroyed. When there is a right, there must be a remedy. Although admittedly, it "is to the interest of the public that there should be an end to litigation by the same parties and their privies over a subject once fully and fairly adjudicated," it would be extremely impracticable, inconvenient, and unjust to perpetually preclude the registered owner from registering any voluntary transaction, *i.e.*, sale, donation, mortgage, lease, *etc*., on his/her land simply because he/she failed to prove, to the satisfaction of the court, that he/she, in fact, lost his/her title. If the Court were to uphold the dismissal of the second petition on the ground of *res judicata*, PBCOM would be left with no other remedy under the law to exercise full ownership rights over its own property.

8. ID.; ID.; ID.; THERE IS NO CONCLUSIVE ADJUDICATION OF RIGHTS BETWEEN ADVERSARIAL PARTIES IN PROCEEDINGS FOR THE REPLACEMENT OF A LOST OR DESTROYED OWNER'S DUPLICATE CERTIFICATE OF TITLE, AS THE SAME DO NOT PASS UPON THE OWNERSHIP OF THE LAND COVERED BY THE LOST OR DESTROYED TITLE, BUT ONLY INVOLVE THE

RE-ISSUANCE OF A NEW OWNER'S DUPLICATE CERTIFICATE OF TITLE LOST OR DESTROYED IN ITS ORIGINAL FORM AND CONDITION.— *Res judicata* has been defined as "'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.' *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit." As in proceedings for the reconstitution of original certificates of title however, proceedings for the replacement of owner's duplicate certificates of title **only involve** "the re-issuance of a new [owner's duplicate] certificate of title lost or destroyed in its original form and condition. It does not pass upon the ownership of the land covered by the lost or destroyed title." **Strictly speaking therefore, there is no conclusive adjudication of rights between adversarial parties in a proceeding for the replacement of a lost or destroyed owner's duplicate certificate of title**.

9. ID.; ID.; ID.; THE COURT'S AUTHORITY IN A PETITION FOR THE REPLACEMENT OF A LOST OWNER'S DUPLICATE CERTIFICATE OF TITLE IS LIMITED TO DETERMINING WHETHER THE PROCEDURE PRESCRIBED IN SECTION 109 OF P.D. 1529 HAS BEEN COMPLIED WITH, AND WHETHER THE OWNER'S DUPLICATE CERTIFICATE OF TITLE HAS, IN FACT, BEEN LOST/DESTROYED; A PETITION FOR THE REPLACEMENT OF A LOST OWNER'S DUPLICATE CERTIFICATE OF TITLE SHALL BE DISMISSED BY THE COURT, AFTER NOTICE AND HEARING, IF THE REQUISITES ARE UNSATISFIED, WITHOUT PREJUDICE TO THE REGISTERED OWNER'S SUBSEQUENT COMPLIANCE WITH THE REQUISITES PRESCRIBED BY LAW.— Section 109 of P.D. 1529 pertinently provides x x x. The foregoing provision unequivocally shows that the Court's authority in a petition for the replacement of a lost owner's duplicate certificate of title is limited to determining: (1) whether the procedure prescribed in Section 109 has been complied with; and (2) whether the owner's

duplicate certificate of title has, in fact, been lost/destroyed. If the requisites are satisfied, the court, after notice and hearing, should direct the issuance of a new duplicate certificate in its original form and condition, with a memorandum of the fact that it is being issued in place of the lost duplicate certificate. On the other hand, if the requisites are not satisfied, the court, after notice and hearing, should dismiss the petition **without prejudice** to the registered owner's subsequent compliance with the requisites prescribed by law. [A] reading of RTC-Branch 62's dismissal of the first petition astutely indicates that the dismissal was actually without prejudice x x x. [T]he RTC-Branch 62 dismissed the first petition because PBCOM failed to show that it exerted its best efforts to locate the title. This dismissal is obviously without prejudice to the right of PBCOM, as the undisputed registered owner, to subsequently and sufficiently prove that the owner's duplicate of TCT No. 21320 has indeed been lost.

APPEARANCES OF COUNSEL

Pedro Agnes & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the February 23, 2015 Decision[2] (Assailed Decision) and February 12, 2016 Resolution[3] (Assailed Resolution) of the Court of Appeals[4] (CA) in CA-G.R. SP No. 126081. The CA dismissed petitioner Philippine

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

[2] *Id.* at 42-52. Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a Member of this Court).

[3] *Id.* at 54-56.

[4] Thirteenth Division and Former Thirteenth Division.

Bank of Communications' (PBCOM) Rule 65 petition for *certiorari* and affirmed *in toto* the April 27, 2012[5] and June 7, 2012[6] Orders of the Regional Trial Court, Branch 63, La Trinidad, Benguet (RTC-Branch 63) in LRC Admin. Case No. 12-AD-1401.[7]

The Facts and Antecedent Proceedings

The instant dispute involves two successive petitions for replacement of lost owner's duplicate Transfer Certificate of Title (TCT) No. 21320. The first petition was dismissed by the Regional Trial Court, Branch 62, La Trinidad, Benguet (RTC-Branch 62) in LRC Case No. 11-AD-1335 (first petition) for insufficiency of evidence, *i.e.*, for failure to prove the fact of loss, while the second petition was dismissed by the RTC-Branch 63 in LRC Adm. Case No. 12-AD-1401 (second petition) on the ground of *res judicata*.[8] The instant case is an offshoot of the second petition. The CA summarized the facts as follows:

> On January 28, 2011, PBCOM filed a petition for issuance of the owner's duplicate copy of TCT No. 21320 in lieu of the lost one (*first petition*), docketed as LRC Case No. 11-AD-1335, raffled to RTC, Branch 62, La Trinidad, Benguet. PBCOM claimed to be the registered owner of the subject property, having acquired it on March 2, 1985 through an extrajudicial foreclosure sale. The property was allegedly not included in PBCOM's inventory of assets because the bank's La Union branch failed to forward all the pertinent records of its acquisition to the Makati head office. Although the property was registered in the bank's name, it only "got wind" of its existence when it received a May 2010 Notice and Reminder to Real Property Tax Payers from the Office of the Municipal Treasurer of La Trinidad, Benguet. It allegedly exerted all possible efforts to locate the owner's duplicate copy of TCT No. 21320, but to no avail. It then filed an affidavit of loss with the Registry of Deeds of Benguet.

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[5] *Rollo*, pp. 81-86. Penned by Presiding Judge Jennifer P. Humiding.

[6] *Id.* at 87-90.

[7] *Id.* at 51.

[8] *Id.* at 13-18.

After PBCOM's *ex parte* presentation of evidence, the RTC, Branch 62 issued its July 29, 2011 Order dismissing the first petition for insufficiency of evidence. It held that PBCOM failed to prove that it had "exerted all efforts to determine the actual whereabouts of TCT No. 21320 from all its available records and the bank's past and present officers or employees and legal counsel who could and should have knowledge of the bank's acquired property and the documents relative thereto." Noting the testimony of one (1) of PBCOM's witnesses that it is possible that the previous accountable officer did not turn over the title to the property or the lawyer who handled the foreclosure proceeding failed to include the owner's copy of TCT No. 21320 in the documents forwarded to their main office, the RTC, Branch 62 stressed that PBCOM should have exerted efforts to verify from these persons the whereabouts of the missing title because if any other person is known or suspected to be in possession of the copy of the title, either lawfully or unlawfully, the petition would not be the appropriate legal remedy.

PBCOM filed an omnibus motion for reconsideration of the July 29, 2011 Order and prayed that it be allowed to present additional evidence to prove the allegations in its first petition. It also filed a Manifestation suggesting the publication in a newspaper of general circulation of the fact of loss and the pending proceedings for the issuance of a new one. The RTC, Branch 62 gave PBCOM five (5) days to file a supplemental motion but failed to comply and did not bother to set its foregoing motions for hearing. Thus, in its February 9, 2012 Order, the RTC, Branch 62 considered the omnibus motion for reconsideration as well [as] the Manifestation as abandoned.

Instead of filing a[n] appeal from the July 29, 2011 Order, PBCOM filed the second petition, docketed as LRC Case No. 12-AD-1401 [(*second petition*)], raffled to RTC, Branch 63. The allegations in the second petition were essentially the same as that contained in the first petition.[9] (Italics and underscoring supplied)

In its April 27, 2012 Order, the RTC-Branch 63 dismissed the second petition, *motu proprio*, on the ground of *res judicata*.[10] As the first petition was dismissed for insufficiency of evidence, *i.e.*, an adjudication on the merits, the RTC-Branch 63 held

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

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

that the second petition involving the same parties and cause of action was barred by prior judgment.[11]

PBCOM sought reconsideration of the aforementioned Order, which was, however, denied.[12] It then filed a notice of appeal, which it later withdrew.[13] Thereafter, it filed a petition for *certiorari* with the CA, claiming that the respondent judge therein committed grave abuse of discretion (1) in dismissing the second petition on the ground of *res judicata* and (2) in dismissing, without first determining, whether the evidence presented in the first petition was identical to the evidence intended to be presented in the second petition.[14] PBCOM claimed that the dismissal of the first petition did not bar the filing of a second petition, for otherwise, it would be forever barred from securing a "replacement copy of the missing title.[15]

The CA dismissed the petition for *certiorari* and held that: (1) PBCOM availed of the wrong remedy as the dismissal of the second petition on the ground of *res judicata* was a complete disposition and was thus reviewable *via* appeal;[16] and (2) all elements of *res judicata* were attendant, given that PBCOM sought the issuance of the owner's duplicate copy of TCT No. 21320 in both petitions.[17]

PBCOM thus filed the instant Petition under Rule 45 of the Rules of Court alleging, among others, that: (1) the Rules of Court and the concept of *res judicata* do not apply to land registration;[18] and (2) it availed of the correct remedy.[19]

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[11] *Id.*

[12] *Id.* at 46.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 46-47.

[16] *Id.* at 47-48.

[17] *Id.* at 50.

[18] *Id.* at 19-25.

[19] *Id.* at 25-29.

In its Comment,[20] respondent Register of Deeds through the Office of the Solicitor General, argued that: (1) the RTC-Branch 63 correctly dismissed the petition on the ground of *res judicata*;[21] and (2) PBCOM availed of the wrong remedy.[22]

Issues

The issues pending before the Court may be summarized as follows: (1) whether PBCOM availed of the correct remedy to challenge the dismissal of the second petition; and (2) whether the RTC-Branch 63 correctly dismissed the second petition on the ground of *res judicata*.

The Court's Ruling

The Petition has partial merit.

PBCOM availed of the wrong remedy when it filed a Rule 65 petition for certiorari to challenge the dismissal of the second petition on the ground of res judicata

A Rule 65 petition for *certiorari* is not the correct remedy to challenge the dismissal of the second petition.

Rule 41 of the Rules of Court governs ordinary appeals from the Regional Trial Courts, *viz.*:

> SECTION 1. *Subject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (b) An interlocutory order;

[20] *Id.* at 263-276.

[21] *Id.* at 266-271.

[22] *Id.* at 271-274.

(c) An order disallowing or dismissing an appeal;

(d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(e) An order of execution;

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. (*As amended by A.M. No. 07-7-12-SC, December 4, 2007*) (Underscoring supplied)

In *Medina v. Spouses Lozada*,[23] the Court explained:

An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff[, except when otherwise provided,] is to appeal the order.[24]

Applying the foregoing, there is no question that (1) a dismissal on the ground of *res judicata* is a final order that completely disposes of the case and leaves nothing more to be done in the RTC,[25] and (2) such dismissal does not fall within the enumeration of orders from which no appeal may be taken. In fact, a dismissal on the ground of *res judicata* is expressly

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[23] G.R. No. 185303, August 1, 2018.

[24] *Id.*

[25] See *Medina v. Spouses Lozada, id.*

declared to be appealable under Rule 16, Section 1 in relation to Section 5, *viz.*:

SECTION 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

x x x x x x x x x

SEC. 5. *Effect of dismissal.* — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of Section 1 hereof shall bar the refiling of the same action or claim. (n) (Underscoring supplied)

Evidently therefore, appeal — and not a special civil action for *certiorari* — was the correct remedy to challenge the dismissal of the second petition on the ground of *res judicata*. *United Alloy Phils. Corp. v. United Coconut Planters Bank*[26] has unequivocally stated, "if the reason for the dismissal is based on paragraphs (f), (h), or (i) (*i.e.*, *res judicata*, prescription, extinguishment of the claim or demand, or unenforceability under the Statute of Frauds) the dismissal, under Section 5 of Rule 16, is *with prejudice* and the remedy of the aggrieved party is to appeal the order granting the motion to dismiss."[27]

As appeal was available, PBCOM's Rule 65 petition would not prosper even if the ground therefor was grave abuse of discretion.[28] In *Chingkoe v. Republic*,[29] the Court explained:

x x x Pursuant to Rule 65 of the Rules of Court, a special civil action for *certiorari* could only be availed of when a tribunal "acts in a capricious, whimsical, arbitrary or despotic manner in the exercise

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[26] 773 Phil. 242 (2015).

[27] *Id.* at 254-255. Underscoring supplied.

[28] *Medina v. Spouses Lozada*, *supra* note 23.

[29] 715 Phil. 651 (2013).

of [its] judgment as to be said to be equivalent to lack of jurisdiction" or when it acted without or in excess of its x x x jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.

It is settled that the Rules precludes recourse to the special civil action of *certiorari* if appeal by way of a [Notice of Appeal or a] Petition for Review is available, as the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[30] (Underscoring supplied)

PBCOM admitted as much when it filed an ordinary appeal of the April 27, 2012 Order but subsequently withdrew the same.[31]

In view of the foregoing, the CA cannot be faulted for having dismissed the petition for *certiorari*. PBCOM's contention that a Rule 65 petition was proper as the Order dismissing the second petition was void for lack of due process is untenable. Rule 9, Section 1 of the Rules of Court expressly allows the *motu proprio* dismissal of cases on the ground, among others, of *res judicata*, *viz.*:

SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

In *Katon v. Palanca, Jr.*,[32] citing *Gumabon v. Larin*,[33] the Court explained:

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[30] *Id.* at 659.

[31] *Rollo*, p. 48.

[32] 481 Phil. 168 (2004).

[33] 422 Phil. 222, 230 (2001).

"x x x [T]he *motu proprio* dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, *failed to prosecute his action for an unreasonable length of time* or neglected to comply with the rules or with any order of the court. Outside of these instances, any *motu proprio* dismissal would amount to a violation of the right of the plaintiff to be heard. Except for qualifying and expanding Section 2, Rule 9, and Section 3, Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure brought about no radical change. *Under the new rules, a court may motu proprio dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter*; when there is another cause of action pending between the same parties for the same cause, or *where the action is barred by a prior judgment or by statute of limitations* x x x."[34] (Underscoring supplied)

Nevertheless, in the interest of substantial justice, the Court finds it proper to relax the technical rules of procedure if only to resolve the novel issue presented before the Court.

A registered owner who fails to prove the loss or destruction of his/her owner's duplicate certificate of title may not be barred from refiling a new petition to replace the same

It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[35] It is conclusive evidence with respect to the ownership of the land described therein.[36] In *The Heirs of Alfredo Cullado v. Gutierrez*,[37] the Court explained:

Indeed, the bedrock of the Torrens system is the indefeasibility and incontrovertibility of a land title where there can be full faith

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[34] *Katon v. Palanca, Jr.*, *supra* note 32 at 180.

[35] *Catindig v. Vda. de Meneses*, 656 Phil. 361, 373 (2011).

[36] *Id.* at 373.

[37] G.R. No. 212938, July 30, 2019.

reliance thereon. Verily, the Government has adopted the Torrens system due to its being the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. To the registered owner, the Torrens system gives him complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land. On the part of a person transacting with a registered land, like a purchaser, he can rely on the registered owner's title and he should not run the risk of being told later that his acquisition or transaction was ineffectual after all, which will not only be unfair to him, but will also erode public confidence in the system and will force land transactions to be attended by complicated and not necessarily conclusive investigations and proof of ownership.[38] (Underscoring supplied)

In other words, ownership of registered land is evidenced by the certificate of title, which is indefeasible and incontrovertible. Presidential Decree No. (P.D.) 1529[39] or the "Property Registration Decree" mandates the issuance of this certificate of title in **duplicates** — the original certificate of title, which is either an original certificate of title or TCT to be kept by the Register of Deeds and an owner's duplicate certificate of title to be kept by the registered owner. P.D. 1529 provides:

CHAPTER IV
CERTIFICATE OF TITLE

SEC. 39. *Preparation of decree and Certificate of Title*. — After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended,

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[38] *Id.* at 17-18.

[39] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES, June 11, 1978.

reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The original certificate of title shall be a true copy of the decree of registration. The decree of registration shall be signed by the Commissioner, entered and filed in the Land Registration Commission. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.

SEC. 40. *Entry of Original Certificate of Title*. — Upon receipt by the Register of Deeds of the original and duplicate copies of the original certificate of title the same shall be entered in his record book and shall be numbered, dated, signed and sealed by the Register of Deeds with the seal of his office. Said certificate of title shall take effect upon the date of entry thereof. The Register of Deeds shall forthwith send notice by mail to the registered owner that his owner's duplicate is ready for delivery to him upon payment of legal fees.

SEC. 41. *Owner's duplicate certificate of title*. — **The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative**. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.

SEC. 42. Registration Books. — The original copy of the original certificate of title shall be filed in the Registry of Deeds. The same shall be bound in consecutive order together with similar certificates of title and shall constitute the registration book for titled properties.

SEC. 43. Transfer Certificate of Title. — The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title", **and likewise issued in duplicate**. The certificate shall show the number of the next previous certificate covering the same land and also the fact

that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found. (Emphasis and underscoring supplied)

Based on the foregoing, there is no doubt that the owner's duplicate certificate of title is a fundamental aspect of the Torrens system. While a registered owner is free to exercise and enjoy all manner of rights over his/her property [*i.e.*, (1) *Jus possidendi* or the right to possess; (2) *Jus utendi* or the right to use and enjoy; (3) *Jus fruendi* or the right to the fruits; (4) *Jus accessionis* or right to accessories; (5) *Jus abutendi* or the right to consume the thing by its use; (6) *Jus disponendi* or the right to dispose or alienate; and (7) *Jus vindicandi* or the right to vindicate or recover][40] and non-registration thereof does not affect the validity of said acts as between the parties, no voluntary transaction affecting the land will be registered (and thus bind third persons) without the presentation of the owner's duplicate certificate of title as mandated by P.D. 1529, *viz.*:

CHAPTER V
SUBSEQUENT REGISTRATION

I. VOLUNTARY DEALINGS WITH REGISTERED LANDS
GENERAL PROVISIONS

SEC. 51. *Conveyance and other dealings by registered owner.* — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

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[40] *The Heirs of Alfredo Cullado v. Gutierrez*, *supra* note 37 at 7. See also *Philippine Banking Corp. v. Lui She*, 128 Phil. 53, 68 (1967).

SEC. 52. *Constructive notice upon registration*. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

SEC. 53. *Presentation of owner's duplicate upon entry of new certificate*. — No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

SEC. 54. *Dealings less than ownership, how registered.* — No new certificate shall be entered or issued pursuant to any instrument which does not divest the ownership or title from the owner or from the transferee of the registered owners. All interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner. (Underscoring supplied)

The requirement that the owner's duplicate certificate of title be presented for voluntary transactions is precisely what gives the registered owner "security" and "peace of mind" under

the Torrens system. Without the owner's duplicate certificate of title, transfers and conveyances[40a] like sales and donations,

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[40a] P.D. 1529 states:

(A) CONVEYANCES AND TRANSFERS

SEC. 57. *Procedure in registration of conveyances*. — An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled". The deed of conveyance shall be filed and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

SEC. 58. *Procedure where conveyance involves portion of land*. - If a deed or conveyance is for a part only of the land described in a certificate of title, the Register of Deeds shall not enter any transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved pursuant to Section 50 of this Decree. Meanwhile, such deed may only be annotated by way of memorandum upon the grantor's certificate of title, original and duplicate, said memorandum to serve as a notice to third persons of the fact that certain unsegregated portion of the land described therein has been conveyed, and every certificate with such memorandum shall be effectual for the purpose of showing the grantee's title to the portion conveyed to him, pending the actual issuance of the corresponding certificate in his name.

Upon the approval of the plan and technical descriptions, the original of the plan, together with a certified copy of the technical descriptions shall be filed with the Register of Deeds for annotation in the corresponding certificate of title and thereupon said officer shall issue a new certificate of title to the grantee for the portion conveyed, and at the same time cancel the grantor's certificate partially with respect only to said portion conveyed, or, if the grantor so desires, his certificate may be cancelled totally and a new one issued to him describing therein the remaining portion: Provided, however, that pending approval of said plan, no further registration or annotation of any subsequent deed or other voluntary instrument involving the unsegregated portion conveyed shall be effected by the Register of Deeds, except where such unsegregated portion was purchased from the Government or any of its instrumentalities. If the land has been subdivided into several lots, designated by numbers or letters, the Register of Deeds may, if desired by the grantor, instead of cancelling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said cetificate

mortgages, and leases,[41] and agencies and trusts[42] while valid, will not bind the registered land. As such, the owner's duplicate

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and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is cancelled as to such lot or lots.

SEC. 59. *Carry over of encumbrances*. — If, at the time of any transfer, subsisting encumbrances or annotations appear in the registration book, they shall be carried over and stated in the new certificate or certificates; except so far as they may be simultaneously released or discharged.

[41] P.D. 1529 provides:

(B) MORTGAGES AND LEASES

SEC. 60. *Mortgage or lease of registered land*. — Mortgage and leases shall be registered in the manner provided in Section 54 of this Decree. The owner of registered land may mortgage or lease it by executing the deed in a form sufficient in law. Such deed of mortgage or lease and all instruments which assign, extend, discharge or otherwise deal with the mortgage or lease shall be registered, and shall take effect upon the title only from time of registration.

No mortgagee's or lessee's duplicate certificate of title shall hereafter be issued by the Registers of Deeds, and those issued prior to the effectivity of this Decree are hereby deemed cancelled and the holders thereof shall immediately surrender the same to the Register of Deeds concerned.

SEC. 61. *Registration*. — Upon presentation for registration of the deed of mortgage or lease together with the owner's duplicate, the Register of Deeds shall enter upon the original of the certificate of title and also upon the owner's duplicate certificate a memorandum thereof, the date and time of filing and the file number assigned to the deed, and shall sign the said memorandum. He shall also note on the deed the date and time of filing and a reference to the volume and page of the registration book in which it is registered.

SEC. 62. *Discharge or cancellation*. — A mortgage or lease on registered land may be discharge or cancelled by means of an instrument executed by the mortgage or lessee in a form sufficient in law, which shall be filed with the Register of Deeds who shall make the appropriate memorandum upon the certificate of title.

SEC. 63. *Foreclosure of Mortgage*. — (a) If the mortgage was foreclosed judicially, a certified copy of the final order of the court confirming the sale shall be registered with the Register of Deeds. If no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.

certificate of title safeguards ownership. At the same time, the owner's duplicate certificate of title is also crucial to the full

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Where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by a brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title of the mortgagor.

If the property is not redeemed, the final deed of sale executed by the sheriff in favor of the purchaser at a foreclosure sale shall be registered with the Register of Deeds; whereupon the title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.

(b) If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.

In the event of redemption by the mortgagor, the same rule provided for in the second paragraph of this section shall apply.

In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed of mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled.

[42] P.D. 1529 states:

(C) POWERS OF ATTORNEY; TRUSTS

SEC. 64. *Power of attorney.* — Any person may, by power of attorney, convey or otherwise deal with registered land and the same shall be registered with the Register of Deeds of the province or city where the land lies. Any instrument revoking such power of attorney shall be registered in like manner.

SEC. 65. *Trusts in registered land.* — If a deed or other instrument is filed in order to transfer registered land in trust, or upon any equitable condition or limitation expressed therein, or to create or declare a trust or other equitable interests in such land without transfer, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate; but only a memorandum thereof shall be entered by the words "in trust", or "upon condition", or other apt words, and by a reference by number to the instrument authorizing or creating the same. A similar memorandum shall be made upon the original instrument creating or declaring the trust or other equitable interest with a reference by number to the certificate

and effective exercise of ownership rights over registered land. Hence, a registered owner has a substantive right to own and possess the owner's duplicate certificate of title and to replace the same in case of loss or destruction.[43]

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of title to which it relates and to the volume and page in the registration book in which it is registered.

SEC. 66. *Trust with power of sale, etc., how expressed.* — If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell", or "power to mortgage", or by apt words of description in case of other powers. No instrument which transfers, mortgages or in any way deals with registered land in trust shall be registered, unless the enabling power thereto is expressly conferred in the trust instrument, or unless a final judgment or order of a court of competent jurisdiction has construed the instrument in favor of the power, in which case a certified copy of such judgment or order may be registered.

SEC. 67. *Judicial appointment of new trustee.* — If a new trustee of registered land is appointed by a court of competent jurisdiction, a new certificate may be issued to him upon presentation to the Register of Deeds of a certified copy of the order or judicial appointment and the surrender for cancellation of the duplicate certificate.

SEC. 68. *Implied trusts, how established.* — Whoever claims an interest in registered land by reason of any implied or constructive trust shall file for registration with the Register of Deeds a sworn statement thereof containing a description of the land, the name of the registered owner and a reference to the number of the certificate of title. Such claim shall not affect the title of a purchaser for value and in good faith before its registration.

[43] SEC. 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

In view of the foregoing, the Court finds that PBCOM, as the undisputed registered owner of the land covered by TCT No. 21320 on file with the Register of Deeds,[44] **cannot be barred by *res judicata* from filing a second petition to replace its owner's duplicate certificate of title in case of loss or destruction of the original duplicate.**

Rule 1, Section 4 of the Rules of Court expressly provides that the Rules of Court apply to land registration cases only by analogy, in a suppletory character, and whenever practicable and convenient —

> SEC. 4. *In what cases not applicable*. — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient. (Underscoring supplied)

As already explained, the nature and purpose of the Torrens system and the absolute indispensability of the owner's duplicate certificate of title mandates that the Court give primacy to the registered owner's substantive right to possess and accordingly, to seek a replacement of an owner's duplicate certificate of title that has been lost or destroyed. When there is a right, there must be a remedy.

Although admittedly, it "is to the interest of the public that there should be an end to litigation by the same parties and their privies over a subject once fully and fairly adjudicated,"[45] it would be extremely impracticable, inconvenient, and unjust to perpetually preclude the registered owner from registering any voluntary transaction, *i.e.*, sale, donation, mortgage, lease, etc., on his/her land simply because he/she failed to prove, to the satisfaction of the court, that he/she, in fact, lost his/her title. If the Court were to uphold the dismissal of the second petition on the ground of *res judicata*, PBCOM would be left

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[44] *Rollo*, p. 13.

[45] *Manila Electric Co. v. Philippine Consumers Foundation, Inc.*, 425 Phil. 65, 66 (2002). See also *Salud v. Court of Appeals*, 303 Phil. 397 (1994).

with no other remedy under the law to exercise full ownership rights over its own property.

This finds more importance in this case because PBCOM is a bank and is thus bound to comply with Section 51 of Republic Act No. (R.A.) 8791 or the "General Banking Law," to wit:

> SECTION 51. *Ceiling on Investments in Certain Assets*. — Any bank may acquire real estate as shall be necessary for its own use in the conduct of its business: *Provided, however*, That the total investment in such real estate and improvements thereof including bank equipment, shall not exceed fifty percent (50%) of combined capital accounts: *Provided, further*, That the equity investment of a bank in another corporation engaged primarily in real estate shall be considered as part of the bank's total investment in real estate, unless otherwise provided by the Monetary Board. (25a)
>
> SECTION 52. *Acquisition of Real Estate by Way of Satisfaction of Claims*. — Notwithstanding the limitations of the preceding Section, a bank may acquire, hold or convey real property under the following circumstances:
>
> 52.1 Such as shall be mortgaged to it in good faith by way of security for debts;
>
> 52.2 Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or
>
> 52.3 Such as it shall purchase at sales under judgments, decrees, mortgages, or trust deeds held by it and such as it shall purchase to secure debts due it.
>
> Any real property acquired or held under the circumstances enumerated in the above paragraph shall be disposed of by the bank within a period of five (5) years or as may be prescribed by the Monetary Board: *Provided, however*, That the bank may, after said period, continue to hold the property for its own use, subject to the limitations of the preceding Section. (25a) (Underscoring supplied)

In other words, sustaining the dismissal and upholding the applicability of *res judicata* in the instant case would not only perpetually prevent PBCOM from registering any voluntary transaction over the parcel of land, but also perpetually prevent it from complying with its obligations under the General Banking Law. This interpretation is absurd.

Res judicata has been defined as "'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.' *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit."[46]

As in proceedings for the reconstitution of original certificates of title[47] however, proceedings for the replacement of owner's duplicate certificates of title **only involve** "the re-issuance of a new [owner's duplicate] certificate of title lost or destroyed in its original form and condition. It does not pass upon the ownership of the land covered by the lost or destroyed title."[48] **Strictly speaking therefore, there is no conclusive adjudication of rights between adversarial parties in a proceeding for the replacement of a lost or destroyed owner's duplicate certificate of title**. Section 109 of P.D. 1529 pertinently provides:

SEC. 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

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[46] *Spouses Layos v. Fil-Estate Golf and Development, Inc.*, 583 Phil. 72, 101-102 (2008).

[47] P.D. 1529, Section 110 in relation to R.A. 26.

[48] *Spouses Layos v. Fil-Estate Golf and Development, Inc.*, *supra* note 46 at 116.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree. (Underscoring supplied.)

The foregoing provision unequivocally shows that the Court's authority in a petition for the replacement of a lost owner's duplicate certificate of title is limited to determining: (1) whether the procedure prescribed in Section 109 has been complied with; and (2) whether the owner's duplicate certificate of title has, in fact, been lost/destroyed. If the requisites are satisfied, the court, after notice and hearing, should direct the issuance of a new duplicate certificate in its original form and condition, with a memorandum of the fact that it is being issued in place of the lost duplicate certificate. On the other hand, if the requisites are not satisfied, the court, after notice and hearing, should dismiss the petition **without prejudice** to the registered owner's subsequent compliance with the requisites prescribed by law.

In fact, a reading of RTC-Branch 62's dismissal of the first petition astutely indicates that the dismissal was actually without prejudice, *viz.*:

The petitioner, through its lone witness in the person of Orlando Rafael Cucueco, Jr., the head of its Acquired Property Management Unit, in charge of the inventory of all bank acquired properties, tried to establish the fact of loss of the owner's duplicate copy of TCT No. 21320. The following facts can be deduced from the testimony of the witness.

1. The property covered by the title is registered in the name of the petitioner and, from the documents secured by the witness from the Office of the Register of Deeds of Benguet, the property was acquired after the same was mortgaged to, and foreclosed and purchased at public auction by the La Union Branch of the petitioner.

2. The witness however cannot locate the owner's duplicate of title including all documents and records that should have

been filed with it, in its vault at its central office and La Union Branch.

3. The bank does not have any record to who should or could have actual custody of the owner's duplicate copy of the title.

It appears that the witness for the petitioner has no personal knowledge of the existence and the fact of loss of the owner's duplicate copy of TCT No. T-21320. He only affirmed that the same cannot be located among its files in the central office as well as in their branch in La Union. The court believes that the petitioner must not only show that the copy of the title cannot be located but must also show that it is so despite its best efforts to locate the same, necessarily and reasonably leading to the conclusion that the missing title may be considered beyond recovery.

There was no showing that the petitioner exerted all its efforts to determine the actual whereabouts of the missing title from all its available records and from the bank's past and present officers or employees and legal counsel who could and should have knowledge of the bank's acquired property and the documents relative thereto.

It is altogether possible, as even mentioned by the petitioner's witness, that the previous accountable officer did not turn over the documents including the title to the property or that the lawyer who handled this predecessor in office might not have turned over all or any accountability regarding the subject property, considering that he just assumed his position two years ago. It is also possible that the lawyer who handled the foreclosure proceeding failed to include the documents, including the title, in the documents that were forwarded to their main office. But petitioner, failed to show that it exerted efforts to verify from these persons as to the whereabouts of the missing documents. It must be clearly shown that the petitioner is convinced that the copy of the title sought to be replaced is not in the possession of any other person. If any other person is known or suspected to be in possession of the copy of the title, either lawfully or unlawfully, this petition is clearly not the appropriate legal remedy.[49] (Underscoring supplied)

In other words, the RTC-Branch 62 dismissed the first petition because PBCOM failed to show that it exerted its best efforts

[49] *Rollo*, pp. 198-199.

to locate the title. This dismissal is obviously without prejudice to the right of PBCOM, as the undisputed registered owner, to subsequently and sufficiently prove that the owner's duplicate of TCT No. 21320 has indeed been lost.

WHEREFORE, the Petition is **GRANTED**. The February 23, 2015 Decision and February 12, 2016 Resolution in CA-G.R. SP No. 126081 of the Court of Appeals are hereby **SET ASIDE**. The petition for replacement of the lost Owner's Duplicate Transfer Certificate of Title No. 21320 in LRC Adm. Case No. 12-AD-1401 is hereby **REINSTATED**. The Regional Trial Court, Branch 63, La Trinidad, Benguet is hereby **DIRECTED** to hear the petition with immediate dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 225409. March 11, 2020]

PHILIPPINE HEART CENTER, *petitioner*, *vs.* **THE LOCAL GOVERNMENT OF QUEZON CITY, CITY MAYOR OF QUEZON CITY, CITY TREASURER OF QUEZON CITY and CITY ASSESSOR OF QUEZON CITY,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; VERIFICATIONS AND CERTIFICATIONS AGAINST FORUM SHOPPING SIGNED IN BEHALF OF A CORPORATION BUT WITHOUT AUTHORITY FROM

ITS BOARD IS DEFECTIVE; IT AFFECTS THE FORM OF THE PLEADING BUT DOES NOT WARRANT OUTRIGHT DISMISSAL OF THE CASE.— An individual cannot exercise any corporate power pertaining to a corporation without authority from its board of directors. Physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose. Consequently, verifications and certifications against forum shopping purportedly signed in behalf of the corporation but without the requisite board resolution authorizing the same are defective. Such defect, however, merely affects the form of the pleading and does not necessarily warrant the outright dismissal of the case. In fact, courts may order the correction of the unverified pleading or even act on it despite the infirmity to ensure that the ends of justice are served. x x x Here, although the PHC did not expressly authorize Dr. Manzo to sign the petition's verification and certificate against forum shopping in its behalf, Dr. Manzo, as Officer-in-Charge Executive Director of the PHC pursuant to DOH Order No. 2016-2359-A dated August 5, 2016, is indubitably in a position to verify the truthfulness of the allegations in the petition. Too, considering further the substantive issues involved here, liberal application of the rules is warranted so the ends of justice may be served.

2. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; EXPANDED POWER OF JUDICIAL REVIEW; MAY BE INVOKED THROUGH SPECIAL CIVIL ACTIONS FOR *CERTIORARI* OR PROHIBITION UNDER RULE 65 OF THE RULES OF COURT; CASE AT BAR.— Article VIII, Section 1 of the 1987 Constitution empowers the Court to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is the Court's expanded power of judicial review which may be invoked through special civil actions for *certiorari* or prohibition under Rule 65 of the Rules of Court. The remedies of *certiorari* and prohibition may issue to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not

exercise judicial, quasi-judicial or ministerial functions. Here, the PHC correctly availed of the remedy of *certiorari* before the Court of Appeals when it assailed the validity of respondents' assessment, levy and sale of its eleven (11) properties in Quezon City. Although respondents' acts were neither judicial nor quasi-judicial in nature, the same may still be the proper subject of *certiorari* when tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. In its petition for *certiorari* before the Court of Appeals, the PHC charged respondents with grave abuse of discretion when they imposed and assessed taxes on its properties despite the PHC's claimed exemption pursuant to PD 673, LOI 1455, Article III, Section 28(3) of the 1987 Constitution, Section 234(b) of RA 7160, and the *MIAA* and *MCIAA* cases. Should their argument merit the grant of affirmative relief, *certiorari* may properly issue to nullify respondents' acts.

3. ID.; THE LOCAL GOVERNMENT CODE (RA 7160); POWER OF LOCAL GOVERNMENT UNITS TO TAX REAL PROPERTY IS RECOGNIZED; EXEMPTIONS; PROPERTY OWNED BY THE REPUBLIC IS EXEMPTED FROM REAL PROPERTY TAXES.— Local government units are empowered to create their own sources of revenues and to levy taxes, fees, and charges subject to guidelines and limitations as Congress may provide. On this score, Section 232 of RA 7160 recognizes the power of the local government units to tax real property not otherwise exempt, x x x Section 234(a) of RA 7160 further exempts real property owned by the Republic from real property taxes, x x x Indeed, real properties owned by the Republic, whether titled in the name of the Republic itself or in the name of agencies or instrumentalities of the national government, are exempt from real property tax.

4. ID.; ADMINISTRATIVE LAW; AGENCY CLASSIFIED AS GOVERNMENT INSTRUMENTALITY VESTED WITH CORPORATE POWERS; IT PERFORMS GOVERNMENTAL FUNCTIONS AND ENJOYS OPERATIONAL AUTONOMY.— Section 2(10) of Executive Order (EO) 292, the Administrative Code of 1987, defines an "Instrumentality" as "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and

enjoying operational autonomy, usually through a charter." From this definition, the category of an ***instrumentality with corporate powers*** was born. x x x [I]n addition to government-owned and controlled corporations (GOCCs) and instrumentalities, a third category of government agencies under the jurisdiction of the OGCC is now recognized — *government instrumentalities vested with corporate powers or government corporate entities*. These entities remain government instrumentalities because they are not integrated within the department framework and are vested with special functions to carry out a declared policy of the national government. An agency will be classified as a government instrumentality vested with corporate powers when the following elements concur: a) it performs governmental functions, and b) it enjoys operational autonomy.

5. ID.; ID.; ID.; THE PHILIPPINE HEART CENTER (PHC) IS A GOVERNMENT INSTRUMENTALITY VESTED WITH CORPORATE POWERS; IT IS UNDER THE SUPERVISION OF THE DEPARTMENT OF HEALTH (DOH) AND CARRIES OUT GOVERNMENT POLICIES IN PURSUIT OF ITS OBJECTIVES.— The Philippine Heart Center (PHC) [is a government instrumentality with corporate powers.] Although not integrated in the department framework, the PHC is under supervision of the DOH and carries out government policies in pursuit of its objectives in Section 4 of PD 673, x x x [T]he PHC's enumerated functions are less commercial than governmental, and more for public use and public welfare than for profit-oriented services. As such, the PHC is authorized to "call upon any department, bureau, office, agency or instrumentality of the Government, including government-owned or controlled corporations, for such assistance as it may need in the pursuit of its purposes and objectives." Too, the PHC is vested with corporate powers under Section 5 of PD 673: x x x The provision itself vests the PHC with all the powers of a juridical entity under Section 35 of RA 11232, the Revised Corporation Code of the Philippines. The general clauses in paragraphs 8 and 9 of Section 5, PD 673 likewise authorize the PHC to adopt rules and perform acts necessary to accomplish its purposes. The PHC therefore bears the essential characteristics of a government instrumentality vested with corporate powers, exempt from real property taxes. Indeed, the PHC's corporate status does not divest itself of its character as a government

instrumentality. These are not polar opposites. For despite its corporate status, it is really the resources and reputation of the Republic that are at stake in the capitalization and operations of the government entity.

6. ID.; THE LOCAL GOVERNMENT CODE (RA 7160); REAL PROPERTY TAXES; EXEMPTIONS; THE PROPERTIES OF THE PHC ARE PROPERTIES OF PUBLIC DOMINION DEVOTED TO PUBLIC USE AND WELFARE AND THEREFORE, EXEMPT FROM REAL PROPERTY TAXES AND LEVY.— Under Article 420 of the Civil Code, the following things are property of public dominion: (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; and (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. Given the mandate and purpose of the PHC, its properties are thus properties of public dominion intended for public use or service. As such, they are exempt from real property tax under Section 234(a) of the Local Government Code.

7. ID.; ID.; ID.; ID.; REAL PROPERTY OWNED BY THE REPUBLIC IS EXEMPT FROM REAL PROPERTY TAXES *EXCEPT WHEN THE BENEFICIAL USE THEREOF HAS BEEN GRANTED TO A TAXABLE PERSON.*— [T]he fact that the PHC may have entered into transactions with regard to its properties, short of alienating them, does not detract from their characterization as properties of public dominion for public use or public service. For what is important is the role, nexus, and relevance that these properties play in the public use or public service purposes of the PHC. Indeed, the core of the PHC's mission is patient care. The government established the PHC specifically to secure the well-being of the people by providing them specialized treatment for heart and allied diseases, x x x [However], Section 234(a) of RA 7160 exempts real property owned by the Republic from real property taxes **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person** (commercial establishments). Thus, the Court has invariably held that a government instrumentality, though vested with corporate powers, are exempt from real property tax but the exemption shall not extend to taxable private entities to whom the beneficial use of the

> government instrumentality's properties has been vested. x x x Notably, it is the "taxable person" with beneficial use who shall be responsible for payment of real property taxes due on government properties. Any remedy for the collection of taxes should then be directed against the "taxable person," the same being an action *in personam*.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the City Attorney for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 121019 entitled *Philippine Heart Center versus the Local Government of Quezon City, City Mayor of Quezon City, City Treasurer of Quezon City and City Assessor of Quezon City*:

1. Decision dated March 15, 2016,[1] dismissing the Philippine Heart Center's (PHC's) petition for *certiorari* for being the wrong remedy against a supposedly void assessment, levy, and sale of real property; and

2. Resolution dated June 23, 2016,[2] denying the PHC's motion for reconsideration.

Antecedents

In 1975, the PHC was established under Presidential Decree 673[3] (PD 673) as a specialty hospital mandated to provide expert

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[1] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a member of this Court); *rollo*, p. 17.

[2] *Rollo*, p. 32.

[3] Creating the Philippine Heart Center for Asia, March 19, 1975.

comprehensive cardiovascular care to the general public, especially the poor and less fortunate in life.[4]

To enable the PHC to perform its mandate, the national government provided the initial land, building, equipment and facilities needed for its establishment.[5] PD 673 also authorized the PHC to acquire properties; to enter into contracts; and to mortgage, encumber, lease, sell, convey or dispose of its properties.[6] More, it exempted the PHC from "the payment of all taxes, charges, fees imposed by the Government or any political subdivision or instrumentality thereof" for a period of ten (10) years.[7] In 1985, then President Ferdinand E. Marcos issued Letter of Instruction (LOI) 1455 extending the tax exemption "without interruption."[8]

Among the properties owned by the PHC were eleven (11) land and buildings in Quezon City under the following tax declarations: (1) C-021-01200; (2) D-021-02081; (3) C-021-01201; (4) D-021-02082; (5) C-021-01202; (6) D-021-02542; (7) D-021-03359; (8) D-021-02541; (9) E-021- 00006; (10) E-021-01049 and (11) E-021-01049.[9]

In 2004 respondent Quezon City Government issued three (3) final Notices of Delinquency for unpaid real property taxes of Php36,530,545.00 pertaining to the eleven (11) afore-cited properties of the PHC. The notices were unheeded, thus, respondent Quezon City Treasurer levied on the PHC's properties.[10]

Aggrieved, the PHC wrote then President Gloria M. Macapagal-Arroyo for condonation or reduction of the taxes

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[4] Presidential Decree 673, Section 4.

[5] Presidential Decree 673, Section 2.

[6] Presidential Decree 673, Section 5 (1-3).

[7] Presidential Decree 673, Section 6.

[8] Letter of Instruction 1455, Section 1.

[9] *Rollo,* p. 122.

[10] *Id.*

assessed on its properties. But since its letter was not acted upon, the PHC entered into a Memorandum of Agreement (MOA) with the Quezon City Government as a means to settle its tax liabilities. Under this MOA, the PHC agreed to provide free medical services to qualified residents of Quezon City until the accumulated monetary value of these services was sufficient to cover the real property taxes it owed.[11]

Under Memorandum dated August 22, 2006, the Office of the Government Corporate Counsel (OGCC) informed the PHC of the Court's ruling in *Manila International Airport Authority v. Court of Appeals*[12] (*MIAA*). There, the Court declared that government entities are exempt from taxes, fees or charges of any kind that may be imposed by any local government unit. It also advised all government instrumentalities under its jurisdiction to suspend any payment of local tax liability pending the finality of the Court's ruling. Consequently, the PHC withheld the efficacy of its MOA with the Quezon City Government.[13]

Subsequently, in November 2010, a new MOA was forged between the PHC and the Quezon City Government containing the same stipulations in their earlier agreement. The PHC, however, suspended the implementation of the second MOA when Dr. Manuel T. Chua Chiaco, Jr. became Executive Director. It also reiterated its exemption from payment of taxes based on the OGCC's August 22, 2006 Memorandum.[14]

The Quezon City Government, nonetheless, stood firm on its position that the PHC was and still remained liable for real property taxes since a major portion of its properties were being leased to private individuals. Thus, on June 1, 2001, it issued two (2) Final Notices of Tax Delinquency to the PHC. On June 13, 2011, respondent Quezon City Treasurer issued a Warrant of Levy for the PHC's failure to pay real property taxes despite

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[11] *Id.* at 122-123.

[12] 528 Phil. 181, 226-227 (2006).

[13] *Rollo*, p. 123.

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

due notice. On July 7, 2011, after due publication, all the properties were sold to the Quezon City Government, the lone bidder during the public auction.[15]

On September 1, 2011, the PHC filed a petition for *certiorari* before the Court of Appeals, claiming respondents Quezon City Government, Mayor, Treasurer and Assessor gravely abused their discretion when they assessed, levied and sold its properties. It asserted that under the Court's ruling in *MIAA*, it was exempt from taxes, fees and charges imposed by a local government unit. Further, as a charitable institution, the real properties it owned which were actually, directly and exclusively used for charitable purposes were exempt from real property taxes.[16]

In its Comment, respondents moved to dismiss the petition for the PHC's failure to exhaust administrative remedies. They also pointed to the PHC's failure to comply with the formal requirements of verification and certification against forum shopping since Dr. Chua Chiaco, Jr. was not duly authorized by the PHC to sign these documents in its behalf. Too, the Court of Appeals could not have acquired jurisdiction over the petition since the PHC failed to pay the deposit required under Section 267 of Republic Act (RA) 7160,[17] otherwise known as the Local Government Code. As for the substantive aspect, respondents claim that the PHC failed to clearly show the basis of its tax exemption.[18]

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[15] *Id.* at 124.

[16] *Id.* at 125.

[17] Section 267. *Action Assailing Validity of Tax Sale*. - No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

[18] *Rollo*, pp. 24 and 125.

The Rulings of the Court of Appeals

In its Decision dated September 25, 2012,[19] the Court of Appeals dismissed the petition for failure of the PHC to exhaust administrative remedies available to it under Section 252 of RA 7160, *viz*:

Section 252. *Payment Under Protest. —*

(a) No protest shall be entet1ained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

The availability of a plain, speedy and adequate remedy allegedly did not only bar the PHC from resorting to the extraordinary remedy of *certiorari*, it also rendered the PHC's action premature.[20]

On reconsideration, the PHC argued that the doctrine of exhaustion of administrative remedies is not iron-clad and the Court had in fact recognized several exceptions thereto.[21] It

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[19] Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rosmari D. Carandang (now a member of this Court) and Leoncia Real-Dimagiba; *rollo*, p. 121.

[20] *Rollo*, pp. 128-130.

[21] The PHC enumerated the exceptions to the doctrine exhaustion of

argued that the Court of Appeals may already take cognizance of its petition since: (1) respondents' act of imposing real property taxes on its properties is patently illegal; (2) the issue of whether it is exempt from paying real property taxes is a pure question of law; and (3) it would be unreasonable to require the PHC to exhaust administrative remedies considering that its properties were already levied and sold through public auction.[22]

By Resolution dated March 18, 2013, the Court of Appeals reinstated the petition. It held that the remedies under Section 252 of RA 7160 are no longer plain, speedy, nor adequate since the properties in issue had already been auctioned off and sold to the Quezon City Government. There was also an urgent need for judicial intervention since the PHC "is a vital cog in the government's public health program" and "there is no telling what its future as a leading government cardiovascular hospital would be" should its properties be transferred to the Quezon City Government.[23]

As for PHC's alleged failure to comply with the deposit requirement under Section 267 of RA 7160, the Court of Appeals ruled that the provision does not apply where the government

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administrative remedies as follows: (1) Where there is a violation of due process; (2) When the issue involved is a purely legal question; (3) When the administrative action is patently illegal; (4) When there is estoppel on the part of the administrative agency concerned; (5) When there is irreparable injury; (6) When respondent is a department agency whose acts, as an alter ego of the President, bear the implied and assumed approval of the latter; (7) When to require exhaustion of administrative remedies would be unreasonable; (8) When it would amount to a nullification of a claim; (9) When the subject matter is a private land in land case proceedings; (10) When the rule does not provide a plain, speedy and adequate remedy; (11) When there are circumstances indicating the urgency of judicial intervention and unreasonable delay would greatly prejudice the complainant; (12) When no administrative review is provided by law; (13) Where the rule of qualified political agency applies; and (14) When the issue of non-exhaustion of administrative remedies has been rendered moot; *Rollo*, pp. 10-11;

[22] *Rollo*, p. 11.

[23] *Id.* at 12.

or any of its agencies is plaintiff, as in this case. *National Housing Authority v. Iloilo City*[24] elucidated:

> The deposit requirement, to be sure, is not a tax measure. As expressed in Section 267 itself, the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. The deposit, equivalent to the value for which the real property was sold plus interest, is essentially meant to reimburse the purchaser of the amount he had paid at the auction sale should the court declare the sale invalid.
>
> Clearly, the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale. Thus, the requirement is not applicable if the plaintiff is the government or any of its agencies as it is presumed to be solvent,[8] and more so where the tax exempt status of such plaintiff as basis of the suit is acknowledged. In this case, NHA is indisputably a tax-exempt entity whose exemption covers real property taxes and so its property should not even be subjected to any delinquency sale. Perforce, the bond mandated in Section 267, whose purpose it is to ensure the collection of the tax delinquency should not be required of NHA before it can bring suit assailing the validity of the auction sale.

Respondents' motion for reconsideration was denied on September 27, 2013.[25]

By its assailed Decision dated March 15, 2016, however, the Court of Appeals dismissed anew the PHC's petition for *certiorari*. Although it found the petition to have been properly verified and accompanied by a certificate against forum shopping,[26] it was nevertheless an improper remedy to assail the acts of respondents.[27] *Certiorari* would lie only against the

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[24] 584 Phil. 604, 611 (2008).

[25] *Rollo,* p. 8.

[26] A Board Resolution authorizing Dr. Manuel T. Chua Chiaco, Jr. to file the petition for *certiorari* was attached to the CA *rollo*; *rollo,* pp. 24-25.

[27] *Rollo,* p. 27.

exercise of judicial or quasi-judicial functions. But when respondents assessed, levied, and sold the properties of the PHC, they were not acting in any judicial or quasi-judicial capacity. The PHC's choice of remedy was, therefore, fatal to its case. Consequently, the Court of Appeals no longer delved into the merits of the PHC's arguments.[28]

The PHC moved for reconsideration which was denied under Resolution dated June 23, 2016.[29]

The Present Petition

The PHC now urges this Court to nullify the Court of Appeals' Decision dated March 15, 2016 and Resolution dated June 23, 2016.

It asserts that it availed of the proper remedy of *certiorari* before the Court of Appeals when it challenged the authority of the Quezon City Government to assess it with real property taxes. It cites *MIAA and Mactan Cebu International Airport Authority v. City of Lapu-Lapu*[30] (*MCIAA*) wherein the Court supposedly allowed the same remedy under similar circumstances. Even assuming there were indeed procedural infirmities in filing the petition for *certiorari*, considerations of equity and substantial justice present cogent reasons to relax the rules.[31]

On the merits, the PHC reiterates its claim for exemption from real property taxes pursuant to PD 673 and LOI 1455.[32] It also argues that under Article III, Section 28(3) of the 1987 Constitution[33] and Section 234(b) of RA 7160,[34] charitable

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

[29] *Id.* at 32.

[30] 759 Phil. 296, 352 (2015).

[31] *Rollo*, pp. 42-44.

[32] *Id.* at 45.

[33] (3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

institutions are exempt from paying real property taxes on its properties which are being actually, directly, and exclusively being used for charitable purposes.[35]

At any rate, it is exempt from real property taxes as a government instrumentality.[36] The Court has recognized this exemption in the following cases: (1) *Philippine Fisheries Development Authority (PFDA) v. Central Board of Assessment Appeals;*[37] (2) *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*;[38] (3) *Manila International Airport Authority v. City of Pasay*;[39] (4) *National Housing Authority v. Iloilo City as represented by its Mayor*;[40] (5) *Philippine Fisheries Development Authority (PFDA) v. The Honorable Court of Appeals*;[41] and (6) *Philippine Fisheries Development Authority (PFDA) v. Court of Appeals.*[42]

In its Comment/Opposition,[43] respondents riposte:

First, the PHC failed to comply with the rule on verification and non-forum shopping. It did not attach a Board Resolution

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[34] Section 234. Exemptions from Real Property Tax. — The following are exempted from payment of the real property tax:

x x x x x x x x x

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

x x x x x x x x x

[35] *Rollo*, pp. 45-50.

[36] *Id.* at 50-56.

[37] 653 Phil. 328 (2010).

[38] 623 Phil. 964 (2009).

[39] 602 Phil. 160 (2009).

[40] 584 Phil. 604 (2008).

[41] 560 Phil. 738 (2007).

[42] 555 Phil. 661 (2007).

[43] *Rollo*, p. 154.

or Secretary's Certificate authorizing Dr. Gerardo S. Manzo to file the petition and sign the appended verification and certification against forum shopping;[44]

Second, the PHC failed to exhaust administrative remedies when it filed its petition before the Court of Appeals instead of availing of the remedies available under Section 277 of Ordinance No. SP-91, S. 1993, otherwise known as the Quezon City Revenue Code, *i.e.* any protest against a tax assessment may be filed before the City Treasurer through the Board of Tax Appeals after payment of the assessed tax "under protest." Section 266 of the same Ordinance further provides for administrative appeal before the Board of Tax Appeals as condition *sine qua non* to judicial action.[45]

Third, the PHC is not exempt from real property taxes because it granted the beneficial use of its properties to commercial establishments such as Globe Telecom, Inc., Jollibee Foods Corporation, Course Development, Inc. and Proheart Food Corp. (Chowking). If it were indeed exempt from real property taxes, it should have proved so pursuant to Section 206 of RA 7160,[46] *viz*:

Section 206. *Proof of Exemption of Real Property from Taxation.* — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

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[44] *Id.* at 155-156.

[45] *Id.* at 156-158.

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

In its Reply,[47] the PHC counters that it appended to the petition copy of Department of Health (DOH) Order No. 2016-2359-A dated August 5, 2016, bearing the designation of Dr. Manzo as PHC Officer-in-Charge Executive Director. As for its alleged failure to exhaust administrative remedies, this issue had long been settled by the Court of Appeals in its favor. Finally, it reiterates its substantive arguments in support of its claim for exemption from real property taxes.

Threshold Issues

Whether the PHC's recourse ought to be dismissed for failure to exhaust administrative remedies had already been resolved with finality by the Court of Appeals in Resolution dated March 18, 2013. Under the doctrine of finality or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law.[48]

Hence, the only remaining issues are:

1. Did the PHC comply with the required verification and certification against forum shopping?
2. Is a petition for *certiorari* the proper remedy to challenge respondents' assessment, levy, and sale of its properties for failure to pay real property taxes thereon?
3. Is the PHC exempt from paying real property taxes on its eleven (11) properties in Quezon City?

Ruling

The petition substantially complied with the rules on verification and certification against forum shopping

An individual cannot exercise any corporate power pertaining to a corporation without authority from its board of directors.

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[47] *Id.* at 175.

[48] *Re: Karen Herico Licerio*, G.R. No. 208005, November 21, 2018.

Physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose. Consequently, verifications and certifications against forum shopping purportedly signed in behalf of the corporation but without the requisite board resolution authorizing the same are defective.[49]

Such defect, however, merely affects the form of the pleading and does not necessarily warrant the outright dismissal of the case. In fact, courts may order the correction of the unverified pleading or even act on it despite the infirmity to ensure that the ends of justice are served.[50] ***Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue***[51] is apropos:

> In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. **In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping**; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc. v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd. (Lepanto)*, we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping **even without the submission of the board's authorization**. (emphases added)

Cagayan Valley Drug Corporation cited cases like *Mactan-Cebu International Airport Authority v. Court of Appeals*,[52]

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[49] *Swedish Match Philippines, Inc. v. The Treasurer of City of Manila*, 713 Phil. 240, 247 (2013).

[50] *Id.*

[51] 568 Phil. 572, 580-581 (2008).

[52] 399 Phil. 695 (2000).

Pfizer v. Galan,[53] *Novelty Philippines, Inc. v. Court of Appeals*,[54] and *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.*[55] Where the Court invariably recognized the authority of some corporate officer to sign the verification and certificate against forum shopping, albeit they had not even presented any proof of their authority to represent the company. In all these cases, the Court accepted as proper the signatories' verification and certification against forum shopping because these signatories were in a position to verify the truthfulness and correctness of the allegations in their respective petitions. This is the Court's standard in gauging whether there was substantial compliance with Rule 7, Sections 4 and 5[56] of the Rules of Court.[57]

Here, although the PHC did not expressly authorize Dr. Manzo to sign the petition's verification and certificate against forum shopping in its behalf, Dr. Manzo, as Officer-in-Charge Executive Director of the PHC pursuant to DOH Order No. 2016-2359-A

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[53] 410 Phil. 483 (2001).

[54] 458 Phil. 36 (2003).

[55] 458 Phil. 36 (2003).

[56] **Section 4.** *Verification.* — x x x

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

x x x x x x x x x

Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. x x x

[57] *Supra* note 51.

dated August 5, 2016, is indubitably in a position to verify the truthfulness of the allegations in the petition. Too, considering further the substantive issues involved here, liberal application of the rules is warranted so the ends of justice may be served.

The PHC properly availed of the extraordinary remedy of *certiorari* before the Court of Appeals

Article VIII, Section 1 of the 1987 Constitution empowers the Court to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[58] This is the Court's expanded power of judicial review which may be invoked through special civil actions for *certiorari* or prohibition under Rule 65 of the Rules of Court.

The remedies of *certiorari* and prohibition may issue to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[59]

Here, the PHC correctly availed of the remedy of *certiorari* before the Court of Appeals when it assailed the validity of respondents' assessment, levy and sale of its eleven (11) properties in Quezon City. Although respondents' acts were neither judicial nor quasi-judicial in nature, the same may still

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[58] Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[59] *Ifurung v. Hon. Carpio Morales*, G.R. No. 232131, April 24, 2018.

be the proper subject of *certiorari* when tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its petition for *certiorari* before the Court of Appeals, the PHC charged respondents with grave abuse of discretion when they imposed and assessed taxes on its properties despite the PHC's claimed exemption pursuant to PD 673, LOI 1455, Article III, Section 28(3) of the 1987 Constitution, Section 234(b) of RA 7160, and the *MIAA* and *MCIAA* cases. Should their argument merit the grant of affirmative relief, *certiorari* may properly issue to nullify respondents' acts.

The PHC is a government instrumentality with corporate powers exempt from local taxes

Local government units are empowered to create their own sources of revenues and to levy taxes, fees, and charges subject to guidelines and limitations as Congress may provide.[60] On this score, Section 232 of RA 7160 recognizes the power of the local government units to tax real property not otherwise exempt, *viz*:

Section 232. *Power to Levy Real Property Tax.* — A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

One of the limitations to this power is embodied in Section 133(o), *viz.*:

SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units*. — Unless otherwise provided herein, **the exercise of the taxing powers of** provinces, **cities,** municipalities, and barangays s**hall not extend to the levy of the following:**

x x x x x x x x x

[60] Article X, Section 5 of the 1987 Constitution.

(o) **Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities** and local government units. (emphases and underscoring supplied)

x x x x x x x x x

MIAA elucidated on the rationale behind the exemption from local taxes of the national government and its agencies and instrumentalities, thus:

Section 133(o) recognizes the basic principle that local governments cannot tax the national government, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power "subject to such guidelines and limitations as the Congress may provide."

When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities.

Another rule is that a tax exemption is strictly construed against the taxpayer claiming the exemption. However, when Congress grants an exemption to a national government instrumentality from local taxation, such exemption is construed liberally in favor of the national government instrumentality. As this Court declared in *Maceda v. Macaraig, Jr.*[61]:

> The reason for the rule does not apply in the case of exemptions running to the benefit of the government itself or its agencies. In such case the practical effect of an exemption is merely to reduce the amount of money that has to be handled by government in the course of its operations. For these reasons, provisions granting exemptions to government agencies may be construed liberally, in favor of non-tax-liability of such agencies.

There is, moreover, no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.

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[61] G.R. No. 88291, June 8, 1993, 223 SCRA 217.

There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.

Thus, Section 133 of the Local Government Code states that "unless otherwise provided" in the Code, local governments cannot tax national government instrumentalities. xxx

Section 234(a) of RA 7160 further exempts real property owned by the Republic from real property taxes, *viz*:

SEC. 234. *Exemptions from Real Property Tax.* —The following are exempted from payment of the real property tax:

(a) Real property **owned by the Republic of the Philippines or any of its political subdivisions** except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person; (emphasis added)

x x x x x x x x x

Indeed, real properties owned by the Republic, whether titled in the name of the Republic itself or in the name of agencies or instrumentalities of the national government, are exempt from real property tax.[62] Central to the resolution of this case, therefore, is determining whether the PHC is a government instrumentality covered by this tax exemption.

Section 2(10) of Executive Order (EO) 292, the Administrative Code of 1987, defines an "Instrumentality" as "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter." From this definition, the category of an

[62] *Supra* note 12.

instrumentality with corporate powers was born. The concept came to fore by virtue of this Court's pronouncement in ***MIAA***, *viz*:

> MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. x x x
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> x x x x x x x x x
>
> **When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers x x x Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework** x x x
>
> Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation x x x These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities. (emphasis added)

On December 29, 2006, EO 596[63] was enacted, acknowledging this new category described in *MIAA* and placing it under the jurisdiction of the OGCC. Section 1 of EO 596 provides:

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[63] DEFINING AND INCLUDING "GOVERNMENT INSTRUMENTALITY VESTED WITH CORPORATE POWERS" OR "GOVERNMENT CORPORATE ENTITIES" UNDER THE JURISDICTION OF THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL (OGCC) AS PRINCIPAL LAW OFFICE OF GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCCs) AND FOR OTHER PURPOSES.

Section 1. The Office of the Government Corporate Counsel (OGCC) shall be the principal law office of all GOCCs, except as may otherwise be provided by their respective charter or authorized by the President, their subsidiaries, corporate offsprings, and government acquired asset corporations. The OGCC shall likewise be the principal law office of "government instrumentality vested with corporate powers" or "government corporate entity," as defined by the Supreme Court in the case of "*MIAA vs. Court of Appeals, City of Parañaque, et al*.," *supra*, notable examples of which are: Manila International Airport Authority (MIAA), Mactan International Airport Authority, the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), *Metropolitan Water and Sewerage Services (MWSS)*, Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, and San Fernando Port Authority.

Subsequently, in 2011, RA 10149, the GOCC Governance Act of 2011, further formalized the creation of this new category:

Section 3. Definition of Terms. —

x x x x x x x x x

(n) *Government Instrumentalities with Corporate Powers (GICP)/ Government Corporate Entities (GCE)* refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the *Metropolitan Waterworks and Sewerage System (MWSS)*, the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).

Hence, in addition to government-owned and controlled corporations (GOCCs) and instrumentalities, a third category of government agencies under the jurisdiction of the OGCC is now recognized — *government instrumentalities vested with corporate powers or government corporate entities*. These entities remain government instrumentalities because they are not integrated within the department framework and are vested with special functions to carry out a declared policy of the national government.[64]

An agency will be classified as a government instrumentality vested with corporate powers when the following elements concur: a) it performs governmental functions, and b) it enjoys operational autonomy. The PHC passes these twin criteria.

Although not integrated in the department framework, the PHC is under supervision of the DOH and carries out government policies in pursuit of its objectives in Section 4 of PD 673, *viz*:

Section 4. *Purposes and objectives*. The purposes and objectives of the Philippine Heart Center are:

1. To construct, establish, operate and maintain a heart center for the public welfare, including a specialized heart hospital;

2. To promote, encourage and engage in scientific research on the prevention of cardio-vascular diseases and the care and/or treatment of heart patients and related activities, including sponsorship and conduct of relevant congresses, conventions, seminars, and conferences;

3. To stimulate and/or underwrite scientific researches on the biological, demographic, social, economic, eugenic, physiological aspects of cardio-vascular disorders and abnormalities and their control; and gather, compile, and publish the findings of such researches for public dissemination;

4. To facilitate and encourage the dissemination and exchange of ideas and information on the prevention, treatment and control of heart diseases, to arouse, enhance and develop public interest on heart consciousness or awareness, general health and physical fitness, especially on human cardio-vascular requirements and other relevant or related fields;

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[64] *City of Lapu-Lapu v. Phil. Economic Zone Authority*, 748 Phil. 473, 541 (2014).

5. To encourage and/or undertake the training of physicians, nurses, medical technicians, health officers and social workers on the practical and scientific conduct and implementation of cardiac services, and related activities;

6. To assist universities, hospitals and research institutions in their studies of cardio-vascular anomalies, to encourage advanced training on matters of, or affecting the heart, and related fields and to support educational programs of value to general health;

7. To encourage the formation of other organization on the national, provincial, city, municipal or barangay level and to coordinate their various efforts and activities for the purpose of achieving a more effective programmatic approach on the common problems relative to the objectives herein enumerated; and

8. To extend medical and cardiological services to the general public, to help prevent, relieve or alleviate the innumerable cardio-vascular afflictions and maladies of the people specially the poor and less fortunate in life, without regard to race, creed, color or political belief.

Certainly, the PHC's enumerated functions are less commercial than governmental, and more for public use and public welfare than for profit-oriented services. As such, the PHC is authorized to "call upon any department, bureau, office, agency or instrumentality of the Government, including government-owned or controlled corporations, for such assistance as it may need in the pursuit of its purposes and objectives."[65]

Too, the PHC is vested with corporate powers under Section 5 of PD 673:

Section 5. *Powers.* For the attainment and/or furtherance of the above purposes and objectives, the Philippine Heart Center, as a body corporate, acting through its Board of Trustees, **shall have all the powers pertaining to a juridical person**, and is therefore authorized, among other things:

1. To acquire and hold in any property of whatever nature or description, and to dispose of such property under any mode of encumbrance or conveyance;

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[65] Section 7, Presidential Decree 673.

2. To contract and be contracted with;

3. To mortgage, lease, sell, transfer, convey or otherwise dispose of its properties;

4. To solicit and receive donations, endowments and funds in the form of contributions, whether in cash or in kind, from both the public and private sectors;

5. To open such accounts in banks and other financial institutions, and to disburse such funds or invest the same as the Board may direct to accomplish or advance the purposes or interest of the Philippine Heart Center;

6. To invite foreign heart specialists and similar experts in the various medical fields to train the personnel or trainees or residents of the Philippine Heart Center;

7. To send the personnel of the Philippine Heart Center to research institutes, medical institutes or universities for advance training or observation and to attend international or regional conventions, conferences, congresses, seminars as the Board may deem necessary to accomplish the purposes and objectives of the Philippine Heart Center;

8. To adopt a set of by-laws, rules and regulations not inconsistent with law and the provisions hereof to govern the administration and operation of the affairs of the Philippine Heart Center; and

9. To do all such other acts and things as are or may be necessary or incidental for the accomplishment of the purposes and objectives of the Philippine Heart Center. (emphases added)

This enumeration is not exhaustive. The provision itself vests the PHC with all the powers of a juridical entity under Section 35 of RA 11232,[66] the Revised Corporation Code of the

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[66] **Section 35.** *Corporate Powers and Capacity.* - Every corporation incorporated under this Code has the power and capacity:

(a) To sue and be sued in its corporate name;

(b) To have perpetual existence unless the certificate of incorporation provides otherwise;

(c) To adopt and use a corporate seal;

(d) To amend its articles of incorporation in accordance with the provisions of this Code;

Philippines. The general clauses in paragraphs 8 and 9 of Section 5, PD 673 likewise authorize the PHC to adopt rules and perform acts necessary to accomplish its purposes.

The PHC therefore bears the essential characteristics of a government instrumentality vested with corporate powers, exempt from real property taxes. Indeed, the PHC's corporate status does not divest itself of its character as a government instrumentality. These are not polar opposites. For despite its corporate status, it is really the resources and reputation of the Republic that are at stake in the capitalization and operations of the government entity.[67]

The properties of the PHC are properties of public dominion devoted to public use and welfare and, therefore, exempt from real property taxes and levy, without prejudice to the liability of taxable persons to whom

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(e) To adopt bylaws, not contrary to law, morals or public policy, and to amend or repeal the same in accordance with this Code;

(f) In case of stock corporations, to issue or sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation if it be a nonstock corporation;

(g) To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage, and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the constitution;

(h) To enter into a partnership, joint venture, merger, consolidation, or any other commercial agreement with natural and juridical persons;

(i) To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: *Provided*, that no foreign corporation shall give donations in aid of any political party or candidate or for purposes of partisan political activity;

(j) To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers, and employees; and

(k) To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.

[67] See *LRTA v. Quezon City*, G.R. No. 221626, October 9, 2019.

the beneficial use of any of these properties has been granted

Under Article 420 of the Civil Code, the following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; and

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

Given the mandate and purpose of the PHC, its properties are thus properties of public dominion intended for public use or service. As such, they are exempt from real property tax under Section 234(a) of the Local Government Code.[68] ***City of Lapu-Lapu v. Phil. Economic Zone Authority***[69] is *apropos*:

> Properties of public dominion are outside the commerce of man. These properties are exempt from "levy, encumbrance or disposition through public or private sale." As this court explained in Manila International Airport Authority:
>
> > Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale.

MIAA identifies the locus of ownership of properties of public dominion for public use — the Republic of the Philippines. If any of these properties is titled in the name of specific government entities, the latter only hold the legal title for the ultimate benefit of the Republic and the sovereignty.

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[68] *Id.*

[69] *Supra* note 64.

Here, the fact that the PHC may have entered into transactions with regard to its properties, short of alienating them, does not detract from their characterization as properties of public dominion for public use or public service. For what is important is the role, nexus, and relevance that these properties play in the public use or public service purposes of the PHC.[70]

Indeed, the core of the PHC's mission is patient care. The government established the PHC specifically to secure the well-being of the people by providing them specialized treatment for heart and allied diseases, *viz.*:

> xxx [I]t is the concern of Government to assist and provide material and financial support in the establishment and maintenance of a Philippine Heart Center for Asia, primarily to benefit the people of the Philippines, and further enhance the noble undertaking of research in heart and allied diseases, particularly those affecting the people of Asia; of training of medical and technical personnel therefor; and of rendering specialized medical services for the prevention and treatment of heart and allied diseases.[71]

In the pursuit of its lofty mandate, the PHC reported that for 2018,[72] it had served about 60,000 cardiology patients, performed around 94,000 radiology procedures, organized surgical missions in eight (8) regional health centers, provided free heart surgery for 82 mission beneficiaries, among others. Notably, these figures have increased from their 2017 values.

In sum, the PHC is a vital cog in the delivery of basic services to the people. These services, though, do not come cheap. Despite reporting revenues of ₱3,038,549,394.00 in 2018, the PHC still operated at a loss of ₱504,503,852.00. Thus, the government itself annual1y allocates funding to the PHC.[73] Even with so

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[70] *Supra* note 67.

[71] Presidential Decree 673.

[72] https://www.phc.gov.ph/Images/accomplishments/annual_reports/2018/PHC%20Annual%20Report%202018.pdf#toolbar=0&view=fitV, last accessed on February 18, 2020.

[73] Section 8, PD 673:

much public expenses to take care of, the government has taken measures to keep PHC accessible to our communities. Were it not for the government subsidy of ₱888,873,333.00 in 2018, the PHC would not have been able to defray its costs.

The hospital fees which the PHC charges are simply too meager to cover operating expenses. To divest the PHC of other sources of income may, therefore, impede, if not paralyze its operations altogether. And to allow the Quezon City Government to confiscate the PHC's properties would be nothing short of ironic, if not self-destructive, as it would kill the very patient the government so desperately seeks to revive.

Respondents, nevertheless, contend that the eleven (11) properties of the PHC in Quezon City are subject to real property tax since the PHC granted the beneficial use of these properties to commercial establishments such as Globe Telecom, Inc., Jollibee Foods Corporation, Course Development, Inc. and Proheart Food Corp.

On this score, respondents' argument is meritorious.

To reiterate, Section 234(a) of RA 7160 exempts real property owned by the Republic from real property taxes **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.** Thus, the Court has invariably held that a government instrumentality, though vested with corporate powers, are exempt from real property tax but the exemption shall not extend to taxable private entities to whom the beneficial use of the government instrumentality's properties has been vested.

In ***Lung Center of the Philippines v. Quezon City***,[74] the Court held that the portions of the land leased to private entities

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Section 8. *Government contribution.* The amount of ₱10,000,000 is hereby appropriated as contributions of the National Government for the initial operations and maintenance of the Philippine Heart Center. Thereafter, the necessary amount to support the continued operation and maintenance of the Philippine Heart Center shall be appropriated and released, subject to the approval of the President of the Philippines.

[74] 477 Phil. 141, 160 (2004).

as well as those parts of the hospital leased to private individuals are not exempt from real property taxes. On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt.

In ***Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila***,[75] the Court nullified the real property tax assessments issued by the City of Manila to the Government Service Insurance System, **except the assessment pertaining to the leased Katigbak property served on the Manila Hotel Corporation as lessee which has actual and beneficial use thereof.**

In ***PFDA v. Central Board of Assessment Appeals***,[76] the Court declared void all the real property tax assessments issued by the City of Lucena on the Lucena Fishing Port Complex **except for the portions that the Philippine Fisheries Development Authority has leased to private parties.**

In ***Metropolitan Waterworks and Sewerage System (MWSS) v. Local Government of Quezon***[77] the Court declared the real properties of the MWSS exempt from the real property taxes imposed by the Quezon City Government. It also nullified all the real estate tax assessments, including the final notices of real estate tax delinquencies, issued on the real properties of the Metropolitan Waterworks and Sewerage System in Quezon City **except for the portions that were alleged and proven to have been leased to private parties.**

Respondents, therefore, correctly posit that the PHC's properties which are leased to private individuals are no longer covered by the tax exemption. This, however, does not automatically validate their acts of assessing, levying, and selling the eleven (11) properties of the PHC.

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[75] *Supra* note 38.

[76] *Supra* note 37.

[77] G.R. No. 194388, November 7, 2018.

Jurisprudence requires that respondents not only allege but also **prove** that the properties of the PHC have indeed been leased to private individuals; and the assessments, validly served **on the lessees** which have actual and beneficial use thereof. Here, respondents' bare allegation that the PHC had been leasing its properties to private individuals, without more, is not sufficient to justify the affirmance of the Court of Appeals' rulings. As it was, respondents failed to specify which of the eleven (11) properties or portions thereof were being leased out, to whom they were being leased, and the lease periods for which the private individuals are to be taxed. Consequently, respondents also failed to show that the taxable lessees were validly served notices of assessments covering the properties purportedly leased out by the PHC.

As for respondents' levy and subsequent sale of the PHC's properties, these acts have no basis in law. Section 256 of RA 7160 provides:

> **Section 256.** *Remedies for The Collection of Real Property Tax*. - For the collection of the basic real property tax and any other tax levied under this Title, the local government unit concerned **may avail of the remedies by administrative action thru levy on real property or by judicial action.** (emphasis added)

The provision must be read in connection with Section 133(o) of RA 7160 exempting the Republic from local taxes, and Section 234 of the same law allowing the imposition of tax on real property owned by the Republic when the beneficial use thereof has been granted to a "taxable person."

Notably, it is the "taxable person" with beneficial use who shall be responsible for payment of real property taxes due on government properties. Any remedy for the collection of taxes should then be directed against the "taxable person," the same being an action *in personam*.[78]

In another vein, the Republic and its instrumentalities including the PHC retain their exempt status despite leasing

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[78] *Salva v. Magpile*, G.R. No. 220440, November 8, 2017.

out their properties to private individuals. The fact that PHC was short of alienating its properties to private parties in relation to the establishment, operation, maintenance and viability of a fully functional specialized hospital, does not divest them of their exemption from levy; the properties only lost the exemption from being taxed, but they did not lose their exemption from the means to collect such taxes.

Otherwise stated, local government units are precluded from availing of the remedy of levy against properties owned by government instrumentalities, whether or not vested with corporate powers, such as the PHC. Indeed, it would be the height of absurdity to levy the PHC's properties to answer for taxes the PHC does not owe. This leaves the Quezon City Government with only one recourse — judicial action for collection of real property taxes against private individuals with beneficial use of the PHC's properties.

A final word. Local government units must exercise restraint in levying on government properties. The "power to destroy" ought not be used against the very entity that wields it.[79] Despite its corporate status, the PHC remains an instrumentality of the government from which the power to tax of local units originates. Thus, it, too, must be spared from a local unit's power of confiscation.

As in *MIAA*, we see no compelling reason or sound policy for allowing the Quezon City Government to tax the PHC, a national government instrumentality which renders essential public health care services. More so, given that the PHC's services are more readily accessible to residents of Quezon City itself than of any other local government unit. Besides, there is simply no point in forcing the transfer of public funds from one government pocket to another.

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[79] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 246 (2003), citing *Basco v. Philippine Amusement and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52.

ACCORDINGLY, the petition is **GRANTED**. The Court of Appeals' Decision dated March 15, 2016 and Resolution dated June 23, 2016 in CA- G.R. SP No. 121019 are **REVERSED and SET ASIDE**.

The Court further **DECLARES**:

1. The Philippine Heart Center and its properties utilized in relation to the establishment, operation, and maintenance a specialty hospital in the country are **EXEMPT** from the real property taxes of the Quezon City Government;

2. All the real property tax assessments, as well as the final notices of real property tax delinquencies, and the warrant of levy issued by the Quezon City government on the Philippine Heart Center and its properties, are **VOID**; and

3. The July 7, 2011 sale at public auction of the properties of the Philippine Heart Center, as well as the purchase of these properties by the Quezon City Government, are **VOID**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 225729. March 11, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VALENTINO CATIG *y* GENTERONI,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** The elements of the crime of rape under Article 266-A of the RPC are as follows: (1) the accused had carnal knowledge of the victim; and (2) the said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SUPREME COURT GIVES HIGH RESPECT TO THE TRIAL COURT'S EVALUATION OF THE TESTIMONY OF A WITNESS BECAUSE IT HAS THE BEST OPPORTUNITY TO OBSERVE THE DEMEANOR OF THE WITNESS SO AS TO DETERMINE IF THERE IS INDEED TRUTH TO HIS OR HER TESTIMONY IN THE WITNESS STAND.—** The arguments presented by appellant attack the credibility of AAA as a witness. The trial court has the best opportunity to observe the demeanor of the witness so as to determine if there is indeed truth to his or her testimony in the witness stand. Hence, the Court gives high respect to its evaluation of the testimony of a witness. x x x The Court is x x x generally bound by the findings of the trial court, especially when affirmed by the appellate court, in the absence of any misapprehension of facts that would warrant the reversal of the lower court's decision. We see no reason to depart from the trial court's finding that AAA is a credible witness. She narrated in a clear, categorical and straightforward manner how she was subjected to the bestial act by appellant. She likewise identified appellant with certainty as her perpetrator before the court.

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; IN CASES WHERE PENETRATION WAS NOT FULLY ESTABLISHED, THE COURT HAS CONSISTENTLY ENUNCIATED THAT RAPE WAS NEVERTHELESS CONSUMMATED ON THE VICTIM'S TESTIMONY THAT SHE FELT PAIN, FOR THE PAIN COULD BE NOTHING BUT THE RESULT OF PENILE PENETRATION, SUFFICIENT TO CONSTITUTE RAPE.—** Much leeway should be given to AAA's testimony considering her age and mental capacity. Thus, although AAA

did not describe the incident of rape in more detail, it is apparent from her testimony that appellant was successful in having carnal knowledge of her. To stress, We cannot expect AAA to provide a detailed account of what transpired because of her mental handicap. In any case, her simple narration was indicative of her honesty and innocence. Interestingly, AAA attested without any inkling of hesitation that she felt pain in her vagina when she was being raped by appellant. "Moreover, in cases where penetration was not fully established, the Court had consistently enunciated that rape was nevertheless consummated on the victim's testimony that *she felt pain*. The pain could be nothing but the result of penile penetration, sufficient to constitute rape." The presence of a hymenal laceration at 3 o'clock position due to penetration further strengthens AAA's testimony that she was raped. It is worthy to note that the results of AAA's physical examination which was **conducted on the very same day that the rape incident happened** corroborates her testimony that she was sexually molested by the appellant. Dr. Yap even categorically stated that AAA's vagina was still bleeding when she was brought to him for personal examination, thus proving that the act of rape was consummated.

4. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; THE CREDIBILITY OF THE WITNESS COUPLED WITH HER POSITIVE IDENTIFICATION THAT THE ACCUSED RAPED HER HAS GREATER WEIGHT THAN THE ACCUSED'S MERE DEFENSES OF DENIAL AND ALIBI.— We x x x sustain AAA's competency and give full weight and credence to her testimony. Her credibility as a witness coupled with her positive identification that it was appellant who raped her has greater weight than appellant's mere defenses of denial and alibi. In fact, the Court frowns upon these weak defenses as these are easily fabricated and highly unreliable. Moreover, appellant failed to present evidence showing that AAA and her family harbored any ill motive to falsely accuse him of a heinous crime. Her testimony is therefore more believable in the absence [of] any reason or improper motive on why she would falsely implicate him of committing a heinous crime.

5. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE MENTAL RETARDATION OF A RAPE VICTIM CAN BE PROVEN BY EVIDENCE OTHER THAN MEDICAL/ CLINICAL EVIDENCE, SUCH AS THE TESTIMONY OF

WITNESSES AND EVEN THE OBSERVATION BY THE TRIAL COURT.— It is not required for a rape victim to undergo a comprehensive medical examination so as to prove that he/she is a mental retardate. We have repeatedly pronounced that mental retardation can be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court. However, the conviction of an accused of rape based on the mental retardation of the victim must be anchored on proof beyond reasonable doubt of the same. There is no doubt that AAA is a mental retardate. Ladringan, the social worker who conducted the case study, testified that AAA suffered from typhoid fever for almost a month when she was three years old. She had a convulsion episode and was confined at the hospital for treatment. Due to her severe illness, AAA's mental development was affected. AAA is likewise illiterate, unable to read and write, and only reached Grade 1 level due to difficulty in comprehension.

6. ID.; ID.; ID.; ALTHOUGH IT IS PROVEN AND ADMITTED DURING TRIAL THAT THE ACCUSED KNEW OF THE VICTIM'S MENTAL RETARDATION, THE SAME CANNOT BE APPRECIATED AS QUALIFYING CIRCUMSTANCE IF IT IS NOT SPECIFICALLY ALLEGED IN THE INFORMATION THAT HE WAS AWARE OF THE VICTIM'S MENTAL RETARDATION.— [A]ppellant even admitted that he knew of AAA's mental state. Dr. Yap also declared that AAA's physical built clearly manifested that she is indeed mentally retardate. Further, the trial court judge duly observed that she was suffering from mental impairment based on her demeanor and manner of answering the questions propounded to her during her examination while in the witness stand. Such observation was even reflected in the April 8, 2014 Decision of the RTC. However, although it was proven and admitted during trial that appellant knew of AAA's mental retardation, the same cannot be appreciated as a qualifying circumstance for it was not specifically alleged in the Information that he was aware of AAA's mental retardation. All told, the Court finds that the appellate court correctly found that appellant is indeed guilty beyond reasonable doubt of the crime of Simple Rape under Article 266-A, paragraph 1(b) of the RPC, as amended by Republic Act (R.A.) No. 8353. The appellate court also correctly meted the penalty of *reclusion perpetua* on appellant pursuant to Article 266-B of the RPC.

APPEARANCES OF COUNSEL

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

D E C I S I O N

HERNANDO, *J.*:

On appeal is the July 16, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06824 which affirmed with modifications the April 8, 2014 Decision[2] of the Regional Trial Court (RTC), Branch 73 of Olongapo City, in Criminal Case No. 130-2008 finding appellant Valentino Catig *y* Genteroni (appellant) guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of *reclusion perpetua*.

The Antecedent Facts

The Information[3] dated July 24, 2008 charging appellant with Rape reads:

That on or about the 23rd day of July 2008, at about 9:30 in the morning, x x x Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, did then and there willfully, unlawfully and feloniously have sexual intercourse with and carnal knowledge of fifteen (15)-year old minor AAA[4] [who is also] mentally retardate, to the damage and prejudice of said AAA.

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[1] *Rollo*, pp. 2-23. Penned by Associate Justice Celia C. Librea-Leagogo and concurred by Associate Justices Nina G. Antonio-Valenzuela and Melchor Q.C. Sadang.

[2] CA *rollo*, pp. 48-54; penned by Presiding Judge Norman V. Pamintuan.

[3] Records, pp. 2-3.

[4] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances). The confidentiality of the identity of the victim

CONTRARY TO LAW.[5]

Appellant pleaded "not guilty."[6] Trial on the merits thereafter ensued.

Version of the Prosecution

The prosecution presented the following as witnesses: (a) AAA; (b) BBB, AAA's sister; (c) Dr. Earl Yap (Dr. Yap), the Municipal Health Officer who examined AAA; and, (d) Fatima Ladringan (Ladringan), a Social Worker Officer at the Municipal Social Welfare and Development Office (MSWDO) of x x x, Zambales.

The facts as established by the prosecution are as follows:

On July 23, 2008, at around 9:30 in the morning, BBB asked AAA to fetch water from appellant's house. AAA complied. Upon arriving at appellant's house, the latter instructed her to go inside. Once inside, he laid her on the bed, took off her shorts and panty, touched her vagina, and raped her. After he was done with his bestial act, appellant gave AAA money and sugarcane. AAA then went home.

When she arrived at their house, BBB noticed that AAA's shorts were worn backwards with bloodstains on it. When BBB asked AAA what happened, AAA suddenly cried and told BBB that she was raped by appellant. She further narrated that appellant gave her money and sugarcane.

After hearing the horrid story, BBB and AAA immediately sought assistance from barangay authorities and the MSWDO. AAA was brought to the Municipal Health Center for a physical

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is mandated by Republic Act (R.A.) No. 7610 (Special Protection of Children against Abuse, Exploitation and Discrimination Act); R.A. No. 8505 (Rape Victim Assistance and Protection Act of 1998); R.A. No. 9208 (Anti-Trafficking in Persons Act of 2003); R.A. No. 9262 (Anti-Violence against Women and Their Children Act of 2004); and R.A. No. 9344 (Juvenile Justice and Welfare Act of 2006).

[5] Records, p. 2.

[6] *Id.* at 16.

examination. Dr. Yap physically found hymenal bleeding and laceration indicative of a recent penetration of the victim's vaginal canal. Subsequently, BBB and AAA went to the police to report the incident.

Version of the Defense

Appellant denied raping AAA. He alleged that on the day of the incident, he went home in the morning after plying his tricycle all night. While sleeping in the sala, he heard someone calling him. When he stood up, he saw AAA who was looking for his daughter but his daughter was not around. AAA then asked for sugarcane from appellant. During their conversation, appellant noticed bloodstains on AAA's hand and shorts. When asked about it, AAA simply ignored him. AAA then went to the water pump outside their house where she found two one-peso coins left by his daughter. AAA got the coins and went to the direction of the sugarcane field. Appellant thereafter closed the door of their house and went back to sleep.

At around 3 o'clock in the afternoon, three policemen went to their house informing him that someone is accusing him of rape. Appellant voluntarily went with the police. It was only then that he learned that AAA was his accuser.

Appellant claimed that he was being accused of the crime because he refused to lend BBB his bicycle and to give her his dog which she previously asked from him.

Ruling of the Regional Trial Court

In its April 8, 2014 Decision,[7] the RTC, Branch 73 of Olongapo City, found appellant guilty as charged. It gave credence to AAA's testimony on how she was allegedly raped by appellant. The RTC observed that despite the victim's mental handicap, she properly conveyed her ideas and intelligently answered the questions propounded to her during the trial. Her testimony which was corroborated by the results of her medical

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[7] *Supra* note 2.

examination was given greater probative weight than appellant's defense of denial.

The *fallo*[8] of the RTC Decision reads in this wise:

> WHEREFORE, judgment is hereby rendered, finding accused Valentino Catig *y* Genteroni GUILTY beyond reasonable doubt of the crime of Rape under Art. 266-A, paragraph 1(d) of the Revised Penal Code in relation to Republic Act No. 7610 and is sentenced to suffer the penalty of *Reclusion Perpetua*. He is also ordered to pay the private complainant ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.
>
> SO ORDERED.

Ruling of the Court of Appeals

The CA, in its July 16, 2015 Decision,[9] affirmed the findings of the trial court but found appellant criminally liable of the crime of Simple Rape under Article 266-A, par. 1 (b), and not under Article 266-A, par. 1 (d) of the Revised Penal Code (RPC). The CA reasoned that Article 266-A, par. 1 (d) refers to a person who is suffering from dementia which is a condition of deteriorated mentality characterized by marked decline in the individual's intellectual level and often emotional apathy, madness, or insanity. On the other hand, the phrase "deprived of reason" under Article 266-A, par. 1 (b), has been interpreted to include those suffering from mental abnormality, deficiency, or retardation.

AAA, as ruled by the appellate court, is mentally deficient. Thus, she should be considered a person "deprived of reason" which falls under Article 266-A, par. 1 (b), and not one who is "demented."

The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 08 April 2014 of the Regional Trial Court of Olongapo

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[8] *Id.* at 54.

[9] *Supra* note 1.

City, Branch 73 in *Crim. Case No. 130-2008* finding accused-appellant Valentino Catig *y* Genteroni guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay private complainant ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, is AFFIRMED with MODIFICATIONS in that accused-appellant is:

(a) found guilty of simple rape under Article 266-A (1)(b) of the Revised Penal Code, as amended;

(b) not eligible for parole;

(c) further ordered to pay private complainant AAA ₱30,000.00 as exemplary damages; and

(d) ordered to pay interest at the rate of 6% *per annum* on the award of civil indemnity, moral damages, and exemplary damages from finality of this judgment until fully paid.

SO ORDERED.[10]

Hence, the instant appeal.

Both parties did not file supplemental briefs as they had already exhaustively argued their issues in their respective briefs filed before the CA.[11]

Issue

The sole issue in this case is whether the prosecution sufficiently established appellant's guilt beyond reasonable doubt for the crime charged.

The Court's Ruling

The Court finds the appeal bereft of merit.

The elements of the crime of rape under Article 266-A of the RPC are as follows: (1) the accused had carnal knowledge of the victim; and (2) the said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

[10] *Id.* at 20.

[11] *Id.* at 32-36; 39, unpaginated.

In this case, appellant avers that the prosecution failed to duly prove how the alleged rape was committed. AAA merely made a general reference to rape during her testimony. She did not mention that appellant's penis penetrated her vagina. Neither did she state in her testimony if appellant kissed or touched her. Further, appellant insists that the presence of laceration of general reference to rape which was repeatedly stated by AAA does not prove defloration which can be caused by several factors other than sexual abuse.

The Court disagrees.

The arguments presented by appellant attack the credibility of AAA as a witness. The trial court has the best opportunity to observe the demeanor of the witness so as to determine if there is indeed truth to his or her testimony in the witness stand.[12] Hence, the Court gives high respect to its evaluation of the testimony of a witness.

The rationale on why it is the duty of the trial court to determine a witness' credibility was elucidated by the Court in *People v. Abat*,[13] citing *People v. Banzuela*,[14] in this wise:

> It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "[t]here is an inherent impossibility of

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[12] *People v. Banzuela*, 723 Phil. 797, 814 (2013).

[13] 731 Phil. 304, 312 (2014).

[14] *Supra* at 815, citing *People v. Sapigao, Jr.*, 614 Phil. 589, 599 (2009).

determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot he transcribed upon the record, and hence they can never be considered by the appellate court.

The Court is therefore generally bound by the findings of the trial court, especially when affirmed by the appellate court, in the absence of any misapprehension of facts that would warrant the reversal of the lower court's decision.[15]

We see no reason to depart from the trial court's finding that AAA is a credible witness. She narrated in a clear, categorical and straightforward manner how she was subjected to the bestial act by appellant. She likewise identified appellant with certainty as her perpetrator before the court. We quote the pertinent portions of her testimony, to wit:[16]

Q: Do you remember anything bad done to you when you went to the house of Catig?
A: Yes madam.

Q: What is that x x x happened? Do you know what it is? Did he do anything to you?
A: I was raped there.

Q: What is the meaning to you now, if you can imitate also or tell us?
A: "Iniyot nya ako."

Q: Were you wearing anything when he did that to you "iniyot ka niya"?
A: Yes, I was wearing my clothes madam.

Q: When he did that to you, did you see his penis?
A: Yes madam.

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[15] *Planteras, Jr. v. People*, G.R. No. 238889, October 3, 2018.

[16] TSN, April 16, 2010, pp. 4-6, 9-10.

x x x x x x x x x

Q: Did he kiss you, do you remember?
A: No.

x x x x x x x x x

Q: Do you remember when he committed "iyot" to you where were you? Were you inside the house or outside the house?
A: Inside the house.

x x x x x x x x x

Q: Whose house was it if you know?
A: It is the house of Catig our neighbor.

Q: Why were you there at that time at the house of Catig?
A: I fetched water madam.

Q: Who told you to fetch water?
A: I was asked by my sister to fetch water madam.

x x x x x x x x x

Q: Were you able to fetch water?
A: Yes madam.

Q: What happened first? You got the water or Catig committed "iyot" upon you?
A: He raped me.

Q: After he raped you and you got the water, did he say, do or give anything?
A: There was.

Q: And what was this?
A: Tubo and peso.

Q: Do you know why he gave you tubo and peso?
A: He also gave me fish.

x x x x x x x x x

Q: So x x x, where in this case, because this is just outside, where did he commit iyot upon you, inside or outside or where?
A: Outside.

Q: You did not go inside the house anymore? You only stayed here outside?

A: He raped me inside.

Q: So, you were able to go inside.
A: Yes in his house.

Q: So in his house, you saw a bed?
A: Yes madam.

Q: It was there at the bed that he committed iyot upon you?
A: Yes and he made me lie down.

Q: Were you crying at that time when he was making iyot upon you?
A: Yes madam.

Q: Did it hurt or not? Masakit ba?
A: Yes.

Q: Where, what part of your body were you hurt?

COURT INTERPRETER —

Witness pointing to her vagina.

FISCAL BAYONA

Q: It was painful because of your menstruation or because of what he was doing?
A: Yes.

Q: Do you remember if he touched you in any part of your body?
A: Yes madam.

Q: At what part do you remember or parts of your body did he touch you [AAA]?
A: My vagina.

Q: Did he remove your clothes at any part during that time?
A: He took off my panty.

Much leeway should be given to AAA's testimony considering her age and mental capacity. Thus, although AAA did not describe the incident of rape in more detail, it is apparent from her testimony that appellant was successful in having carnal knowledge of her. To stress, We cannot expect AAA to provide a detailed account of what transpired because of her mental handicap. In any case, her simple narration was indicative of

her honesty and innocence.[17] Interestingly, AAA attested without any inkling of hesitation that she felt pain in her vagina when she was being raped by appellant.[18] "Moreover, in cases where penetration was not fully established, the Court had consistently enunciated that rape was nevertheless consummated on the victim's testimony that *she felt pain*. The pain could be nothing but the result of penile penetration, sufficient to constitute rape."[19]

The presence of a hymenal laceration at 3 o'clock position due to penetration further strengthens AAA's testimony that she was raped. It is worthy to note that the results of AAA's physical examination which was **conducted on the very same day that the rape incident happened** corroborates her testimony that she was sexually molested by the appellant.[20] Dr. Yap even categorically stated that AAA's vagina was still bleeding when she was brought to him for personal examination, thus proving that the act of rape was consummated.

On the other hand, the defense miserably failed to impeach AAA's credibility during cross-examination. If indeed AAA fabricated her story, it would have been easy for the defense to destroy her credibility, "for the ability to sustain such fiction would require a quick and insidious mind, and her mental condition certainly precluded such possibility."[21]

We therefore sustain AAA's competency and give full weight and credence to her testimony. Her credibility as a witness coupled with her positive identification that it was appellant who raped her has greater weight than appellant's mere defenses of denial and alibi. In fact, the Court frowns upon these weak defenses as these are easily fabricated and highly unreliable.[22]

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[17] *People v. Antolin*, 386 Phil. 870, 882 (2000).

[18] *People v. Veluz*, 593 Phil. 145, 161 (2008).

[19] *Id.*

[20] *People v. Ulgasan*, 390 Phil. 763, 775 (2000).

[21] *People v. Antolin*, *supra* note 17.

[22] *People v. Gani*, 710 Phil. 466, 474 (2013).

Moreover, appellant failed to present evidence showing that AAA and her family harbored any ill motive to falsely accuse him of a heinous crime. Her testimony is therefore more believable in the absence of any reason or improper motive on why she would falsely implicate him of committing a heinous crime.[23]

Studies show that children, particularly very young children, make "perfect victims" of rape. Certainly, children have more problems providing accounts of events because they do not understand everything they experience. Moreover, children have very limited vocabulary. Although AAA was 13 years old, she had the mental capacity of a 4-5-year old child. The lower courts, and this Court as well, could therefore not expect AAA to narrate and describe the exact details of how she was raped the way a 13-year old child could do.[24]

Mental retardation and its various levels are extensively discussed in *People v. Dalandas*,[25] *viz.*:

Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individual's own social environment. Commonly, a mental retardate exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.

Although "mental retardation" is often used interchangeably with "mental deficiency," the latter term is usually reserved for those without recognizable brain pathology. The degrees of mental retardation according to their level of intellectual function are illustrated, thus:

Mental Retardation

LEVEL QUOTIENT	DESCRIPTION TERM	INTELLIGENCE (IQ RANGE)
I	Profound	Below 20

[23] *People v. Campit*, G.R. No. 225794, December 6, 2017, citing *People v. Ferrer*, 356 Phil. 497, 508 (1998).

[24] *People v. Veluz*, *supra* note 18.

[25] 442 Phil. 688, 695 (2002).

II	Severe	20-35
III	Moderate	36-52
IV	Mild	53-68

A normal mind is one which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general, and are by common consent recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.

x x x x x x x x x

The mental retardation of persons and the degrees thereof may be manifested by their overt acts, appearance, attitude and behavior. The dentition, manner of walking, ability to feed oneself or attend to personal hygiene, capacity to develop resistance or immunity to infection, dependency on others for protection and care and inability to achieve intelligible speech may be indicative of the degree of mental retardation of a person. Those suffering from severe mental retardation are usually undersized and exhibit some form of facial or body deformity such as mongolism, or gargolism. The size and shape of the head is indicative of microphaly. The profoundly retarded may be unable to dress himself or wash or attend to bowel and bladder functions so that his appearance may be very unclean and untidy unless they receive a great deal of nursing care. There may be marked disturbance of gait and involuntary movements. Attempts to converse with a mental retardate may be limited to a few unintelligible sounds, either spontaneous or in response to attempts that are made by the examiner to converse or may be limited to a few simple words or phrases. All the foregoing may be testified on by ordinary witnesses who come in contact with an alleged mental retardate.[26]

It is not required for a rape victim to undergo a comprehensive medical examination so as to prove that he/she is a mental retardate. We have repeatedly pronounced that mental retardation can be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.[27] However, the conviction of an accused of

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[26] *Id.* at 697.

[27] *People v. Ventura*, 729 Phil. 567, 574 (2014), citing *People v. Monticalvo*, 702 Phil. 643, 660-661 (2013).

rape based on the mental retardation of the victim must be anchored on proof beyond reasonable doubt of the same.[28]

There is no doubt that AAA is a mental retardate. Ladringan, the social worker who conducted the case study,[29] testified that AAA suffered from typhoid fever for almost a month when she was three years old. She had convulsion episode and was confined at the hospital for treatment. Due to her severe illness, AAA's mental development was affected. AAA is likewise illiterate, unable to read and write, and only reached Grade 1 level due to difficulty in comprehension.

Notably, appellant even admitted that he knew of AAA's mental state.[30] Dr. Yap also declared that AAA's physical built clearly manifested that she is indeed mentally retardate.[31] Further, the trial court judge duly observed that she was suffering from mental impairment based on her demeanor and manner of answering the questions propounded to her during her examination while in the witness stand. Such observation was even reflected in April 8, 2014 Decision of the RTC.[32]

However, although it was proven and admitted during trial that appellant knew of AAA's mental retardation, the same cannot be appreciated as a qualifying circumstance for it was not specifically alleged in the Information that he was aware of AAA's mental retardation.[33] All told, the Court finds that the appellate court correctly found that appellant is indeed guilty beyond reasonable doubt of the crime of Simple Rape under Article 266-A, paragraph 1 (b) of the RPC, as amended by Republic Act (R.A.) No. 8353.

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[28] *People v. Bermas*, G.R. No. 234947, June 19, 2019.

[29] Records, pp. 156-159.

[30] TSN dated April 11, 2013, p. 5.

[31] TSN dated December 1, 2011, p. 3.

[32] *Supra* note 2 at 53.

[33] See *People v. Baay*, 810 Phil. 943, 955 (2017).

The appellate court also correctly meted the penalty of *reclusion perpetua* on appellant pursuant to Article 266-B of the RPC.

Nonetheless, in light with the recent jurisprudence,[34] the Court deems it wise to increase the awards of moral damages, civil indemnity, and exemplary damages to ₱75,000.00 each. Finally, the CA correctly imposed interest on the damages awarded at the rate of 6% per *annum* from the date of this judgment until its full satisfaction.[35]

WHEREFORE, the appeal is **DISMISSED.** The Decision of the Court of Appeals in CA-G.R. CR-HC No. 06824 finding appellant Valentino Catig *y* Genteroni guilty beyond reasonable doubt of the crime of Simple Rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** and that the appellant is ordered to pay AAA: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱75,000.00 as exemplary damages.

SO ORDERED.

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

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[34] *People v. Jugueta*, 783 Phil. 806, 849 (2016).

[35] *People v. Sabal*, 734 Phil. 742, 747 (2014); *Nissan Gallery-Ortigas v. Felipe*, 720 Phil. 828, 840 (2013), citing *Nacar v. Gallery Frames and/or Felipe Barley, Jr.*, 716 Phil. 267, 281-283 (2013) citing BSP-MB Circular No. 799 dated May 16, 2013.

FIRST DIVISION

[G.R. No. 228132. March 11, 2020]

MICHAEL TAÑAMOR *y* ACIBO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); DUE TO THE PECULIAR NATURE OF A BUY-BUST OPERATION, THE LAW CONCOMITANTLY REQUIRES STRICT COMPLIANCE WITH PROCEDURES LAID DOWN BY IT TO ENSURE THAT ALL THE RIGHTS OF THE ACCUSED ARE GUARANTEED AND THE CREDIBILITY OF THE *CORPUS DELICTI* SAFEGUARDED, IN SOBER RECOGNITION OF THE FACT THAT THE CHARACTER OF ANTI-NARCOTICS OPERATIONS AND THE DECIDED EASE WITH WHICH ILLEGAL DRUGS MAY BE PLANTED OPEN THEM TO A GREAT POSSIBILITY OF ABUSE.— In drug cases, the State bears the burden not only of proving the elements of the crime, but also its body or *corpus delicti*, which in these cases pertains to the dangerous drug itself. In cases involving illegal drugs, buy-bust operation has been declared as a valid and effective procedure for apprehending drug peddlers and distributors and a legally sanctioned means of trapping lawbreakers in felonious acts. Nevertheless, precisely due to the peculiar nature of a buy-bust operation, the law concomitantly requires strict compliance with procedures laid down by it to ensure that all the rights of the accused are guaranteed and the credibility of the *corpus delicti* safeguarded, in sober recognition of the fact that the character of anti-narcotics operations and the decided ease with which illegal drugs may be planted open them to a great possibility of abuse.

2. ID.; ID.; CHAIN OF CUSTODY RULE; CHAIN OF CUSTODY, DEFINED; AN UNBROKEN CHAIN OF CUSTODY IS NECESSARY IN ORDER TO ESTABLISH BEFORE THE COURT THAT THE PROHIBITED DRUG

CONFISCATED OR RECOVERED FROM THE SUSPECT IS THE VERY SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT, AND THAT THE IDENTITY OF SAID DRUG IS ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUIRED TO MAKE A FINDING OF GUILT.— A long line of cases decided by the Court has demonstrated that the exacting procedures for observation during a buy-bust operation more often rise or fall on either the adherence to or non-compliance with the chain of custody rule. The chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure, to receipt in the forensic laboratory, to safekeeping, to presentation in court. An unbroken chain of custody is necessary in order to establish before the court that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt. This rule is imperative, under pain of rendering all seized evidence in the course of the operation incredible.

3. ID.; ID.; SECTION 21, ARTICLE II OF RA 9165, AS AMENDED BY RA 10640, AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR); MANDATORY PROCEDURES TO BE OBSERVED BY THE POLICE OPERATIVES IN ORDER TO ASSURE THE INTEGRITY OF THE CONFISCATED DRUGS; REQUIRED WITNESSES; THE FAILURE OF THE ARRESTING OFFICERS TO COMPLY WITH THE MANDATORY REQUIREMENTS DURING THE CONDUCT OF THE BUY-BUST OPERATION AND THE PROSECUTION'S NEGLECT TO JUSTIFY AND ACKNOWLEDGE THESE LAPSES, IS FATAL TO ITS CASE.— [S]ection 21, Article II of RA 9165, as amended by RA 10640, provides for the procedure that police operatives are required to observe in order to assure the integrity of the confiscated drugs. The said provision requires that: (1) the seized items be inventoried and photographed immediately after confiscation at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (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,

and (c) a representative of the National Prosecution Service or the media; and (3) the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof. Further, Section 21(a), Article II of the IRR of RA 9165 further specifies where the physical inventory and photographing of the seized items should be done and in the presence of whom x x x. Given the law, *i.e.*, under Section 21, Article II of RA 9165, as reiterated in Section 21(a), Article II of the IRR, the decisive requirements that bear upon the present case are the immediacy of the physical inventory and photographing of the seized items, and the protective, insulating presence of the three required witnesses. This Court finds that the arresting officers in this case failed to comply with these two requirements during the conduct of the buy-bust operation and the prosecution neglected to justify, let alone acknowledge these lapses, ultimately proving fatal to its case.

4. ID.; ID.; ID.; THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE DRUGS MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION, WHICH MUST BE AT THE PLACE OF APPREHENSION AND/OR SEIZURE; IF THIS IS NOT PRACTICABLE, IT MAY BE DONE AS SOON AS THE APPREHENDING TEAM REACHES THE NEAREST POLICE STATION OR NEAREST OFFICE; MERE INVOCATION OF AN INCONVENIENCE THAT RENDERED THE INVENTORY IMPRACTICABLE AT THE SITE OF SEIZURE DOES NOT TRANSLATE TO COMPLIANCE WITH SECTION 21 AND ITS IRR, ESPECIALLY IF SUCH INVOCATION IS NOT SUFFICIENTLY EXPLAINED IN THE RECORDS OF THE CASE AND SUPPORTED BY CREDIBLE EVIDENCE.— [I]n the event of the prosecution's acknowledgment of the police officers' failure to comply with the general rule, the liberal application of the alternative place of inventory and photographing may only be triggered upon offer of sufficient justification. In other words, mere invocation of an inconvenience that rendered the inventory impracticable at the site of seizure does not translate to compliance with Section 21 and its IRR, especially if such invocation is not sufficiently explained in the records of the case and supported by credible evidence.

This Court has also already drawn the nuances in what "immediately" entails in the operative description "immediately after seizure and confiscation." In *People v. Adobar*, the Court held in no uncertain terms: **The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure.** If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.

5. ID.; ID.; ID.; THE TWO INSULATING WITNESSES, WHOSE PRESENCE IS REQUIRED DURING THE INVENTORY AND PHOTOGRAPHING, MUST ALSO BE PRESENT DURING THE SEIZURE AND CONFISCATION; THE PRESENCE OF THIRD-PARTY WITNESSES IS NEITHER AN EMPTY FORMALITY IN THE CONDUCT OF BUY-BUST OPERATIONS, NOR A MERE RUBBERSTAMP TO VALIDATE THE ACTIONS TAKEN AND SELF-SERVING ASSURANCES PROFFERED BY LAW ENFORCEMENT OFFICERS, AS THE ATTENDANCE OF THESE THIRD-PARTY WITNESSES ENSURES THE IDENTITY, ORIGIN, AND INTEGRITY OF THE ITEMS SEIZED.— [T]he prosecution's case must also fail on the ground that the required insulating witnesses were not present during the confiscation, but were merely "called in" at the station, both belatedly and after the process they were supposed to insulate. Undoubtedly, the requirement of the presence of the mandatory two insulating witnesses in this case is inseparable from the requirement of physical inventory and photographing at the place of seizure. Stated differently, since the physical inventory and photographing of the seized items must, as a general rule, be done at the place of seizure, it follows that the two insulating witnesses whose presence are required during the inventory and photographing *must* also be in or within the area of the site of seizure. Considering the notoriety of buy-bust operations as possible tools for extortion, and the seeming habit of "calling in" witnesses, the Court has already taken steps to untangle confusions on this point. In *People v. Castillo*, the Court categorically clarified: "The requirement of conducting inventory and taking of photographs immediately after seizure and confiscation necessarily means that the **required witnesses must also be present during the seizure and confiscation**." The presence of third-party witnesses is not an

empty formality in the conduct of buy-bust operations. It is not a mere rubberstamp to validate the actions taken and self-serving assurances proffered by law enforcement officers. Far from a passive gesture, the attendance of third-party witnesses ensures the identity, origin, and integrity of the items seized.

6. ID.; ID.; ID.; THE PRESENCE OF THE REPRESENTATIVE FROM THE MEDIA OR THE DEPARTMENT OF JUSTICE (DOJ) AND ANY ELECTED PUBLIC OFFICIAL DURING THE SEIZURE AND MARKING OF THE SACHETS OF *SHABU* PROTECTS THE SEIZURE AND ARREST FROM POSSIBILITIES OF SWITCHING, "PLANTING" OR CONTAMINATION OF THE EVIDENCE, WHICH COMPROMISE THE INTEGRITY OF THE CONFISCATED ITEMS; NON-COMPLIANCE WITH THE REQUIRED WITNESSES JEOPARDIZES THE TRUSTWORTHINESS OF *CORPUS DELICTI*, BREAKS THE CHAIN OF CUSTODY AND PUTS THE GUILT OF THE ACCUSED IN DOUBT.— It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory and serves a crucial purpose. x x x The presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the sachets of *shabu* protects the seizure and arrest from possibilities of switching, "planting" or contamination of the evidence, which compromise the integrity of the confiscated items. Failure to comply with this jeopardizes the trustworthiness of *corpus delicti*, breaks the chain of custody and, by result, puts the guilt of the accused in doubt. This requirement on the presence of the insulating witnesses at the time of seizure can also be easily complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. In *People v. Umipang*, the Court called out the police officers' failure to exert earnest efforts to obtain the insulating witnesses' presence x x x. Here, the officers could have complied with the requirements of the law had they intended to, as they had days to secure the attendance of the required witnesses. Particularly, they even had the time to conduct both surveillances and a test-buy prior to the actual buy-bust. The fact that the apprehending team had days to plan and do surveillances renders the absence of the insulating witnesses at the place of operation inexcusable. That the prosecution failed to even acknowledge this lapse let alone justify it leaves excusing it unlikely.

7. ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO RECOGNIZE THE LAPSES IN THE CHAIN OF CUSTODY AND TO JUSTIFY OR EXPLAIN THE SAME UNDERSCORED THE DOUBT AND SUSPICION ABOUT THE INTEGRITY OF THE EVIDENCE OF THE *CORPUS DELICTI*, WARRANTING THE ACQUITTAL OF THE ACCUSED; ACQUITTAL OF THE PETITIONER, WARRANTED.— [T]he prosecution may not hide behind the permissive tone of the saving clause of Section 21 and its IRR. As the Court explained in *People v. Reyes*: Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*. With the chain of custody having been compromised, the accused deserves acquittal. x x x The seizure of the confiscated items, including the three sachets of *shabu* weighing 0.61 gram is therefore invalid and void. The prosecution has no more evidence on which to ground petitioner's conviction, and petitioner must be acquitted.

APPEARANCES OF COUNSEL

Edric P. Torremocha for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review[1] under Rule 45 filed by petitioner Michael Tañamor *y* Acibo (petitioner) assailing

[1] *Rollo*, pp. 12-34.

the Decision[2] dated April 27, 2016 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 02070, which affirmed the Judgment[3] dated April 6, 2015 of the Regional Trial Court of Dumaguete City, Branch 30 (RTC) in Criminal Case No. 2014-22151, which found petitioner guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts

An Information docketed as Criminal Case No. 2014-22151 was filed against petitioner in this case, the accusatory portion of which reads:

> "That on or about the 25th day of February 2014 in the City of Dumaguete, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the said accused, MICHAEL TAÑAMOR y' ACIBO and JUNFIL PIÑERO, a.k.a. JUN PHIL PIÑERO a.k.a. PILO a.k.a. JOHN FEL T. PIÑERO, in conspiracy, not being authorized by law, did then and there willfully, unlawfully and criminally sell and deliver to a poseur-buyer three (3) heat sealed transparent plastic sachets containing white crystalline substance with an approximate weight of 0.61 gram of methamphetamine hydrochloride, commonly known "shabu," a dangerous drug under R.A. No. 9165.
>
> Contrary to [S]ection 5 in relation to Section 26, Article II of RA 9165."[4]

The RTC was able to acquire jurisdiction over the person of petitioner only, as his co-accused, Junfil Piñero (Piñero), managed to escape during the buy-bust operation and has since remained at large. During arraignment, petitioner pleaded not guilty to the charge and trial ensued thereafter.[5]

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[2] *Id.* at 108-121; penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court) with Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig, concurring.

[3] *Id.* at 63-77; penned by Judge Rafael Crescencio C. Tan, Jr.

[4] *Id.* at 63; italics and underscoring omitted.

[5] *Id.*

Evidence of the Prosecution

The prosecution presented the testimonies of Police Chief Inspector Josephine Llena (PCI Llena), Police Officer 2 Marvin Buenaflor (PO2 Buenaflor), Department of Justice (DOJ) representative Anthony Chilius Benlot (DOJ representative Benlot), Police Officer 1 Ricknie Briones (PO1 Briones), Barangay Kagawad Jujemar Salud Flores Cañete (Kagawad Cañete), Intelligence Officer 1 Julieta Amatong (IO1 Amatong) and media practitioner Neil Rio (media practitioner Rio).[6] Petitioner, on the other hand, testified and presented the testimonies of his father, Eleno Tañamor (Eleno), and his father's friend, one Elias Laturnas (Elias).[7]

The prosecution sought to establish that petitioner was apprehended following a legitimate buy-bust operation. Its witnesses testified as follows:

In January 2014, in the course of a debriefing on arrested persons at the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) of the Negros Oriental Provincial Police Office, an informant came forward about a certain Mike and Pilo who, conspiring with each other, were engaged in illegal drug trade.[8] Acting on said information, the Chief of PAIDSOTG instructed PO2 Buenaflor and PO1 Briones to conduct a series of surveillance operations on these two. Upon surveillance, said officers alleged that they were able to find out that the real names of Mike and Pilo were Michael Tañamor and Junfil Piñero, respectively, as well as confirm their involvement with the drug trade. Through an asset, a test-buy was also conducted, where the asset was able to purchase two sachets of *shabu* from petitioner and Piñero, which prompted the operatives to plan the buy-bust proper, beginning with the negotiation of a drug deal by PO2 Buenaflor and PO1 Briones.[9]

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

[7] *Id.* at 67.

[8] *Id.* at 64.

[9] *Id.*

In the afternoon of February 25, 2014, PO2 Buenaflor and PO1 Briones, with the aid of another asset, met with petitioner and Piñero in Barangay Tinago, where the asset introduced the officers to the latter. A sale was agreed upon where the police officers would purchase ₱4,000.00 worth of *shabu*, with the actual sale scheduled at 6:00 o'clock in the evening of the same day. Upon the officers' return to the station, the PAIDSOTG Chief called for a pre-operational briefing, where PO2 Buenaflor was designated as the poseur-buyer and given one ₱500.00 bill as marked money, to be placed on top of a bundle of cut up pieces of paper. After the briefing, PO2 Buenaflor coordinated with the Philippine Drug Enforcement Agency (PDEA) Regional Office 7.[10]

Thereafter, PO2 Buenaflor and PO1 Briones boarded a motorcycle and proceeded to the target site. After some time, the two officers saw petitioner and Piñero from a distance, transacting with another male person. The officers approached Piñero and asked him for the item they had agreed upon earlier in the day. Piñero took three pieces of elongated transparent plastic sachets containing *shabu* and gave them to PO2 Buenaflor, who, in turn, took the marked money from his pocket and handed them over to Piñero. Piñero, however, instructed petitioner to receive the money from PO2 Buenaflor. As soon as petitioner received the money, PO2 Buenaflor immediately held Piñero's hand and declared an arrest. Piñero, however, slipped and managed to escape despite hot pursuit. PO1 Briones, on the other hand, arrested petitioner and informed him of the nature of the charge against him as well as his constitutional rights. From petitioner was recovered the marked money.[11]

Upon PO2 Buenaflor's return, he marked the three confiscated sachets and placed them inside a brown envelope, over which he kept sole custody. For fear of retaliation from petitioner's relatives, some of whom allegedly lived in the area, the buy-bust team decided to conduct the inventory at the Dumaguete

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

[11] *Id.* at 65.

City Police Station. There, PO2 Buenaflor conducted the inventory in the presence of petitioner, as well as Kagawad Cañete, DOJ representative Benlot and media practitioner Rio, all of whom signed the Receipt of Property Seized. With the Memorandum Request for Crime Laboratory and Drug Test, PO2 Buenaflor brought the tape-sealed brown envelope and petitioner to the Negros Oriental Provincial Crime Laboratory for examination.[12]

At the laboratory, PCI Llena received custody of the seized items, conducted qualitative examination over the same and concluded in her Chemistry Report No. D-069-14 that they tested positive for Methamphetamine Hydrochloride. PCI Llena likewise conducted a screening and confirmatory test on the urine sample taken from petitioner, which also tested positive for Methamphetamine Hydrochloride.[13]

Evidence of the Defense

In his defense, petitioner denied ownership of the items that were allegedly seized and submitted instead that no buy-bust operation took place before his arrest.

Petitioner specifically alleged that at 10:00 o'clock in the morning of February 25, 2014, he was at LL Eatery in Barangay Motong, eating breakfast when, without provocation, he was approached by two male persons who held his hands and forcibly brought him to a nearby vehicle with plate number FEF570. Petitioner testified that he was told to just cooperate and that the persons just wanted to ask him some questions. He added that at the time he was taken, there were more than five people in the same eatery, but that none of them was able to come to his aid.[14]

He further submitted that on board the vehicle, he was forcibly searched without the benefit of a search warrant and that several

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

[13] *Id.* at 67.

[14] *Id.* at 68.

personal items were recovered from him, including his cellular phone, a cellular phone battery and one ₱500.00 bill, which he intended to use as payment of his breakfast. Allegedly finding nothing from his personal items which would point to any illegal activity, one police officer named Gerald Manlan, whom he recognized as his neighbor, showed him three sachets containing white substance, after which the persons in the vehicle threatened him with an allegation of ownership of the same if he did not cooperate. He was thereafter brought to a house in Sibulan, where he was repeatedly interrogated about his knowledge of a certain "Edfox." Petitioner alleged that the persons who detained him kept insisting that he knew "Edfox" despite petitioner's persistent denial. Petitioner further alleged that he was kept in that house for over eight hours, after which he was brought to the police station.

At the station, petitioner alleged that he was made to enter a room with the same persons who took him and there he saw these persons cut some pieces of paper and place them under the ₱500.00 bill they recovered from him earlier. He also saw the three sealed sachets which were shown him earlier in the vehicle and petitioner was told to just relax. He allegedly saw the witnesses arrived then.[15]

To corroborate his son's testimony, Eleno testified that in the morning of February 25, 2014, after one of his younger children came home to tell him that his son, petitioner, was taken at the LL Eatery by unidentified persons, he immediately went to the police station to check whether his son had been arrested. He was informed that petitioner was not at the station. Eleno then asked one of the police officers therein to record in its police blotter the forcible taking of petitioner, but the officer refused to do so, saying that the taking might have been related to a drug case.[16] Eleno kept going to different police stations to see if petitioner was there. At about 8:00 o'clock in the evening, Eleno saw petitioner at the Dumaguete City Police Station, where the latter was about to be brought to the hospital

[15] *Id.*

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

for a medical check-up. Finally, about a month after petitioner was taken, Eleno said he met his friend, Elias, who told him that he saw petitioner being accosted by two persons and dragged out of LL Eatery sometime in February.[17]

Ruling of the RTC

After trial on the merits, the RTC convicted petitioner of the crime charged in its Judgment dated April 6, 2015, with the dispositive portion reading thus:

> **WHEREFORE**, in the light of the foregoing, the accused MICHAEL TAÑAMOR *y* ACIBO is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.61 gram of *shabu* in violation of Section 5, in relation to Section 26, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> The three (3) heat-sealed transparent plastic sachets with markings "MT/JP-BB1-02-25-14," "MT/JP-BB2-02-25-14" and "MT/JP-BB3-02-25-14," with signatures respectively, and containing an approximate weight of 0.61 gram of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.
>
> In the service of sentence, the accused MICHAEL TAÑAMOR *y* ACIBO shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.
>
> SO ORDERED.[18]

In finding petitioner guilty, the RTC weighed the contradicting versions of the recital of facts of the prosecution and the defense and found the former's version more credible.[19] The RTC gave credence to the consistent and straightforward narration of PO2 Buenaflor and PO1 Briones, who testified, and deemed them

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[17] *Id.* at 69.

[18] *Id.* at 76-77.

[19] *Id.* at 73.

trustworthy.[20] It held that petitioner was unable to overturn the general presumption of regularity of official duty in the arresting officers' favor. It also found that petitioner evidently acted in common concert with co-accused Piñero in the act of the illegal sale of *shabu*, by the former's act of receiving the buy-bust money pursuant to Piñero's instructions and that petitioner was rightly charged as a co-principal.[21]

The RTC also upheld the presumption of regularity in the performance of official duty of the arresting officers, citing petitioner's failure to adduce clear and convincing evidence to overturn the same. It found petitioner's arrest valid, as it was made pursuant to a buy-bust operation, and that in any case, petitioner was already estopped from challenging its validity by virtue of his failure to do so before he entered his plea during arraignment. The RTC further dismissed as irrelevant the pointed irregularity in the disposition and preservation of the subject drug in the case, holding instead that the officers complied with the law and the integrity of the drug was preserved.[22] It noted the fact that the qualitative examination conducted on petitioner's urine sample tested positive for Methamphetamine Hydrochloride although it added that the same neither constituted an element of the crime charged nor materially affected the same.[23] Finally, the RTC dismissed petitioner's defenses for being mere words and supported only by testimonies of two biased persons, who did not actually witness the arrest.[24]

Aggrieved, petitioner filed an appeal to the CA, mainly alleging that the RTC erred in not giving due weight to his defenses.[25]

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[20] *Id.* at 75-76.

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

[22] *Id.* at 74-75.

[23] *Id.* at 75.

[24] *Id.* at 76.

[25] *Id.* at 116.

Ruling of the CA

In the questioned CA Decision dated April 27, 2016, the CA was unpersuaded by petitioner's contentions and affirmed his conviction.[26] It found that the elements of the crime of illegal sale of drugs were sufficiently established. It also held that with respect to the inventory having been conducted in a place other than the site of arrest, it was nevertheless proper, given that Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165 allows for the inventory to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in cases of warrantless seizure.[27] It likewise added that such substantial compliance was recognized by this Court as sufficient, owing to varied field conditions.[28] It further dismissed petitioner's denial and allegations of frame-up based on his failure to offer supporting evidence, including the lack of witnesses, who could corroborate his story.[29]

Petitioner filed a Motion for Reconsideration[30] but the same was denied by the CA for lack of merit through its Resolution[31] dated September 30, 2016.

Hence, the instant Petition.

Issue

The sole issue for the Court's resolution is whether the lower courts erred in convicting petitioner for violating Section 5, Article II of RA 9165.

The Court's Ruling

The Petition is meritorious. The unjustified, let alone admitted departures from the chain of custody, particularly the undertaking

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[26] *Id.* at 121.

[27] *Id.* at 118.

[28] *Id.*, citing *People v. Lorena*, 654 Phil. 131 (2013).

[29] *Id.* at 119-120.

[30] *Id.* at 122-128.

[31] *Id.* at 142-143.

of the inventory elsewhere than in the place of arrest and the absence of the insulating witnesses at the time of seizure, lead the Court to no sounder conclusion than petitioner's acquittal.

In drug cases, the State bears the burden not only of proving the elements of the crime, but also its body or *corpus delicti*, which in these cases pertains to the dangerous drug itself.[32] In cases involving illegal drugs, buy-bust operation has been declared as a valid and effective procedure for apprehending drug peddlers and distributors[33] and a legally sanctioned means of trapping lawbreakers in felonious acts.[34] Nevertheless, precisely due to the peculiar nature of a buy-bust operation, the law concomitantly requires strict compliance with procedures laid down by it to ensure that all the rights of the accused are guaranteed and the credibility of the *corpus delicti* safeguarded, in sober recognition of the fact that the character of anti-narcotics operations and the decided ease with which illegal drugs may be planted open them to a great possibility of abuse.[35]

A long line of cases decided by the Court has demonstrated that the exacting procedures for observation during a buy-bust operation more often rise or fall on either the adherence to or non-compliance with the chain of custody rule. The chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure, to receipt in the forensic laboratory, to safekeeping, to presentation in court.[36] An unbroken chain of custody is necessary in order to establish before the court that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of

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[32] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

[33] *People v. Mantalaba*, 669 Phil. 461, 471 (2011); citation omitted.

[34] *People v. Chua Uy*, 384 Phil. 70, 85 (2000).

[35] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[36] *People v. Guzon, supra* at 451, citing *People v. Dumaplin*, 700 Phil. 737 (2012).

said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[37] This rule is imperative, under pain of rendering all seized evidence in the course of the operation incredible.

On this point, Section 21,[38] Article II of RA 9165, as amended by RA 10640,[39] provides for the procedure that police operatives are required to observe in order to assure the integrity of the confiscated drugs. The said provision requires that: (1) the seized items be inventoried and photographed immediately after

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[37] *Id.*, citing *People v. Remigio*, 700 Phil. 452 (2012).

[38] The said section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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 non-compliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items[.]

[39] 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'" (2014).

confiscation at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (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, and (c) a representative of the National Prosecution Service or the media; and (3) the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.

Further, Section 21 (a), Article II of the IRR of RA 9165 further specifies where the physical inventory and photographing of the seized items should be done and in the presence of whom, to wit:

> SEC. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (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[.][40]

Given the law, *i.e.*, under Section 21, Article II of RA 9165, as reiterated in Section 21 (a), Article II of the IRR, the decisive requirements that bear upon the present case are the immediacy of the physical inventory and photographing of the seized items, and the protective, insulating presence of the three required witnesses.

This Court finds that the arresting officers in this case failed to comply with these two requirements during the conduct of the buy-bust operation and the prosecution neglected to justify, let alone acknowledge these lapses, ultimately proving fatal to its case.

First, Section 21 and its IRR provide that the physical inventory and photographing of the seized items must be done: (1) immediately after seizure or confiscation; (2) in the presence of the following personalities: (a) the accused or his representative or counsel; (b) representative from the media or a representative from the National Prosecution Service; and (c) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and (3) at the place where the search warrant is served or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.[41]

As to the site of the inventory and photographing, this requirement is depicted in greater detail in the internal rules and guidelines of the Philippine National Police (PNP). Under the 1999 PNP Drug Enforcement Manual,[42] the strict procedure in the photographing and inventory of the seized items has been specified, to wit:

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[40] Emphasis supplied.

[41] See *People v. Tomas*, G.R. No. 241631, March 11, 2019.

[42] PNPM-D-O-3-1-99 [NG].

Anti-Drug Operational Procedures
Chapter V. Specific Rules

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation — in the conduct of buy-bust operation, the following are the procedures to be observed:

x x x x x x x x x

k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;

l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

m. The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;

n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.

In addition, in the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation (AIDSOTF-Manual), the handling, custody and disposition of the seized illegal drugs are also prescribed:

Section 2-6 Handling, Custody and Disposition of Drug and Non-Drug Evidence

2.33. During handling, custody and disposition of evidence, provisions of Section 21, RA 9165 and its IRR as amended by RA 10640 shall be strictly observed.

2.34. **Photographs of pieces of evidence must be taken immediately upon discovery of such, without moving or altering its original position, including the process of recording the inventory and the weighing of illegal drugs in the presence of required witnesses, as stipulated in Section 21, Article II, RA 9165, as amended by RA 10640**.

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a. Drug Evidence

(1) Upon seizure or confiscation of illegal drugs or CPECs, laboratory equipment, apparatus and paraphernalia, the operating Unit's Seizing Officer/Inventory Officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:
(a) The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel;
(b) With an elected Public Official; and
(c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.

(2) For seized or recovered drugs covered by Search Warrants, the inventory must be conducted in the place where the Search Warrant was served.

(3) For warrantless seizures like buy-bust operations, inventory and taking of photographs should be done at the nearest Police Station or Office of the apprehending Officer or Team.[43]

The seeming contradiction of the third paragraph of 2.34, *i.e.*, that inventory and photographing after warrantless seizures are to be done at the nearest police station, with the general rule on "on-site" inventory and photographing, must be reconciled in that requirement of "on-site" inventory and photographing under Section 21 of RA 9165 and Section 21 (a) of its IRR, must be observed unless for reasons of practicality or exigency the nearest police station or the office of the apprehending team is the better option.

[43] Emphasis supplied.

Third paragraph of 2.34 must be construed bearing in mind the main subhead of 2.34 which requires that the evidence must be photographed and inventoried without being moved or altered from its original position. The level of specificity with which the AIDSOTF-Manual depicts how the inventory and photographing should be undertaken, *i.e.*, the inventory and photographs of the seized items to be made and taken where they are found is indicative of the legislative intent to ensure that as a general rule, physical inventory and photographing are done at the site of confiscation. Such a legally contemplated and intended requirement would be negated if, in the case of warrantless seizures, the exceptional allowance of inventory and photographing at the police station be made the general rule instead of the exception.

Thus, with the seemingly contradictory clause rightly reconciled, these PNP internal rules illustrate that the inventory and photographing of seized items are done at the very site of seizure, and only in the narrow instances where such is rendered impracticable, and with a satisfactory justification therefor, may the inventory and photographing be undertaken at the nearest police station or the office of the apprehending team.

Moreover, in the event of the prosecution's acknowledgment of the police officers' failure to comply with the general rule, the liberal application of the alternative place of inventory and photographing may only be triggered upon offer of sufficient justification. In other words, mere invocation of an inconvenience that rendered the inventory impracticable at the site of seizure does not translate to compliance with Section 21 and its IRR, especially if such invocation is not sufficiently explained in the records of the case and supported by credible evidence.

This Court has also already drawn the nuances in what "immediately" entails in the operative description "immediately after seizure and confiscation." In *People v. Adobar*,[44] the Court held in no uncertain terms:

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[44] G.R. No. 222559, June 6, 2018, 865 SCRA 220.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.[45]

Secondly, the prosecution's case must also fail on the ground that the required insulating witnesses were not present during the confiscation, but were merely "called in" at the station, both belatedly and after the process they were supposed to insulate.

Undoubtedly, the requirement of the presence of the mandatory two insulating witnesses in this case is inseparable from the requirement of physical inventory and photographing at the place of seizure. Stated differently, since the physical inventory and photographing of the seized items must, as a general rule, be done at the place of seizure, it follows that the two insulating witnesses whose presence are required during the inventory and photographing *must* also be in or within the area of the site of seizure.

Considering the notoriety of buy-bust operations as possible tools for extortion,[46] and the seeming habit of "calling in" witnesses,[47] the Court has already taken steps to untangle confusions on this point. In *People v. Castillo*,[48] the Court categorically clarified:

"The requirement of conducting inventory and taking of photographs immediately after seizure and confiscation necessarily means that the **required witnesses must also be present during the seizure**

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[45] *Id.* at 251; citation and underscoring omitted, emphasis supplied.

[46] *People v. Segundo*, 814 Phil. 697, 719 (2017); citation omitted.

[47] See *People v. Ordiz*, G.R. No. 206767, September 11, 2019; *People v. Narvas*, G.R. No. 241254, July 8, 2019; *People v. Dagdag*, G.R. No. 225503, June 26, 2019; *People v. Nieves*, G.R. No. 239787, June 19, 2019; *People v. Malana*, G.R. No. 233747, December 5, 2018; *People v. Musor*, G.R. No. 231843, November 7, 2018; and *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131.

[48] G.R. No. 238339, August 7, 2019.

and confiscation." The presence of third-party witnesses is not an empty formality in the conduct of buy-bust operations. It is not a mere rubberstamp to validate the actions taken and self-serving assurances proffered by law enforcement officers. Far from a passive gesture, the attendance of third-party witnesses ensures the identity, origin and integrity of the items seized.[49]

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory and serves a crucial purpose. In *People v. Tomawis*,[50] the Court explained the rationale behind the requirement of the insulating witnesses:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.
>
> 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 —

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[49] *Id.*; citation omitted, emphasis supplied.

[50] *Supra* note 47.

and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[51]

The presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the sachets of *shabu* protects the seizure and arrest from possibilities of switching, "planting" or contamination of the evidence, which compromise the integrity of the confiscated items. Failure to comply with this jeopardizes the trustworthiness of *corpus delicti*, breaks the chain of custody and, by result, puts the guilt of the accused in doubt.

This requirement on the presence of the insulating witnesses at the time of seizure can also be easily complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. In *People v. Umipang*,[52] the Court called out the police officers' failure to exert earnest efforts to obtain the insulating witnesses' presence, to wit:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering

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[51] *Id.* at 149-150; citations omitted, emphasis and underscoring in the original.

[52] 686 Phil. 1024 (2012).

that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.[53]

Here, the officers could have complied with the requirements of the law had they intended to, as they had days to secure the attendance of the required witnesses. Particularly, they even had the time to conduct both surveillances and a test-buy prior to the actual buy-bust. The fact that the apprehending team had days to plan and do surveillances renders the absence of the insulating witnesses at the place of operation inexcusable. That the prosecution failed to even acknowledge this lapse let alone justify it leaves excusing it unlikely.

Further, the prosecution may not hide behind the permissive tone of the saving clause of Section 21 and its IRR. As the Court explained in *People v. Reyes*:[54]

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. The failure to justify or explain underscored the doubt and suspicion about the

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[53] *Id.* at 1052-1053; citations omitted, italics in the original.

[54] 797 Phil. 671 (2016).

integrity of the evidence of the *corpus delicti*. With the chain of custody having been compromised, the accused deserves acquittal. x x x[55]

The seizure of the confiscated items, including the three sachets of *shabu* weighing 0.61 gram is therefore invalid and void. The prosecution has no more evidence on which to ground petitioner's conviction, and petitioner must be acquitted.

A final point, under the prevailing circumstances, the vigor of the campaign against illegal drugs is perhaps rivaled only by the number of allegations of illegal seizures and baseless arrests, with the situation reduced to a zero-sum game. At this point, perhaps the Court may well begin to take due notice of the fact that the idea of "substantial compliance" in drug enforcement may be a spectrum of degrees of conformities that have, in far too many instances, negated the general rule of compliance, so that in the end, for purposes of protecting the rights of the accused and the trustworthiness of the prosecution, no degree is "compliant enough" until it is only but *full* adherence to the letter and spirit of the law.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED.** The Decision dated April 27, 2016 of the Court of Appeals in CA-G.R. CEB CR-HC No. 02070 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Michael Tañamor *y* Acibo is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

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[55] *Id.* at 690; citations omitted.

THIRD DIVISION

[G.R. No. 228328. March 11, 2020]

AIRENE T. UNERA, JOAN P. BABAO, CHERRY F. VICENTE, LORIE A. VERDADERO, JENNILYN M. SALVADOR, ROSE ANNE N. MOLINA, JONALIE N. URAYAN, MANILYN L. DIMAILIG, MELANIE B. MENDOZA, IRENE C. MARCOS, GINA T. SINFOROSO, MARICEL A. MAGPANTAY, ROMA D. ASUNSION, RIZZALIE JOY A. VILLANUEVA, VICENTINA C. ROJO, LADY LYN H. CABRERA, DESIRY L. ROTAIRO, MICHELLE C. DAGANGON, LUISITO S. CAMPOS, SONNY T. RACHO, MARY GRACE Q. RACHO, KHAREN B. RED, NIÑA G. BASLAN, REAGAN R. ANDREO, JAY-AR DILAG, FLORANTE B. AGIDO, JR., RHINO DAVE B. PATRIMONIO, JACQUELYN V. DILAG, JASMIN P. MASBATE, CRISTY SUAREZ, JOYCEL CAPULONG, JERALDINE G. TUMALA, MARIEL P. VERGARA, ROSE ANN O. SALAMONDING, MANILYN N. FLORES, MICHELLE P. DUGAN, MARITA B. CERTEZ, JANETTE L. JUBILLO, JENNIE V. CONCEPTION, LEONCIA B. ANZALDO, CHARIZ AL.GUELAS, NOVA R. ABOGADO, SHIELA MAY N. OPEÑA, BHABY ANN N. ECALNE, JEAN E. HERMOSILLA, MARETIS F. BORDARAYS, ROSE SHARON MACHETE, CRESTEL E. CUSTODIO, ROSE ANN R. TIMBAL, LAGRIMAS M. LUSTRE, JULIE P. DELA CRUZ, MECHELLE P. VEGAS, KAREEN M. FABABEIR, REDIN D. BIEN, JENNYROSE L. CASNGAL, JENYLYN B. FULGENCIO, FERDINAND H. ESTENOR, IVY SALIBIO, BENJUN SALIBIO, JEOFFREY M. MASIPAG, REX C. MEJIA, LEA M. YADAO, EDUARDO P. BALIBAGOSO, AMELITA O. TIMTIM, RONALD M. YADAO, ROVY JUNE SADAM T. BARQUILLA, ANTHONY P. SILVA, ERWIN L.

NOVENCIDO, MELCHOR C. LUMBERS, JR., MARK EVAN Q. JIMENEZ, MICHAEL B. DE LEON, ALVIN DELA REMEDIO, ESTANESLAO B. BANDAY, LUISITO DICHOSO, NORM MAE B. PONCE, JEORGIE O. MALABAD, NELSON B. MARCELO, KIMBERLY C. OCA, ANTHONY A. VILLETA, MARIE JOY D. RASDAS, APRIL JOY N. ASUNCION, JOBELYN B. BO, MA. EULA P. DIZON, MERCY E.GODOY, MAE T. MAGSIPOC, MARIA SOCORRO F. LAYUSA, JENALYN M. COLANZA, ROSEVERGINE T. CABANTUGAN, JOAN FURA, ERWIN MERICO, MARY JANE G. JASERENO, SALVACION MILLENA MARBELLA, SALLY A. ZARA, EMELIA DACILLO BOLANIO, JHON PAUL D. BOLANIO, BYRON VILLANUEVA, RIZA M. CAMUNIAS, CARLOS ANTHONY SAGUN, CARLOS BULAN, JOBELLE G. JANABAN, JIMARIE R. ZOLETA, LENA P. VALENTIN, ROSAN A. ALEPOYO, JANICE D. BIOL, CRISTINE N. COMBO, ROLYN R. FELONIA, JONALYN A. TALISIC, ANNA RIZZA L. AYALA, NIÑA JASMINE T. APUNDAR, JOYLYN S. GEPANAGA, RECHELLE C. ROCAMORA, CHARISMA A. GARCIA, JENNIELYN S. MARTINEZ, ARNEL C. DE OCAMPO, FRANCIS REGONDOLA, MICHAEL GAYETA, MARY-ANNE S. DE GUZMAN, JEANNY F. FIGUEROA, BABILYN M. ORUGA, MAY M. VILLANUEVA, BETHZAIDA ARRIBAS, AMELITA PLATINO, GINA M. MANAIG, JOY A. MANATO, ROSEMARIE JOY A. ABADIA, MAILYN P. PANGAN, SUSANA S. ALCAZAR, EVANGELISTA CUPO, MARIBETH PERNIA, LIZA A. CAMRAL, SHELLY M. MATIENZO, CHRISTINA TIERRA, MARVIN A. TIERRA, ARLYN M. RODRIGUEZ, JANICE M. QUEJANO, MARIEBETH J. ULITA, MARY JOY N. CATANDUANES, CHERRY C. MARALET, KERVIN A. CABALLERO, MICHELLE A. SANCHEZ, MA. TERESA B. CONSTANTINO, SONNY C. DACULLO, EMMA G.

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ANN MAE RECTO, MARILOU A. MELICON, ANGELITA E. MILAN, ERLINDA M. LUMABAO, MAAN GRACE M. FUENTES, BENITO L. AGUILAR, RAYMUND V. BERNARTE, MARIFE MENDOZA, JHE ANN C. CARE, BLENDINE B. BUROG, FERDINAND C. MAMARIL, JEFFREY MANILLA, DARWIN CUBILIA, DIVINA GRACE SANCHEZ, REAGAN MANONGSONG, AIZA MELANIO, JANETH A. BUENAOBRA, GODIE B. AGARAO, MANILYN DE OCAMPO, ARNOLD R. LEGASPI, ALLAN T. HERNANDO, RONALD A. DIAZ, JANICE T. SANTOS, ROSE-ANN F. VIRAY, MARJORIE LUSTERIO, MANUELA R. ROTARIO, JAYSA M. BIASON, MARICAR F. ORDOÑEZ, CARINA A. MACANAEG, ODESSA J. DIAZ, SHARON B. ADORA, MARY ANN E. NORCA, CELIZA S. TOMAS, MA. VIRGINITA CARRIAGA, EDUARDO R. TESADO, CATHERINE FRIAL, JENILIN MIRANDA, JAMAICA MARTIN, JONALYN DELEN, DIVINA CAMILLE M. NAWA, MICHAEL BIAY, ROYLAN M. GARCIA, GLORY G. GRATEZA, SHERYL F. DEL MUNDO, ADONIS MARK, KYUSIN BONGCAYAO, MANILYN L. DIMAILIG, MC ROBIN A. DIONGLAY, JR M. MELANIO, EVELYN NITRO, BABY JANE OPRIDO, IVY VILLANUEVA, DIGI ANN ESPINOSA, JOI M. SAN JUAN, MARICEL Q. COLANGO, JENNIFER V. ALAMAG, EMELYNE JOY V. DEL MUNDO, ANGELICA E. LOPEZ, RAYMART ZAMORA, GERLIE ZAMORA, LIBIAN PRAGO, CHARLIE CRISTORIA, NETHEL ESTRELLA, JOVELYN R. RAMOS, EVELYN B. GARLET, LILIAN B. LANCARA, CRISTY A. PANGANIBAN, DEARLY B. NAVARRO, LORENZA B. MACALADLAD, MARICRIS MABINI, JAY-AR SUMULONG, RANDY N. ALAMAG, ARLENE V. CABALIDA, JANNY ROSE S. DEVILLA, AILENE A. DE GALA, ANNA KAREN E. TAMPOCO, MARISSA TINDOC, MARILOU ATENDIDO,

KATHERINE M. GACULA, RONA JEAN MAYUGA, GIRLIE C. MAGDAHONG, GLENDA G. MANONGSONG, NIKKI ANN C. BUDEJAS, LUCYMER G. LOPEZ, JONELYN A. CANDELARIA, GERMONO B. ARIS, JAY-R F. FERNANDEZ, MILYN G. SANGUTAN, MA. JESSILYN A. ELAG, RONALYN Q. MENDOZA, DIOSA R. GALLARDO, MARY GRACE L. LAVARRO, MARY JANE B. LACAR, MARIA BELL S. GENERALE, MILDRED B. PLANDEZ, NEMFA M. ANCHETA, JOSEFINE G. BALAYAN, ALELI D. CAÑETE, ZANDRA D. CABRERA, APPLE F. GAPAS, JANICE B. BANADERA, JOANA F. GAURINO, LELAINE S. OAMIL, MAECHELLE DIANE MORALES, MYLENE L. NATIVIDAD, ANGELA S. ARIOLA, ARLENE S. MAYUGA, SHIELLA B. JARO, ABIGAIL DELA CRUZ, MA. GLORIA T. CABALLERO, YOLANDA R. BERBOSIDAD, MARY JOY V. SAURO, CAROL M. BUISIUNG, AILYN D. FERNANDEZ, MERARIE V. OMPOC, MYLENE N. GABALENIO, JEYSSELL P. OABEL, JOANA C. MIRALLES, MARY JEAN L. LAWAGAN, JOVILYN C. SANTOS, JUNADEL C. BORIBOR, DELMA P. CAÑETE, JINKY DIVINASFLORES ETANG, ROCHELLE VARIAS, EVA ESTABILLO, CRISTEL A. URGELLES, HELEN F. BORJA, JOAN KATHLINE C. OCTAVIO, BABYLENE M. SANCHEZ, MARIBEL LUGAMI, LANIE M. ESTRICOMEN, ROSEMARIE G. VILLAS, MICHELLE B. MAGTAAS, MARICEL H. BALDOZA, ROCHELLE R. MARCELLANA, MERCY D. DIA, MYLENE A. ORONAN, PHILIP O. ORTEZ, KHAREN P. ITA-AS, LIEZEL G. DALULAYTA, MARGIE P. RESPUESTO, ALDEN Y. VENTURA, RUBIE P. ARIEZA, DIANA PEARL A. DELMO, JENNIFER O. NIEVES, SHERYL C. RABY, RENNIEL A. SANTOS, GERRY C. VESLENIO, ROMNICK M. VILLAFLORES, RHEA S. SUMAGUE, ROSEBETH CASTORA, LERMA S. GALIT, represented by

JEOFFREY M. MASIPAG and RONALD M. YADAO, *petitioners, vs.* **SHIN HEUNG ELECTRODIGITAL, INC., / MR. SEUNG RAE CHO / JENNIFER VILLAMAYOR,** *respondents.*

APPERANCES OF COUNSEL

Banzuela & Associates for petitioners.
Manicad Ong & Fallar for respondents.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONS UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN.—** Generally, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts.

2. **ID.; ID.; ID.; ID.; D.; EXCEPTIONS.—** Notably, however, the foregoing general rule admits of several exceptions such as: (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 Court of Appeals' 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 Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

3. ID.; ID.; ID.; ID.; THE DISMISSAL OF EMPLOYEES INVOLVES FACTUAL ISSUES THAT MAY BE REVIEWED WHEN THE FINDINGS THEREON ARE CONFLICTING.— Here, the determination of the validity of the dismissal of the employees necessitates a review of the surrounding circumstances of the case, particularly the authorized cause actually employed by Shin Heung, the allegation of substantial losses and authenticity of closure of Shin Heung's business. Given the conflicting findings of the Court of Appeals and the Labor Arbiter, on one hand, and the NLRC, on the other, a review of the factual issues is proper.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; CLOSURE OF BUSINESS; BOTH ARE SEPARATE AND INDEPENDENT AUTHORIZED CAUSES FOR TERMINATION.— While retrenchment and closure of business establishment or undertaking are often used interchangeably, as in this case, they are actually separate and independent authorized causes for termination of employment as provided for in Article 298 of the Labor Code of the Philippines. . . .

5. ID.; ID.; ID.; ID.; RETRENCHMENT, DEFINITION OF.— Retrenchment or lay-off is the termination of employment initiated by the employer, through no fault of the employees and without prejudice to the latter, during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. It is an exercise of management prerogative which the Court upholds if compliant with certain substantive and procedural requirements. . . .

6. ID.; ID.; ID.; CLOSURE OR CESSATION OF BUSINESS, DISCUSSED.— [C]losure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer. To be a valid ground for termination, the following must be present:

1. There must be a decision to close or cease operation of the enterprise by the management; 2.The decision was made in good faith; and 3. There is no other option available to the employer except to close or cease operations.

The closure or cessation of operations of establishment or undertaking, whether partial or total, may either be due to serious business losses or financial reverses or any other underlying reason or motivation. Under the first kind, the employer must sufficiently and convincingly prove its allegation of substantial losses, while under the second kind, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations was *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service.

7. ID.; ID.; ID.; ID.; THE RESUMPTION OF A PART OF A COMPANY'S PREVIOUS OPERATIONS DOES NOT NEGATE GOOD FAITH IN ITS DECISION TO CLOSE SHOP.— [T]he Court finds the totality of the circumstances surrounding Shin Heung's decision to cease operations as refutation of the claim of bad faith. What the Court sees is a company struggling to stay afloat or trying to get by. There is no indication to defraud its employees of any of their deserving rights. In fact, the company took a loan to pay its employees separation pay despite the rule that dispenses with such payment when the cause for closure of business is due to serious losses. Moreover, there was no union busting or any union activity that the company sought to prevent.

. . .

Similarly, Shin Heung had already sufficiently proven substantial business losses on its part thereby necessitating the closure of the company. Its decision to continue a part of its previous operations did not negate good faith in its decision to close shop, but is seen as an exercise of its right to continue its business. As long as no arbitrary or malicious action on the part of the employer is shown, the wisdom of a business judgment to implement a cost saving device is beyond the court's determination.

D E C I S I O N

ZALAMEDA, *J.*:

A company's decision to resume part of its previous operation does not automatically negate good faith in its prior action to close shop. The circumstances leading to the company's closure should properly be evaluated to determine whether it was done in good faith or otherwise resulting in the circumvention of the rights of its workers.

The Case

In this petition for review on *certiorari*, petitioners assail the Decision dated 23 May 2016[1] and Resolution dated 4 November 2016[2] of the Court of Appeals (CA), which reversed the ruling of the National Labor Relations Commission (NLRC) and held that petitioners were not illegally dismissed.

Antecedents

Respondent Shin Heung Electrodigital, Inc. (Shin Heung) is a company primarily engaged in the manufacture of a computer part called "deck" exclusively for Smart Electronics Manufacturing Service Philippines, Inc. (SEPHIL). Due to dwindling sales and decreasing use of their manufactured product, Shin Heung was initially forced to reduce its labor force from 2000 to 991 employees.[3] Eventually, Shin Heung decided to close shop after SEPHIL formally terminated its contract with the company.[4] It, thus, issued a Memorandum dated 18 April 2013, informing its employees of the company's impending closure on 31 July 2013, to wit:

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[1] *Rollo*, pp. 1717-1756 (Vol. III); penned by CA Associate Justice Renato C. Francisco, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser.

[2] *Id.* at 1755-1756 (Vol. III).

[3] *Id.* at 1730 (Vol. III).

[4] *Id.* at 75 (Vol. I).

Much to our regret, we are informing all workers and staff that our company, Shin Heung Electro Digital, Inc., will cease to operate starting at the close of business hours on July 31, 2013. Retrenchment of workers shall however start after 30-days from notice due to lack of work and so that the company may be able to save from further losses. Workers who last joined the company shall be the first to go (LAST IN, FIRST OUT). However, workers may volunteer to be retrenched ahead. Those who belong to a section that was closed for lack of work maybe be (sic) retrenched earlier regardless of their date of joining the company.

Regular and probationary, workers who has (sic) rendered service of more than six (6) months shall be paid of separation pay in accordance with law, that' of fifteen (15) days basic salary for every year of service, a fraction of six (6) months or more shall be considered one year for the purpose of computation of separation pay, in no case will a worker receive separation pay of less than one month salary, as provided for under Article 283 of the Labor Code of the Philippines. Workers will however be required to process their individual clearance and to execute and sign the required documents as a condition for the payment of separation. NO DOCUMENT, NO PAY.

The decision to close is due to the sad fact that our only client, SEPHIL has officially informed our management that they can no longer maintain orders with our company and with Shin Yae at the same time. Shin Yae will remain as the vendor for SEPHIL based on the decision of the parties concerned.

The decision of SEPHIL may have been prompted by the continuous decrease in the market demand and due to the very stiff business competition in the electronic industry.

As it maybe (sic) already known to everybody, our company has been suffering from continuous business losses since business orders from our only client has steadily decreased since last year. The management has resorted to borrowing from bank to continue its business operation, hoping for business improvement but unfortunately, the business situation even worsened. As a result, our company is now heavily indebted and the stockholders was (sic) left with no other choice but to decide to close business operation and to sell the company factory and equipment to pay our bank loans and obligations.

Everybody is reminded to observe the company rules and regulation during this (sic) last few days of business operation. Every infraction

of the company rules shall be penalized in accordance with the rules, including that of termination from work. Workers shall be updated of any development on the matter. Further inquiry may be addressed to the management during office hours.

THE MANAGEMENT[5]

On the same day, Shin Heung also informed the Department of Labor and Employment (DOLE) of its intent to completely close operations, *viz*:

This is to report that our company, Shin Heung Electro Digital, Inc., with office and plant address at CPIP, Batino, Calamba City, Laguna will totally close operation at the end of business hours on July 31, 2013.

The owners, stockholders and members of the Board of Directors of the company have decided to permanently close the operation of the company due to continuous business losses and after the company's one and only client has decided to pull out and withdraw orders for alleged purely business reason. Hence, without any client to serve and being unable to find a new business, the management was left with no other alternative but to close.

A total number of 991 workers will be affected by the closure. They shall be paid of separation pay and benefits in accordance with the Labor Law.

In the meantime, while there are remaining few client orders left to be served and as requested by our client and in order to give way for the transition, retrenchment shall be implemented gradually beginning 30 days from notice to workers and DOLE until remaining orders are fully served which is estimated to last for not more than three (3) months from today. Retrenchment shall basically be on a Last-In, First-Out basis although workers who are assigned to a section or department that will be closed immediately for lack of work to do may have to be retrenched ahead regardless of their length of stay in the company.

Respectfully submitted,

THE MANAGEMENT[6]

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[5] *Id.* at 1336-1337 (Vol. III).

[6] *Id.* at 74 (Vol. I).

According to Shing Heung, several workers immediately inquired with the personnel department whether they may be allowed to resign for early payment of separation pay. Having received an affirmative response to their query, the workers submitted their handwritten letters of resignation. Those who did not resign were served with their respective notices of termination at least 30 days prior to the scheduled company closure.[7]

A number of Shin Heung's properties, including buildings, machineries and equipment, were later sold. The company also took a loan to pay all its workers separation pay at the rate of 15 days per year of service for a grand total of ₱28,973,250.00. Those who volunteered to resign were paid first, while the workers who did not resign and opted to work until 31 July 2013 were paid on their last day of work or some days or weeks thereafter.[8]

Before its scheduled closure, Shin Heung sent another letter dated 29 July 2013 to the DOLE to recall its earlier notice of closure. The letter reads as follows:

> We are writing regarding our previous letter dated April 18, 2013 that was received by your office on April 18, 2013.
>
> In our said letter we informed your good office of the planned total closure of the our (sic) company Shin Heung Electro-Digital Inc. effective at the end of business hours on July 31, 2013 due to continuous business losses and for the lack of customer who incidentally, pulled out all of its job orders as shown by the termination agreement between the parties, a copy of which is hereto attached as Annex "A".
>
> Starting on or said time, our company immediately started to offer the company equipment and building for sale in order to pay the separation pay of the workers and to pay its other obligations. The lack of any interested person, so far, has prompted us to look for possible customers with substantial orders or to operate on a joint

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[7] *Id.* at 1735 (Vol. III).

[8] *Id.*

venture with possible investors. We found no interested buyer nor investor as of this date but luckily, we found new clients within the Philippines and from other parts of the world such as Canon, Brother, Panasonic, etc. Thus, our company stockholders decided to infuse more capital, sufficient to start a full blast production operation and specially that we still have our manpower, machineries and building ready and available for operation.

In this regard, we are REACALLING (sic) our said letter dated April 18, 2013 addressed to your Honor, with the ardent request to DISREGARD the said notice and to allow us to continue to operator (sic) under the same DOLE registration, license and permit.

Rest assured that we are faithfully complying with the law on every aspect of our business operation as we try our very best to provide work to Filipino workers and contribute in the country's economic growth under the present administration.[9]

Shin Heung, however, asserted that the expected infusion of capital did not follow through. Moreover, the customers it found had limited product orders, which were manufactured using only the press, mold and injection sections of the company.[10] Thus, the company resumed operations over a small portion of the business to alleviate losses and to help maintain company equipment and machineries until the company assets are finally sold. It also leased 80% of its company premises to THN Autoparts Philippines, Inc. for the period 01 September 2014 until 31 August 2017.[11]

Claiming the closure as a ruse to circumvent their tenurial rights, petitioners, who are Shin Heung's previous employees, filed separate complaints for illegal closure of establishment with claims for reinstatement, backwages, additional separation pay, damages and attorney's fees before the Labor Arbiter. To their mind, Shing Heung was in evident bad faith when it resumed business operations after their dismissals.[12]

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[9] *Id.* at 77 (Vol. I).

[10] *Id.* at 1486 (Vol. III).

[11] *Id.* at 1485, 1736 (Vol. III).

[12] *Id.* at 1733-1734 (Vol. III).

Ruling of the Labor Arbiter

On 11 September 2014, the Labor Arbiter rendered a decision confirming the validity of petitioners' dismissal due to the authorized cause of closure of business, excepting three (3) complainants, to wit:

WHEREFORE, premises considered, the respondents are hereby ordered jointly and severally to pay Jervin Pasacsac, Edna Mavida and Girlie Zamora the aggregate amount of ₱70,679.70 representing full backwages reckoned from respective dates of dismissal up to 31 July 2013 computed as follows:

JERVIN PASACSAC	
From 4/22/13 to 7/31/13	
315 x 26 x 3.30	₱27,027.00
EDNA MARVIDA	
From 4/27/13 to 7/31/13	
315 x 26 x 3.13	₱25,634.70
GIRLIE ZAMORA	
From 5/25/13 to 7/31/13	
315 x 26 x 2.2	₱18,018.00
TOTAL	**₱70,679.70**

Causes of action of the following complainants who failed to file position paper are ordered dismissed without prejudice. Those are:

x x x x x x x x x

Causes of action of the following complainants who voluntarily executed letters of resignation are dismissed for lack of merit, to wit:

x x x x x x x x x

Causes of action of the following complainants are hereby dismissed on ground (sic) they were lawfully dismissed for the authorized cause of closure of establishment. To wit:

x x x x x x x x x

All other causes of actions and claims are dismissed for lack of basis.

SO ORDERED.[13]

The complaints of those who did not execute a special power of attorney designating a representative for the filing of their position papers were dismissed for failure to prosecute their cause of action. Meanwhile, those who executed letters of resignation were deemed to have done so voluntarily. Anent the remaining complaints, the Labor Arbiter determined closure of business rather than retrenchment as the proper ground relied upon in the termination of their employment. Accordingly, Shin Heung was found to have followed all the requirements for a valid cessation of business thereby making the dismissal of its employees valid. For some reason, however, the Labor Arbiter ruled that Shin Heung failed to properly refute the termination complaints of Jervin Pasacsac, Edna Marvida and Girlie Zamora. Hence, they were deemed illegally dismissed and awarded backwages from the date of their termination until the scheduled closure of Shin Heung's business.[14]

Ruling of the NLRC

On appeal, the NLRC reversed[15] the ruling of the Labor Arbiter and declared petitioners' dismissal as illegal, *viz*:

WHEREFORE, premises considered, the appeal filed by the complainants is GRANTED.

The Decision of the Labor Arbiter in so far as those complainants under the assistance of Atty. Banzuela is concerned is hereby REVERSED and SET ASIDE. Respondent Shin Heung Electro-Digital, Inc. is ORDERED to REINSTATE and pay said complainants their BACKWAGES computed from 31 July 2013 until the finality of this Decision. The separation pay initially received by the complainants shall be deducted from the backwages due them.

The cause of action of those complainants who failed to submit their position paper and failed to sign in the verification/certification

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[13] *Id.* at 842-848 (Vol. II).

[14] *Id.* at 835, 839-841 (Vol. II).

[15] Decision dated 31 March 2015, *Id.* at 919-935 (Vol. II).

for forum shopping in the position papers filed before the Labor Arbiter is hereby DISMISSED without prejudice.

The decision of the Labor Arbiter in so far as complainants JERVIN PASACSAC, EDNA MARVIDA, and GIRLIE ZAMORA is hereby SUSTAINED.

The Decision of the Labor Arbiter in so far as those complainants who failed to file an appeal is deemed final.

SO ORDERED.[16]

Using retrenchment as basis for the dismissal of petitioners, the NLRC ruled that the evidence on record were insufficient to sustain its claim of continuous losses. It gave no credence to the income tax returns and audited financial statements submitted by Shin Heung. It also noted the resumption of business by the company. Hence, the NLRC deemed Shin Heung's act of dismissing its employees by retrenchment as lacking in merit. Likewise, those who submitted letters of resignation cannot be said to have done so voluntarily and were also ordered reinstated.[17]

Ruling of the Court of Appeals

The Court of Appeals, in its Decision promulgated on 23 May 2016, ruled in favor of respondents and reinstated the Labor Arbiter's decision, to wit:

WHEREFORE, premises considered, the petition is hereby **GRANTED.** The assailed 31 March 2015 Decision and 27 July 2015 Resolution of the National Labor Relations Commission are **SET ASIDE.** The 11 September 2014 Decision of the Labor Arbiter is **REINSTATED.**

SO ORDERED.[18]

The appellate court found the NLRC to have acted with grave abuse of discretion when it declared as illegal the dismissal of

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[16] *Id.* at 934-935 (Vol. II).

[17] *Supra* at note 15.

[18] *Id.* at 1747 (Vol. III).

petitioners. Shin Heung's decision to close its business was not tainted with bad faith considering the termination of contract with its sole client, the heavy losses it incurred as evidenced by audited financial statements, and the lack of any labor-related union activities that may precipitate a fabricated closure of the company.[19] In view of the valid cessation of Shin Heung's business, petitioners were declared lawfully dismissed.

Petitioners moved to reconsider the decision but the Court of Appeals denied the same through the assailed Resolution dated 4 November 2016.

Issues

In this appeal, petitioners raise as sole ground the validity of Shin Heung's closure, to wit:

THE HON. COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT RESPONDENT COMPANY VALIDLY CLOSED DESPITE THERE (SIC) IS ABSENCE OF CLOSURE, AND THE PETITIONERS WERE VALIDLY DISMISSED, AND ARE NOT ENTITLED TO THE PRAYED RELIEFS[20]

Petitioners assert the nullity of their dismissal by virtue of Shin Heung's alleged scheme to retrench workers or reduce manpower without observing the requirements of a valid retrenchment. According to petitioners, some of them were induced to resign from their employment on the pretext of Shin Heung's closure. The others were later laid-off for the same reason. Yet, the company continued to operate disproving its claim of having substantial losses, which supposedly forced it to close the business. These acts, therefore, show bad faith on the part of Shin Heung, which should consequently be ordered to reinstate petitioners. Since the present case falls under the exceptions, a factual review of the case may be made.[21]

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[19] *Id.* at 1742-1747 (Vol. III).

[20] *Id.* at 1852 (Vol. III).

[21] *Id.* at 25-36 (Vol. I).

Respondents counter that the present case should be dismissed outright for raising purely questions of fact. They were able to sufficiently prove the company's substantial losses, which prompted the closure of the business. Again, the closure was a valid business judgment and management prerogative. They also followed the proper procedure for the closure of business. Forcing respondents to employ petitioners would be oppressive or akin to involuntary servitude. Hence, petitioners' claim for illegal dismissal should be denied.[22]

Ruling of the Court

The petition has no merit.

The relevant issues of the case necessitate a factual review, which the Court undertakes under the recognized exceptions

Generally, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts. In *Bank of the Philippine Islands v. Mendoza*,[23] We differentiated a "question of law" from a "question of fact," to wit:

> x x x "there is a 'question of law' when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a 'question of fact' when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of 'law' or 'fact' is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact." Where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct

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[22] *Id.* at 1804-1826; 1871-1899 (Vol. III).

[23] 807 Phil. 640-653 (2017); G.R. No. 198799, 20 March 2017, 821 SCRA 41, 48.

is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.[24]

Notably, however, the foregoing general rule admits of several exceptions such as: (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 Court of Appeals' 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 Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[25]

Here, the determination of the validity of the dismissal of the employees necessitates a review of the surrounding circumstances of the case, particularly the authorized cause actually employed by Shin Heung, the allegation of substantial losses and authenticity of closure of Shin Heung's business. Given the conflicting findings of the Court of Appeals and the Labor Arbiter, on one hand, and the NLRC, on the other, a review of the factual issues is proper.

Closure or cessation of business was the cause of dismissal of Shin Heung's employees

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[24] *Id.*

[25] *Heirs of Feraren v. Court of Appeals*, 674 Phil. 358-370 (2011); G.R. No. 159328, 5 October 2011, 658 SCRA 569, 574.

While retrenchment and closure of business establishment or undertaking are often used interchangeably, as in this case, they are actually separate and independent authorized causes for termination of employment as provided for in Article 298 of the Labor Code of the Philippines, *viz:*

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 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.[26] (Emphasis supplied)

Retrenchment or lay-off is the termination of employment initiated by the employer, through no fault of the employees and without prejudice to the latter, during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation.[27] It is an exercise of management prerogative

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[26] Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), 21 July 2015.

[27] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union-Super*, 585 Phil. 88-106 (2008); G.R. No. 166760, 22 August 2008, 563 SCRA 93, 103.

which the Court upholds if compliant with certain substantive and procedural requirements, namely:

1. That retrenchment is necessary to prevent losses and it is proven, by sufficient and convincing evidence such as the employer's financial statements audited by an independent and credible external auditor, that such losses are substantial and not merely flimsy and actual or reasonably imminent; and that retrenchment is the only effective measure to prevent such imminent losses;

2. That written notice is served on to the employees and the DOLE at least one (1) month prior to the intended date of retrenchment; and

3. That the retrenched employees receive separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.[28]

Meanwhile, closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer.[29] To be a valid ground for termination, the following must be present:

1. There must be a decision to close or cease operation of the enterprise by the management;
2. The decision was made in good faith; and
3. There is no other option available to the employer except to close or cease operations.[30]

The closure or cessation of operations of establishment or undertaking, whether partial or total, may either be due to serious business losses or financial reverses or any other underlying reason or motivation. Under the first kind, the employer must

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[28] *Id.*

[29] *Id.*

[30] Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as Amended, DOLE Department Order No. 147-15, 7 September 2015.

sufficiently and convincingly prove its allegation of substantial losses, while under the second kind, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations was *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.[31]

A careful review of the records show that Shin Heung's intention was to totally close the business. Notwithstanding its use of the word "retrenchment" in its communications to the DOLE and to its employees, Shin Heung consistently informed its stakeholders of the complete cessation of operations by the close of business hours on 31 July 2013. In fact, all of Shin Heung's employees, including its president, were dismissed by 31 July 2013. Hence, the Labor Arbiter and the Court of Appeals did not err in identifying the authorized cause of termination in this case as closure or cessation of business. After all, Shin Heung's decision to operate a smaller part of its business later on did not alter its election of closure of business as the proper authorized cause for the dismissal of its employees. At the very least, the decision to continue a part of its operations will be factored in the determination of whether the closure or cessation of Shin Heung's business was *bona fide* or done in good faith.

The decision of Shin Heung to close its business or cease operations was done in good faith

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[31] *Industrial Timber Corp. v. Ababon,* 515 Phil. 805-823 (2006); G.R. Nos. 164518 & 164965, 25 January 2006, 480 SCRA 171, 183.

According to petitioners, the supposed closure of Shin Heung's business was a pretext for the company to merely reduce its manpower without considering the employees' tenurial rights. As found by the NLRC, Shin Heung failed to prove its claim of substantial losses sufficient to cause the closure of its business. In fact, it subsequently resumed operations but refused to rehire petitioners. Since the closure of Shin Heung was done in bad faith, petitioners are therefore entitled to reinstatement and other equitable reliefs.

We do not agree.

In the present case, there is no indication that Shin Heung was impelled by any unlawful or dishonest motive aimed to circumvent the rights of its workers. To recall, Shin Heung's sole client for its manufactured products terminated its agreement with the company. Prior to this, the company had already reduced its manpower from 2000 to 991 due to declining sales. The substantial losses suffered by the company are also supported by audited financial statements covering the years 2010 to 2013, as well as findings of an independent auditor.[32] These documents were appropriately given evidentiary weight in accordance with the Court's pronouncement in *Asian Alcohol Corp. v. National Labor Relations Commission*,[33] *viz:*

> The condition of business losses is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. It is our ruling that financial statements must be prepared and signed by independent auditors. Unless duly audited, they can be assailed as self-serving documents. But it is not enough that only the financial statements for the year during which retrenchment was undertaken, are presented in evidence. For it may happen that while the company has indeed been losing, its losses may be on a downward trend, indicating that business is picking up and retrenchment, being a drastic move, should no longer be resorted to. Thus, the failure of the employer to show its income or loss for the immediately preceding year or to prove that it expected

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[32] *Rollo,* pp. 1234-1252 (Vol. III).

[33] 364 Phil. 912-934 (1999); G.R. No. 131108, 25 March 1999, 305 SCRA 416, 430.

no abatement of such losses in the coming years, may bespeak the weakness of its cause. It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future.[34]

With the declining demand for its manufactured product and the pull-out of its sole client, Shin Heung was left with no other option but to close shop. Its decision to do so was clearly communicated to stakeholders months before the target date. Accordingly, the company sold its equipment and other assets.[35]

It, however, found it difficult to find a buyer for its real estate prompting it to lease a large part of the premises to generate more income.[36]

In the interim of finding a solution to their financial woes, Shin Heung was able to find a few customers who were willing to do business with them. The customers, however, only have limited orders, which were manufactured using the press, injection and mold sections of the company. The assembly section, which formed more or less 90% of the its previous operation, remained non-functional. The decision to push through with the minimal orders were also a result of wanting to keep the company's unsold equipment in good running condition thereby commanding a good resale price.

From the foregoing, the Court finds the totality of the circumstances surrounding Shin Heung's decision to cease operations as refutation of the claim of bad faith. What the Court sees is a company struggling to stay afloat or trying to get by. There is no indication to defraud its employees of any of their deserving rights. In fact, the company took a loan to pay its employees separation pay despite the rule that dispenses with such payment when the cause for closure of business is due to serious losses. Moreover, there was no union busting or any union activity that the company sought to prevent.

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[34] *Id.*

[35] *Rollo,* pp. 1536-1563 (Vol. III).

[36] *Id.* at 1529-1532 (Vol. III).

To be clear, the resumption of Shin Heung's operations was limited to the press, injection and mold section of the company. It rehired its previous employees who were working in the said sections based on their availability to immediately return to work. Moreover, the re-hired workers were given the status of regular employees immediately upon their first day of work on 19 August 2013. Unfortunately, Shin Heung cannot rehire all of its workers, especially those who worked in the now defunct assembly section.

In *Beralde v. Lapanday Agricultural and Development Corp.*,[37] the Court did not accord bad faith on the subsequent acts of the employer to re-hire its retrenched workers or to hire new employees since the employer had already sufficiently proven economic or business losses, to wit:

> In exercising its right retrench employees, the firm may choose to close all, or a part of, its business to avoid further losses or mitigate expenses. In *Caffco International Limited v. Office of the Minister-Ministry of Labor and Employment,* the Court has aptly observed that –
>
> > Business enterprises today are faced with the pressures of economic recession, stiff competition, and labor unrest. Thus, businessmen are always pressured to adopt certain changes and programs in order to enhance their profits and protect their investments. Such changes may take various forms. Management may even choose to close a branch, a department, a plant, or a shop.
> >
> > In the same manner, when Lapanday continued its business operation and eventually hired some of its retrenched employees and new employees, it was merely exercising its right to continue its business. The fact that Lapanday chose to continue its business does not automatically make the retrenchment illegal. We reiterate that in retrenchment, the goal is to prevent impending losses or further business reversals — it therefore does not require that there is an actual closure of the business. Thus, when the employer satisfactorily proved economic or business losses with sufficient

[37] 761 Phil. 476-495 (2015); G.R. Nos. 205685-86, 22 June 2015, 760 SCRA 158, 177.

> supporting evidence and have complied with the requirements mandated under the law to justify retrenchment, as in this case, it cannot be said that the subsequent acts of the employer to re-hire the retrenched employees or to hire new employees constitute bad faith. It could have been different if from the beginning the retrenchment was illegal and the employer subsequently hired new employees or rehired some of the previously dismissed employees because that would have constituted bad faith. Consequently, when Lapanday continued its operation, it was merely exercising its prerogative to streamline its operations, and to re-hire or hire only those who are qualified to replace the services rendered by the retrenched employees in order to effect more economic and efficient methods of production and to forestall business losses. The rehiring or reemployment of retrenched employees does not necessarily negate the presence or imminence of losses which prompted Lapanday to retrench.

Similarly, Shin Heung had already sufficiently proven substantial business losses on its part thereby necessitating the closure of the company. Its decision to continue a part of its previous operations did not negate good faith in its decision to close shop, but is seen as an exercise of its right to continue its business. As long as no arbitrary or malicious action on the part of the employer is shown, the wisdom of a business judgment to implement a cost saving device is beyond the court's determination. After all, the free will of management to conduct its own business affairs to achieve its purpose cannot be denied.[38]

WHEREFORE, the Petition is hereby **DENIED.** Accordingly, the Decision dated 23 May 2016 and Resolution dated 04 November 2016 promulgated by the Court of Appeals in CA-G.R. SP No. 142008 are **AFFIRMED**.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Carandang,* and *Gaerlan,*[*] *JJ.,* concur.

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[38] *Pantoja v. SCA Hygiene Products Corporation,* 633 Phil. 235-243 (2010); G.R. No. 163554, 23 April 2010.

[*] Reorganization of the Three Divisions of the Court and Designation of the Chairpersons and Members thereof per Special Order No. 2762 dated 10 January 2020.

FIRST DIVISION

[G.R. No. 235711. March 11, 2020]

TERESITA E. PASCUAL, widow of the late ROMULO PASCUAL, who was the heir of the late CATALINA DELA CRUZ and attorney-in-fact of her children and for her own behalf, *petitioner, vs.* **ENCARNACION PANGYARIHAN-ANG, SPOUSES EMELITA ANG-GAN and VICENTE GAN, SPOUSES NILDA ANG-ROMAN and ROBERTO ROMAN, SPOUSES ROSITA ANG-ESTRELLA and LUNAVER ESTRELLA, ERNEST ANG, ANTONIO ANG, SPOUSES RUBY ANG-TAN and JULIO TAN, SPOUSES MA. VICTORIA ANG-SAN PEDRO and AMADO SAN PEDRO, and DANILO ANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 IS LIMITED TO REVIEWING ERRORS OF LAW THAT MAY HAVE BEEN COMMITTED BY THE LOWER COURTS; EXCEPTIONS THERETO, NOT PRESENT IN THIS CASE.— It is a settled rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts. As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts. To do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law. x x x The rule admits of exceptions, which includes, but not limited to: (1) where the conclusion is a finding grounded entirely on speculation, surmise, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record. Here, the issue is essentially factual in nature, the determination of which is best

left to the courts below, especially the trial court. None of the exceptions are present.

2. CIVIL LAW; CONTRACTS; INTERPRETATION OF; THE EVIDENCE SHOWS THAT THE INTENTION OF THE PARTIES ACCORDING TO THE SUBJECT CONTRACT IS THAT PETITIONER SHOULD SECURE FIRST THE TITLES OF THE PROPERTIES IN RESPONDENTS' NAMES BEFORE THEY PAY THE REMAINING BALANCE OF THE PURCHASE PRICE.— As aptly ruled by the RTC, while the provision in paragraph 5 of the "*Pagpapatunay at Pananagutan*" is ambiguous, as it can be interpreted in two ways, that is, the titles mentioned in the said provision is either in the name of Romulo Pascual and/or plaintiff, or in defendants' names, the evidence on records would show that the intention of the parties in the said paragraph 5 is that petitioner should secure first the titles of the subject properties in respondents' names before they pay the remaining balance of the purchase price of the subject properties. It should be recalled that petitioner testified that respondents paid ₱50,000.00 as downpayment for the three lots, and respondents made several payments thereafter on installment basis. It was only after petitioner secured the OCT of the subject first lot under respondents' name that respondents paid her its full purchase price. Thus, it is clear that paragraph 5 of the "*Pagpapatunay at Pananagutan*" should be interpreted according to what transpired on the payment and registration of the first lot.

3. ID.; ID.; ID.; NOT BEING THE INJURED PARTY, PETITIONER IS NOT ENTITLED TO RESCIND THE CONTRACT; HAVING FAILED TO COMPLY WITH HER OBLIGATION IN THE CONTRACT, PETITIONER IS NOT ALSO ENTITLED TO THE COMPENSATION FOR THE USE OF THE SUBJECT LOTS.— [R]espondents' non-payment of the balance of the purchase price is due to the failure of petitioner to comply with their obligation in the contract. Thus, petitioner is not entitled to rescind the contract as she is not the injured party. Finally, petitioner is not entitled to the compensation for the use of the subject lots. To repeat, it was petitioner who failed to comply with their obligation in the contract that resulted to the non-payment of the balance of the purchase price. Thus, petitioner cannot benefit from her own wrongdoing. Also, petitioner's neglect or omission to assert a

supposed right for more than sixteen (16) years is too long a time as to warrant the presumption that they had abandoned such right. The law aids the vigilant, not those who slumber on their rights. *Vigilantibus, sed non dormientibus jura subverniunt.*

APPEARANCES OF COUNSEL

Cristine E. Pascual-Bello for petitioner.
Mena Law Office 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 July 4, 2017 and the Resolution[2] dated November 22, 2017 of the Court of Appeals (*CA*) in CA-G.R. CV No. 107299, which affirmed the Decision[3] of the Regional Trial Court, Malabon City, Branch 74, in favor of herein respondents.

The antecedent facts, as culled from the records, are as follows:

Sometime in January 1989, Romulo Pascual entered into a sale transaction with Encarnacion P. Ang, *et al.*, through Antonio Ang, covering three parcels of land located in Navotas City. This was embodied in a document denominated as "*Pagpapatunay at Pananagutan*," which read:

PAGPAPATUNAY AT PANANAGUTAN

ALAMIN NG SINOMAN:

Na ako, si COL. ROMULO PASCUAL, Pilipino, may sapat na taong gulang, may asawa at naninirahan sa M. Naval St., Navotas,

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Andres B. Reyes, Jr. (now a Member of this Court) and Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 46-56.

[2] *Rollo*, pp. 58-59.

[3] Penned by Judge Celso R. Magsino, Jr.; *id.* at 84-90.

Metro Manila, sa pamamagitan ng kasulatang ito ay nagpapahayag, nagpapatunay at nananagutan ng [mga] sumusunod:

1. Na ako ang siyang may-ari at namamahala ng tatlong (3) parsela ng lupa na nasa Tangos, Navotas, Metro Manila, at ang nasabing mga lupa ay ang mga sumusunod:

    a. Isang (1) parsela ng lupa na nasa Daang Buenaventura, Tangos at nasa pagitan ng mga lote na pag-aari o inookupahan ni Protacio Enriquez at Benjamin Dayao;

    b. Isang (1) parsela ng lupa na nasa dulo ng Daang Buenaventura at Tangos at nasa pagitan ng mga loteng pag-aari nina Benjamin Domingo at Felix San Pedro;

    k. Isang (1) parsela ng lupa na nasa Tabing Ilong ng Tangos sa tabi ng mga lote nina Benjamin Domingo at Amadeo Cruz.

2. Na sa kasalukuyan ang nasabing mga lupa ay inuupahan at inookupahan ni GNG. ENCARNACION PANGYARIHAN ANG at ng kanyang mga anak;

3. Na ako ay nakipagkasundo at pumayag na ipagbili ang lahat ng mga lupa kay ENCARNACION P. ANG at sa kanyang mga anak na sina ANTONIO, ERNESTO, ROSITA, RANILO, EMELITA, NILDA, RUBY AT VICTORIA, pawang may mga apelyidong ANG sa halagang ₱350.00 bawat isang (1) metro kuwadrado;

4. Na ngayong araw na ito ay aking tinanggap mula kay GNG. ENCARNACION P. ANG at kanyang mga anak sa pamamagitan ni ANTONIO ANG, ang halagang ₱50,000.00 bilang paunang bayad sa kabuuang halaga ng mga nasabing lupa;

5. Na ang natitirang halaga, depende sa kabuuang sukat ng mga lupa ay babayaran sa akin nina GNG. ENCARNACION P. ANG at ng kanyang mga anak sa sandali na maipaayos ko ang mga sukat, plano, papeles at titulo ng nasabing mga lupa.

SA KATUNAYAN NG LAHAT, ako ay lumagda ngayong ika-___ ng Enero, 1989, dito sa Navotas, Metro Manila.

SUMASANG-AYON:

(Nilagdaan)
ENCARNACION P. ANG, ET AL. COL. ROMULO PASCUAL
Nagpapatunay

BY: (Nilagdaan)
ANTONIO ANG[4]

On October 28, 1993, the lot referred to in paragraph 1(a) of the "*Pagpapatunay at Pananagutan*" was registered in respondents' names under Original Certificate of Title No. 246. As to the two remaining lots, which were referred in paragraphs 1(b) and 1(k), petitioner claimed that the same were already surveyed and titles thereto were already issued under the name of her husband Romulo Pascual, and that respondents failed to pay in full their purchase price. This lead her in filing a complaint for the rescission of the "*Pagpapatunay at Pananagutan*" with claim for damages before the Regional Trial Court of Navotas City on March 2, 2006. Petitioner, likewise, claimed that the purchase price should be increased, considering the price of the subject properties are no longer the same, and also taking into consideration the depreciation of the Philippine peso from the time of the execution of the contract in 1989 up to present.

On the other hand, respondents admitted the sale transaction, but argued that their agreement would show that the title to the subject lots should first be registered under their names, and not under the name of Romulo Pascual, before they pay the balance of the purchase price. They further argued that it was petitioner who breached their agreement as she intentionally refused to register the two lots under their names because she is asking for a much higher price, different from what was originally agreed upon.

Ruling of the RTC

After trial on the merits, the trial court rendered judgment in favor of herein respondents. It ruled that while the provision in paragraph 5 of the "*Pagpapatunay at Pananagutan*" is ambiguous as it can be interpreted in two ways — the titles mentioned in the said provision is either in the name of Romulo Pascual and/or plaintiff, or in defendants' names — the evidence

[4] *Rollo*, p. 76.

on records would show that the intention of the parties in the said paragraph 5 is that petitioner should secure first the titles of the subject properties in respondents' names before they pay the remaining balance of the purchase price of the subject properties.

The RTC also dismissed petitioner's argument that the purchase price must be increased. It ratiocinated that the amount agreed upon by the parties is at ₱350.00 per square meter, and that the contract is the law between the parties and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs, or public policy.

Aggrieved, petitioner filed an appeal before the Court of Appeals.

Ruling of the CA

On appeal, petitioner averred that the subject first lot was registered in the names of the respondents only after they fully paid its purchase price. It is, therefore, clear that paragraph 5 of the "*Pagpapatunay at Pananagutan*" should be interpreted according to what transpired on the payment and registration of the aforementioned first lot. Thus, the trial court erred when it ruled that the titles of the contested three parcels of land must first be transferred in the names of the respondents before the latter will be duty-bound to pay the balance of the purchase price. According to petitioner, the RTC failed to consider the real intention of the parties based on their conduct, words, and deeds prior to, during, and immediately after executing the subject contract.

Respondents, on the other hand, argued that the action for rescission is a collateral attack against the title of the first subject lot, and that Torrens title cannot be attacked collaterally and the issue on its validity can be raised only in an action expressly instituted for that purpose. Moreover, petitioner prematurely instituted the complaint since they failed to comply with the condition precedent which is to cause the survey, documentation, and accomplishment of the necessary transfer documents of the two remaining lots in the names of the respondents. Moreover, the presentation before the RTC of the Transfers of Certificate of Title (TCTs) in the name of Romulo Pascual which allegedly cover the two subject lots cannot be considered as compliance

with the terms of the contract, because these titles were registered only on March 14, 2006, or 12 days after the filing of the complaint on March 2, 2006.

In its Decision dated July 4, 2017, the CA denied petitioner's appeal and affirmed the ruling of the trial court. It noted that petitioner testified that respondents paid ₱50,000.00 as downpayment for the three lots, and respondents made several payments thereafter on installment basis. It was only after petitioner secured the OCT of the subject first lot under respondents' name that respondents paid her its full purchase price.

The CA also held that respondents' non-payment of the balance of the purchase price is due to the failure of petitioner to comply with their obligation in the contract. Thus, petitioner is not entitled to rescind the contract as she is not the injured party.

Petitioner moved for reconsideration, but the same was denied in a Resolution[5] dated November 22, 2017.

Thus, the present appeal.

Issues

The petition raises the following issues:

1. The [CA] gravely erred when it failed to consider the real intention of the parties based on their conduct, words, and deeds prior to, during, and immediately after executing the contract of sale in order to arrive at its correct and just interpretation;

2. The [CA] gravely erred when it found that petitioner was at fault and therefore not the injured party such that would justify the rescission of the subject contract; [and]

3. The [CA] gravely erred when while it imposes on petitioner the obligation to cause the transfer of titles in the names of respondents, it made no pronouncement on the reciprocal obligation of the latter to pay within the reasonable period of time the remaining balance of

[5] *Supra* note 2.

the purchase, including reasonable compensation for the use of the subject properties.[6]

Our Ruling

The appeal lacks merit.

It is a settled rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts. As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts. To do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law.[7]

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties.[8] This review includes assessment of the "probative value of the evidence presented."[9] 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.[10]

The rule admits of exceptions, which includes, but not limited to: (1) where the conclusion is a finding grounded entirely on speculation, surmise, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record.[11]

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

[7] *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015).

[8] *Republic of the Philippines v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 287-288 (2014) and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 788 (2011).

[9] *Republic of the Philippines v. Ortigas and Company Limited Partnership*, *supra*, at 288.

[10] *Pascual v. Burgos, et al.*, 776 Phil. 167, 183 (2016).

[11] *Uyboco v. People*, 749 Phil. 987, 992 (2014).

Here, the issue is essentially factual in nature, the determination of which is best left to the courts below, especially the trial court. 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 petitioners' main contentions, the petition must still fail.

Articles 1370 and 1371 of the New Civil Code provide:

> Article 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.
>
> Article 1371. In order to judge the intention of the contracting parties, **their contemporaneous and subsequent acts shall be principally considered**. (Emphasis supplied)

In *Abad v. Goldloop Properties, Inc.*,[12] this Court held that:

> [t]he cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." It also resembles the "four corners" rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. **A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations.** Where the written terms of the contract are not ambiguous and can

[12] 549 Phil. 641, 654 (2007). (Emphasis ours; citations omitted).

only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.

As aptly ruled by the RTC, while the provision in paragraph 5 of the "*Pagpapatunay at Pananagutan*" is ambiguous, as it can be interpreted in two ways, that is, the titles mentioned in the said provision is either in the name of Romulo Pascual and/or plaintiff, or in defendants' names, the evidence on records would show that the intention of the parties in the said paragraph 5 is that petitioner should secure first the titles of the subject properties in respondents' names before they pay the remaining balance of the purchase price of the subject properties.

It should be recalled that petitioner testified that respondents paid ₱50,000.00 as downpayment for the three lots, and respondents made several payments thereafter on installment basis. It was only after petitioner secured the OCT of the subject first lot under respondents' name that respondents paid her its full purchase price. Thus, it is clear that paragraph 5 of the "*Pagpapatunay at Pananagutan*" should be interpreted according to what transpired on the payment and registration of the first lot.

Resultantly, respondents' non-payment of the balance of the purchase price is due to the failure of petitioner to comply with their obligation in the contract. Thus, petitioner is not entitled to rescind the contract as she is not the injured party.

Finally, petitioner is not entitled to the compensation for the use of the subject lots. To repeat, it was petitioner who failed to comply with their obligation in the contract that resulted to the non-payment of the balance of the purchase price. Thus, petitioner cannot benefit from her own wrongdoing. Also, petitioner's neglect or omission to assert a supposed right for more than sixteen (16) years is too long a time as to warrant the presumption that they had abandoned such right. The law aids the vigilant, not those who slumber on their rights. *Vigilantibus, sed non dormientibus jura subverniunt.*

WHEREFORE, premises considered, the petition is hereby **DENIED.** The Decision dated July 4, 2017 and the Resolution dated November 22, 2017 of the Court of Appeals in CA-G.R. CV No. 107299 are hereby **AFFIRMED**. Petitioner is hereby **ORDERED** to **CAUSE** the transfer of the titles of the subject lots in the name of the respondents. Respondents, on the other hand, are **ORDERED** to **PAY** petitioner the remaining balance of the purchase price within thirty days (30) from the transfer of the title of the subject lots in their names.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 235724. March 11, 2020]

MARIA LOURDES ARTATES *y* GALLARDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; ELEMENTS.— Estafa, under paragraph 2 (a), Article 315 of the RPC, x x x requires the concurrence of the following elements: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage.

2. ID.; ID.; THE FAILURE OF THE PROSECUTION TO PRODUCE RECEIPTS OF THE AMOUNT ALLEGEDLY SUFFERED IS NOT FATAL TO THE CASE.— Maria further assails her conviction due to the prosecution's failure to present any documentary proof, such as receipts, to prove that she actually received the amount of ₱50,000.00 from Patrocinia. According to her, the failure of the Pablicos to keep a record of every transaction they had with her renders their claims speculative at best. The argument, however, fails to convince. In *Sy v. People*, the Court ruled that the failure of the prosecution to produce receipts of the amount allegedly suffered is not fatal to the case. As in this case, We found that the prosecution was able to prove, by the positive testimony of the private complainant, that the accused was the one who received the money in consideration of a fraudulent representation. Besides, as duly pointed out by the CA, the fact that Patrocinia did not ask for receipts only bolsters her claim that she completely trusted Maria.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION OF THE CREDIBILITY OF WITNESSES WILL NOT BE DISTURBED ON APPEAL IN THE ABSENCE OF PALPABLE ERROR OR GRAVE ABUSE OF DISCRETION ON THE PART OF THE TRIAL JUDGE.— [T]he Court has consistently conformed to the rule that findings of the trial court on the credibility of witnesses deserve great weight. Factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect, if not conclusive effect, most especially when affirmed by the Court of Appeals, as in this case. The reason for this is that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination. In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.

4. ID.; ID.; ID.; MINOR INCONSISTENCIES IN THE NARRATION OF THE WITNESS DO NOT DETRACT FROM ITS ESSENTIAL CREDIBILITY AS LONG AS IT IS, ON THE WHOLE, COHERENT AND INTRINSICALLY BELIEVABLE.— Maria x x x berates the testimonies of the

prosecution witnesses maintaining the same to have glaring inconsistencies. Specifically, she pointed out that while Patrocinia testified that she was with her son Jun during the entrapment, PSI Caballes stated that it was only Patrocinia who talked to Maria. She also faulted Patrocinia when at first, she said that she could not recall the exact amount of the marked money, but when asked again, she suddenly remembered. The contention, however, cannot be used to free her from liability. Time and again, the Court has held that "minor inconsistencies in the narration of the witness do not detract from its essential credibility as long as it is, on the whole, coherent and intrinsically believable." It is in this light that We find any inconsistencies that Maria harps on in the testimonies of the complainants to be inconsequential. What is important is that Patrocinia has positively identified Maria as the one who enticed her to part with her money in exchange for the promised job for Jun.

5. ID.; ID.; DENIAL; CONSIDERED AS NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE.— [T]he Court remains unconvinced by Maria's bare denial and alibi in passing on the liability to her estranged husband PO3 Edmundo as the real perpetrator of the crime, claiming that the only reason why she was being charged of the same is because Patrocinia was afraid to file a complaint against Edmundo who was an influential security officer of former Governor Chavit Singson. Between the categorical statements of the private complainants and the bare denial of Maria, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony, especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated and concocted.

6. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; PENALTY IN CASE AT BAR.— We resolve to sustain Maria's allegation that in light of the recent enactment of R.A. No. 10951, a modification of the penalty imposed by the appellate court of

four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years, eight (8) months, and twenty-one (21) days of *prision mayor*, as maximum, is in order. x x x Applying x x x [Article 315 of the RPC, as amended by R.A. 10951], and considering that the amount defrauded by Maria amounted to ₱50,000.00, which is over ₱40,000.00 but does not exceed ₱1,200,000.00, the imposable penalty shall now be *arresto mayor* in its maximum period to *prision correccional* in its minimum period. There being no mitigating and aggravating circumstance, the maximum penalty should be one (1) year and one (1) day of *prision correccional*. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one (1) month and one (1) day to four (4) months. Thus, the indeterminate penalty for the crime charged herein should be modified to a prison term of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Amended Decision[1] and Resolution,[2] dated April 10, 2017 and September 4, 2017, respectively, of the Court of Appeals *(CA)* in CA-G.R. CR No. 37551, which affirmed with modification the Decision[3] dated January 13, 2015 of the Regional Trial Court *(RTC)*, Branch

[1] Penned by Associate Justice Pedro B. Corales, with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier (now a Member of this Court), concurring; *rollo*, pp. 41-56.

[2] *Id.* at 75-76.

[3] Penned by Judge Marita Bernales Balloguing; *id.* at 104-113.

20, Vigan City, Ilocos Sur, in Criminal Case No. 5559-V, finding petitioner Maria Lourdes Artates *y* Gallardo guilty beyond reasonable doubt of the crime of Estafa, defined and penalized under Article 315 paragraph 2(a) of the Revised Penal Code *(RPC)*.

The factual antecedents, as culled from the CA Decision, are as follows:

It was established by the prosecution that on November 16, 2003, private complainant Patrocinia Pablico and her son, Jun Pablico, were in Filart Shoe Store located at Quezon Avenue, Vigan City, when Maria recruited Jun, a criminology graduate, to enter the Philippine National Police *(PNP)*. Maria told Patrocinia that her husband, PO3 Edmundo Artates, was detailed as security of then Governor Luis "Chavit" Singson and could facilitate Jun's entry into the PNP. In return, Maria asked for money for uniform, medical examination, neuro-examination, and "blow-out." She also told Patrocinia that it was no longer necessary for her son to undergo the medical examination because her husband was influential at the PNP. Thus, from November 16, 2003 to February 20, 2004, Maria asked and received from Patrocinia and Jun the total amount of ₱50,000.00 or more. Despite this, Maria's promise did not happen; Jun was informed that the recruitment at the PNP had already ended. Feeling fooled by Maria, Patrocinia and Jun went to the house of Maria to inquire about Jun's application. There, they discovered that Maria was no longer living with Edmundo, who told them that he had no knowledge of Jun's application and that, in fact, he and Maria were already separated. Consequently, Patrocinia and Jun immediately reported the matter to the Vigan Police Station on February 20, 2004.[4]

At the station, Patrocinia, Jun, and Police Senior Inspector *(PSI)* Nestor Caballes agreed on an entrapment operation where Patrocinia and Jun were to meet Maria to give her the money that the latter previously asked for as payment for Jun's firearm.

[4] *Id*. at 43.

PSI Caballes photocopied the bills that Patrocinia had in her pocket amounting to ₱400.00 which she would hand to Maria. Thereafter, Patrocinia and Jun, together with PSI Caballes, SPO4 Alexander Tapaya, and PO3 Peter Arca, proceeded to meet Maria. Upon meeting her, the police officers positioned themselves near a Jollibee branch which was about 20 to 30 meters away from where Patrocinia and Maria were talking. After Patrocinia handed the money, the police officers immediately went to Maria and informed her that they were arresting her for estafa, informed her of her rights, and brought her to the police station. There, the arresting officers frisked Maria and recovered from her the money handed to her by Patrocinia earlier. They marked said money and proceeded to interview and detain Maria.[5] Subsequently, an Information for estafa was filed against her, to wit:

> That during the period starting November 16, 2003 up to February 20, 2004, in the [C]ity of Vigan, [P]rovince of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously defraud one PATROCINIA PABLICO, as follows, to wit: That said accused by means of false pretenses and fraudulent misrepresentations which she made to said PATROCINIA PABLICO to the effect that she possesses power, influence, and connections to have (sic) employ JUN P. PABLICO, son of said PATROCINIA PABLICO, as Police Officer, provided the amount of ₱50,000.00, Philippine Currency, be delivered to her for securing such employment, as in fact said PATROCINIA PABLICO was induced and delivered to said accused the total amount of ₱50,000.00, more or less, that after having received the same, the said accused instead of complying with her assurances, representations, and obligation of securing employment as Police Officer for said JUN PABLICO, did then and there willfully, unlawfully, and feloniously convert and misappropriate the said amount of ₱50,000.00, more or less, to her own personal use and benefit, to the damage and prejudice of said PATROCINIA PABLICO in the said amount of ₱50,000.00, more or less.
>
> Contrary to law.[6]

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[5] *Id*. at 44.

[6] Records, pp. 1-2.

Maria posted bail to secure her provisional liberty. She also pleaded not guilty at her arraignment. Then, in the ensuing trial, the prosecution presented as witnesses, Patrocinia, Jun, and PSI Nestor. For the defense, the accused, Maria, solely testified on her behalf.

At the stand, Maria denied the allegations against her. She narrated that Patrocinia was her friend and co-worker at the Filart Shoe Shop. In the afternoon of February 20, 2004, Patrocinia met her at Plaza Maestro and told her that the former had given "lots of money" to Edmundo who reneged on his promise to help Jun enter the PNP. As such, Patrocinia asked her to testify in a case that the former was going to file against Edmundo, but she declined due to the absence of any knowledge on what really transpired between Patrocinia and Edmundo. After 30 minutes, the policemen suddenly arrived and invited her to the police station. There, she was again told about the proposal to testify against her husband, but she still refused. Maria further recalled that Patrocinia also attempted to give her some money which she refused to accept. In the end, she maintained that Patrocinia and Jun filed the case of estafa against her instead of her husband, because they were afraid to file a complaint against him being an influential police officer detailed as security of former Governor Chavit Singson.[7]

On January 13, 2015, the RTC rendered its Decision finding Maria guilty beyond reasonable doubt of the crime charged and disposed as follows:

> WHEREFORE, the Court finds accused MARIA LOURDES ARTATES GUILTY beyond reasonable doubt of the crime of Estafa defined and penalized under Art. 315 par. 2(a) of the Revised Penal Code, hereby sentencing her to suffer the indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) day of *prision correccional*, as minimum, to TWELVE (12) years and ONE (1) day of *reclusion temporal*, as maximum. The accused is hereby ordered to return to Patrocinia Pablico the amount of FIFTY THOUSAND (₱50,000.00) PESOS.

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[7] *Id*.

COSTS DE [OFICIO].

SO ORDERED.[8]

The RTC found that the prosecution duly established all the elements of estafa by means of deceit, giving more credence to the positive testimonies of the prosecution over Maria's bare denial. It also held that the validity of Maria's arrest could no longer be assailed because the defense neither moved for the quashal of the Information nor made any reservation to question the same.[9]

In its Decision dated March 28, 2017, the CA affirmed the RTC ruling with the modification as to the penalty, to wit:

WHEREFORE, the instant appeal is hereby DENIED. The January 13, 2015 Decision of the Regional Trial Court, Branch 20, Vigan City, Ilocos Sur in Criminal Case No. 5559-V is AFFIRMED with the following MODIFICATIONS: 1) accused-appellant Maria Lourdes Artates y Gallardo is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years, eight (8) months, and twenty (21) days of *prision mayor*, as maximum; and 2) the ₱50,000.00 actual damages awarded to Patrocinia Pablico shall earn 6% interest *per annum* from the day the Information was filed on February 23, 2004 until full payment.

SO ORDERED.[10]

In its subsequent Resolution and Amended Decision, both dated April 10, 2017, the CA rectified the typographical error in its March 28, 2017 Decision where the maximum penalty was written as "eight (8) years, eight (8) months, and **twenty** (21) days of prision mayor." Thus, it was corrected to read as follows:

WHEREFORE, the instant appeal is hereby DENIED. The January 13, 2015 Decision of the Regional Trial Court, Branch 20, Vigan City, Ilocos Sur in Criminal Case No. 5559-V is AFFIRMED with

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[8] *Id*. at 113.

[9] *Id*. at 111.

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

the following MODIFICATIONS: 1) accused-appellant Maria Lourdes Artates y Gallardo is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years, eight (8) months, and **twenty-one** (21) days of *prision mayor*, as maximum; and 2) the ~~P~~50,000.00 actual damages awarded to Patrocinia Pablico shall earn 6% interest *per annum* from the day the Information was filed on February 23, 2004 until full payment.

SO ORDERED.[11]

In said Amended Decision, the CA accorded great respect to the findings of the trial court, considering that it is in a better position to decide the issue of Maria's guilt having heard the witnesses themselves and observed their deportment and manner of testifying during trial. It held that Maria's defense of denial cannot prevail over the categorical declarations of the prosecution's witnesses that it was Maria, not PO3 Edmundo, who defrauded Patrocinia and Jun.[12]

Aggrieved, petitioner filed the instant petition before the Court raising the following errors:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S CONVICTION OF THE PETITIONER FOR ESTAFA, DESPITE THE PROSECUTION'S FAILURE TO PROVE ALL ITS ELEMENTS.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S CONVICTION OF THE PETITIONER, DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

III.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S CONVICTION OF THE

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[11] *Id*. at 55.

[12] *Id*. at 52.

PETITIONER, DESPITE THE ILLEGALITY OF HER ARREST, AND THE CONSEQUENT INADMISSIBILITY OF THE MARKED MONEY USED IN EVIDENCE AGAINST HER.

IV.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S DECISION OF IMPOSING THE PENALTY OF IMPRISONMENT ON THE PETITIONER, AND THE AWARDING OF DAMAGES TO PRIVATE COMPLAINANT PATROCINIA PABLICO, DESPITE THE LACK OF ANY CREDIBLE EVIDENCE TO SHOW ACTUAL DAMAGE SUFFERED BY THE LATTER.[13]

Maria seeks her acquittal raising several errors committed by the courts below. *First*, Maria insists that the prosecution failed to prove all the elements of the crime charged against her, specifically, the first and third elements. According to Maria, there is no proof, other than the testimonies of Patrocinia and Jun, that her representation that she had the influence to facilitate Jun's application was untrue. Neither is there proof that said misrepresentation was the very cause which induced Patrocinia to part with her money. Further, there is also an absence of any evidence to show that Patrocinia, indeed, suffered a loss of ₱50,000.00. *Second*, Maria maintained that there are glaring inconsistencies in the testimonies of the prosecution witnesses which render their narration dubious. *Third*, she argued that the marked money obtained from her during the alleged entrapment operation is inadmissible in evidence for being a product of an unlawful arrest. *Finally*, Maria posited that while maintaining her innocence, the recent passage of Republic Act *(R.A.)* No. 10951[14] effectively lowered the imposable penalty of the crime charged against her.

The petition lacks merit.

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[13] *Id*. at 18-19.

[14] *An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code*, August 29, 2017.

Estafa, under paragraph 2 (a), Article 315 of the RPC, is committed in the following manner:

> Article 315. Swindling (estafa).— Any person who shall defraud another by any of the means mentioned herein below x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

Thus, it requires the concurrence of the following elements: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage.[15]

In the present case, the Court affirms the findings of the courts below as to the presence of all the elements of the crime charged herein. As the appellate court ruled, the acts of Maria of deliberately misrepresenting herself to the Pablicos as having the capacity to facilitate Jun's entry into the police force through her husband so that she could, as she did, collect money from them allegedly for medical examination, service firearm, and other so-called requirements and her failure to return the same clearly amount to estafa by means of deceit.[16] Contrary to the claims of Maria, the prosecution sufficiently established, through the following pertinent testimony of Patrocinia, the elements that Patrocinia was specifically induced by Maria's false pretense to part with her money, thereby suffering damage as a result thereof:

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[15] *Gamaro, et al. v. People*, 806 Phil. 483, 496 (2017).

[16] *Rollo*, p. 48.

Q: On November 16, 2003, do you know where were you?
A: I was in our Filart Store, sir.

Q: And while in your store, do you remember having seen Maria Lourdes Artates?
A: Yes, sir.

Q: And when you saw Maria Lourdes Artates, what happened?
A: She recruited my son to become a member of the police, but it was (sic) not materialized, sir.

Q: And what is the name of your son whom (sic) recruited by the accused?
A: June (sic) Pablico, sir.

Q: And how did she recruit your son?
A: She told me that her husband is a policeman and my son was a graduate of criminology so she told me that her husband is able to assist him in entering the police service, sir.

Q: And did you believe her when she told you that?
A: Yes, I was convinced because my son also wanted to enter into the police service, sir.

Q: And when you believed her, what did you do?
A: So I told her, "Alright, if your husband can help him," sir.

Q: And after that what happened?
A: Then she demanded money for medical, sir.

Q: And how much did she demand from you?
A: She demanded money by installment, sir.

Q: And did you give her those amounts?
A: Yes, sir.

Q: And did she tell you for what purpose those money she received from you?
A: For medical for the police, sir.

Q: And do you know if medical of whom?
A: June (sic) Pablico, sir.

Q: And do you know if your son had undergone the medical examination?
A: She told me that it is not necessary that he will (sic) come, sir.

Q: And what did you do when she told you that it is not necessary for your son to go for a medical examination?
A: I trusted her because she told me that her husband has influence, sir.

Q: Aside from those amount[s] she demanded from you[,] what else[,] if any?
A: None, only the money sir.

Q: And how much all in all did you give Maria Lourdes Artates?
A: ₱50,000.00 or more, sir.

Q: And was she able to have your son entered (sic) the police service?
A: No. sir.

Q: Do you know the reason why she was not able to enter your son into the police service
A: No, because she only fooled us, sir.

Q: She fooled you on what?
A: That her husband could enter my son into the police service, sir.

Q: And what happened when you discovered that Maria Lourdes Artates was just fooling you?
A: I got mad together with my son, sir.

Q: And when you got mad, what did you do[,] if any?
A: We went to their house and we came to know that they were not living together, sir.

Q: Whom (sic) are you referring to?
A: Maria Lourdes Artates and the husband, sir.[17]

Despite the foregoing, Maria further assails her conviction due to the prosecution's failure to present any documentary proof, such as receipts, to prove that she actually received the amount of ₱50,000.00 from Patrocinia. According to her, the failure of the Pablicos to keep a record of every transaction they had with her renders their claims speculative at best. The

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[17] *Rollo*, pp. 49-51.

argument, however, fails to convince. In *Sy v. People*,[18] the Court ruled that the failure of the prosecution to produce receipts of the amount allegedly suffered is not fatal to the case. As in this case, We found that the prosecution was able to prove, by the positive testimony of the private complainant, that the accused was the one who received the money in consideration of a fraudulent representation. Besides, as duly pointed out by the CA, the fact that Patrocinia did not ask for receipts only bolsters her claim that she completely trusted Maria.

Ultimately, the Court has consistently conformed to the rule that findings of the trial court on the credibility of witnesses deserve great weight. Factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect, if not conclusive effect, most especially when affirmed by the Court of Appeals, as in this case. The reason for this is that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination. In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[19]

This notwithstanding, Maria further berates the testimonies of the prosecution witnesses maintaining the same to have glaring inconsistencies. Specifically, she pointed out that while Patrocinia testified that she was with her son Jun during the entrapment, PSI Caballes stated that it was only Patrocinia who talked to Maria. She also faulted Patrocinia when at first, she said that she could not recall the exact amount of the marked money, but when asked again, she suddenly remembered. The contention, however, cannot be used to free her from liability. Time and again, the Court has held that "minor inconsistencies in the narration of the witness do not detract from its essential credibility as long as it is, on the whole, coherent and intrinsically

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[18] 632 Phil. 276, 287 (2010).

[19] *People v. Dela Cruz*, 811 Phil. 745, 764 (2017).

believable."[20] It is in this light that We find any inconsistencies that Maria harps on in the testimonies of the complainants to be inconsequential. What is important is that Patrocinia has positively identified Maria as the one who enticed her to part with her money in exchange for the promised job for Jun.[21] Be that as it may, We nonetheless affirm the CA in finding that the issue of the legality of the entrapment operation and admissibility of the marked money is inconsequential, considering that the crime of estafa was proved by evidence independent of the money seized from Maria during the same.[22]

In the end, the Court remains unconvinced by Maria's bare denial and alibi in passing on the liability to her estranged husband PO3 Edmundo as the real perpetrator of the crime, claiming that the only reason why she was being charged of the same is because Patrocinia was afraid to file a complaint against Edmundo who was an influential security officer of former Governor Chavit Singson. Between the categorical statements of the private complainants and the bare denial of Maria, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony, especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated and concocted.[23]

Nevertheless, We resolve to sustain Maria's allegation that in light of the recent enactment of R.A. No. 10951, a modification of the penalty imposed by the appellate court of four (4) years

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[20] *People v. Paz*, G.R. No. 233466, August 7, 2019.

[21] *People v. Daud, et al.*, 734 Phil. 698, 716 (2014).

[22] *Rollo*, p. 53.

[23] *People v. Dela Cruz, supra* note 19.

and two (2) months of *prision correccional*, as minimum, to eight (8) years, eight (8) months, and twenty-one (21) days of *prision mayor*, as maximum, is in order. As amended by R.A. 10951, Article 315 of the RPC now reads:

> SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:
>
> ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:
>
> x x x x x x x x x
>
> "3rd. The penalty of arresto mayor in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

Applying the provision cited above, and considering that the amount defrauded by Maria amounted to ₱50,000.00, which is over ₱40,000.00 but does not exceed ₱1,200,000.00, the imposable penalty shall now be *arresto mayor* in its maximum period to *prision correccional* in its minimum period. There being no mitigating and aggravating circumstance, the maximum penalty should be one (1) year and one (1) day of *prision correccional*. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one (1) month and one (1) day to four (4) months. Thus, the indeterminate penalty for the crime charged herein should be modified to a prison term of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.[24]

WHEREFORE, premises considered, the Petition is **DENIED**. The Amended Decision and Resolution, dated April

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[24] *Seguritan v. People*, G.R. No. 236499 (Notice), April 10, 2019.

10, 2017 and September 4, 2017, respectively, of the Court of Appeals in CA-G.R. CR No. 37551, affirming with modification the Decision dated January 13, 2015 of the RTC, Branch 20, Vigan City, Ilocos Sur, in Criminal Case No. 5559-V, are **AFFIRMED** with **MODIFICATION**. Petitioner Maria Lourdes Artates *y* Gallardo is hereby meted the indeterminate penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum. In addition, an interest at the rate of twelve percent (12%) *per annum* from the filing of the Information until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until finality of this Decision is imposed on the amount of ₱50,000.00. The total amount of the foregoing shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lopez, and *Delos Santos,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 239055. March 11, 2020]

RICHIE P. CHAN, *petitioner*, *vs.* **MAGSAYSAY MARITIME CORPORATION, CSCS INTERNATIONAL NV and/or MS. DORIS HO,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; IN THE EXERCISE OF ITS POWER

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[*] Designated Additional Member, in lieu of Associate Justice Amy C. Lazaro-Javier, per Raffle dated February 19, 2020.

OF REVIEW, THE FACTUAL FINDINGS OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE COURT AND IT IS NOT ITS FUNCTION TO ANALYZE OR WEIGH EVIDENCE ALL OVER AGAIN, EXCEPT WHEN THE COURT OF APPEALS' FINDINGS ARE CONTRARY TO THOSE OF THE NATIONAL LABOR RELATIONS COMMISSION AND THE LABOR ARBITER.— [T]his Court is not a trier of facts, hence, only questions of law may be raised in a petition for review on *certiorari* under Rule 45. In the exercise of its power of review, the factual findings of the Court of Appeals are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. It is a recognized exception, however, that when the Court of Appeals' findings are contrary to those of the NLRC and the labor arbiter, as in this case, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.

2. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY RELATED ILLNESS; THE EMPLOYMENT OF SEAFARERS IS GOVERNED BY LAW, THE CONTRACT HE EXECUTED WITH THE EMPLOYER, AND THE POEA-SEC; THE MEDICAL ASSESSMENT OR REPORT OF THE COMPANY–DESIGNATED PHYSICIAN SHALL BE SET ASIDE AND THE DISABILITY GRADING CONTAINED THEREIN WILL NOT BE APPRECIATED WHERE THE SAME WAS NOT COMPLETE, TIMELY AND APPROPRIATELY ISSUED.— The employment of seafarers is governed by the contracts they signed at the time of their engagement. So long as the stipulations in these contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract. Here, petitioner's employment is governed by law, the contract he executed with respondents on November 19, 2012, and the POEA-SEC. Section 20(A) of the POEA-SEC, as amended by POEA Memorandum

Circular No. 10, series of 2010, sets the procedure for disability claims of seafarers x x x. On the other hand, Section 20(A)(6) of the 2010 POEA-SEC highlights that the seafarer's disability shall not be measured by the number of days the seafarer underwent treatment, *viz.*: 6. 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. In ***Olidana v. Jebsens Maritime, Inc.,*** the Court ruled that before the disability gradings under Section 32 may be considered, the same should be properly established and contained in a **valid and timely** medical report of a company-designated physician. Thus, the foremost consideration of the courts is 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 will not be seriously appreciated.

3. ID.; ID.; ID.; TO BE CONCLUSIVE, THE MEDICAL ASSESSMENT OR REPORT OF THE COMPANY-DESIGNATED PHYSICIAN MUST BE COMPLETE, FINAL AND DEFINITE FOR THE PURPOSE OF ASCERTAINING THE DEGREE OF THE SEAFARER'S DISABILITY BENEFITS; OTHERWISE, THE CORRESPONDING DISABILITY BENEFITS AWARDED MIGHT NOT BE COMMENSURATE WITH THE PROLONGED EFFECTS OF THE INJURIES SUFFERED; A DEFINITE DECLARATION BY THE COMPANY-DESIGNATED PHYSICIAN IS AN OBLIGATION, THE ABDICATION OF WHICH TRANSFORMS THE TEMPORARY TOTAL DISABILITY TO PERMANENT TOTAL DISABILITY, REGARDLESS OF THE DISABILITY GRADE.— Under the POEA-SEC, the company-designated doctor is primarily vested with the responsibility to determine the disability grading or fitness to work of seafarers. To be conclusive, however, the medical assessment or report of the company-designated physician must be complete and definite for the purpose of ascertaining the degree of the seafarer's disability benefits. In ***Orient Hope Agencies, Inc. and/or Zeo Marine Corporation v. Michael E. Jara,*** the Court emphasized the importance of a final and definite disability assessment. It

is necessary in order to truly reflect the extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered. Indubitably, a definite declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade. Here, the medical assessment issued by the company-designated physician cannot be considered complete, final, and definite as it did not show how the disability assessment was arrived at. If at all, the assessment merely stated that petitioner had attained maximum medical treatment and declared petitioner's disability at Grade 10. A declaration of disability in the medical assessment, without more, cannot be considered complete, final and definitive.

4. ID.; ID.; ID.; RULES GOVERNING A SEAFARER'S CLAIM FOR TOTAL AND PERMANENT DISABILITY BENEFITS BY A SEAFARER; THE FAILURE OF THE COMPANY TO ACTUALLY RELAY TO OR MADE KNOWN TO THE SEAFARER THE MEDICAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN WITHIN THE 120/240-DAY PERIOD, IS FATAL TO THE COMPANY'S DEFENSE.— Although Section 20(A)(6) of the 2010 POEA-SEC instructs that disability shall not be measured or determined by the number of days a seafarer is under treatment, as to when the fitness of a seafarer for sea duty may be ascertained is still subject to the periods prescribed by law. x x x. In ***Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.***, the Court further summarized the rules governing a seafarer's claim for total and permanent disability benefits by a seafarer, *viz.*: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-

designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. Two (2) requisites, therefore, must concur: 1.) an assessment must be issued within the 120/240-day window, and 2.) the assessment must be final and definitive. It is true that the company-designated physician here failed to issue the medical assessment within the one hundred twenty (120)-day period owing to petitioner's request for time to decide whether or not to undergo surgery. Although this delay should be attributed to petitioner and might have justified an extension of the period for the company-designated physician to issue an assessment within two hundred forty (240) days, this circumstance does not preclude petitioner from recovering total permanent disability benefits. For even assuming that the October 29, 2013 medical assessment was complete, final, and definite, the fact that it was not actually relayed to or made known to petitioner within the extended two hundred forty (240)-day period is fatal to the company's defense.

5. ID.; ID.; ID.; THE THIRD-DOCTOR RULE DOES NOT APPLY WHEN THERE IS NO VALID FINAL AND DEFINITIVE ASSESSMENT FROM A COMPANY-DESIGNATED PHYSICIAN.— 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 one hundred twenty (120) day or two hundred forty (240)-day period. As stated, there is no occasion here for the mandatory third-doctor referral precisely because a complete, final, and definite medical assessment from the company-designated physician is absent, aside from the fact that the so-called October 29, 2013 medical assessment, if at all it exists, was not actually relayed to petitioner. To repeat, it is the issuance and the corresponding conveyance to the employee of the final medical assessment by the company-designated physician that

triggers the application of Section 20(A)(3) of the 2010 POEA-SEC. In ***Orient Hope Agencies, Inc. v. Jara***, the Court held that the third-doctor rule does not apply when there is no valid final and definitive assessment from a company-designated physician, as in this case.

6. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES, WHEN MAY BE AWARDED; THE SEAFARER IS NOT ENTITLED TO MORAL AND EXEMPLARY DAMAGES WHERE THE EMPLOYER WAS NEVER IN BAD FAITH IN FACILITATING THE REPATRIATION AND TREATMENT OF THE SEAFARER; AWARD OF ATTORNEY'S FEES, PROPER WHERE SEAFARER WAS COMPELLED TO LITIGATE TO SATISFY HIS CLAIM FOR DISABILITY BENEFITS; LEGAL INTEREST AT SIX PERCENT (6%) PER ANNUM, IMPOSED ON THE MONETARY AWARDS.— Moral damages are awarded as compensation for actual injury suffered and not as a penalty. The award is proper when the employer's action was attended by bad faith or fraud, oppressive to labor, or done in a manner contrary to morals, good customs, or public policy. Bad faith is not simply bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud. Exemplary damages, on the other hand are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions, and may only be awarded in addition to the moral, temperate, liquidated or compensatory damages. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Here, respondents never evaded liability from petitioner's claims, albeit insisted that petitioner's disability should remain at grade 10. Respondents even provided and financed petitioner's surgery on the affected knee and the consequent therapy and treatment. Thus, respondents were never in bad faith in facilitating the repatriation and treatment of petitioner. For this, petitioner is not entitled to moral damages. Sans the award of moral damages, petitioner is likewise not entitled to exemplary damages. The labor arbiter, therefore, correctly denied petitioner's claim for moral and exemplary

damages for lack of basis. Even then, the fact that petitioner was compelled to litigate to protect his rights, the NLRC correctly awarded attorney's fees of ten percent (10%) of the total monetary award in accordance with Article 2208 of the New Civil Code. In ***Pastor v. Bibby Shipping Philippines, Inc.,*** the Court denied therein petitioner's claims for moral and exemplary damages for lack of substantial evidence showing that respondents acted with malice or in bad faith in refusing petitioner's claims. The Court, nevertheless, deemed it proper to award attorney's fees since petitioner was clearly compelled to litigate to satisfy his claim for disability benefits. Lastly, the Court imposes on the monetary awards legal interest at six percent (6%) per annum from the date of finality of this decision until full payment pursuant to ***Nacar v. Gallery Frames***.

7. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY RELATED ILLNESS; IN DISABILITY COMPENSATION CASES, IT IS NOT THE INJURY WHICH IS COMPENSATED, BUT RATHER, THE INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF ONE'S EARNING CAPACITY; PETITIONER IS ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS.— In disability compensation cases, it is not the injury which is compensated, but rather, the incapacity to work resulting in the impairment of one's earning capacity. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than one hundred twenty (120) days, or two hundred forty (240) days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body. All told, Chan is rightfully entitled to total and permanent disability benefits.

APPEARANCES OF COUNSEL

Bermejo Laurino-Bermejo Law Offices for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] seeks to reverse the Decision dated June 29, 2017[2] of the Court of Appeals in CA-G.R. SP No. 141340 holding that petitioner was only entitled to Grade 10 Disability Benefits.

Antecedents

Petitioner Richie P. Chan sued respondents Magsaysay Maritime Corporation, CSCS International N/V and/or Ms. Doris Ho for permanent total disability benefits, moral and exemplary damages, and attorney's fees. On November 19, 2012, Magsaysay Maritime Corporation, in behalf of its principal CSCS International NV engaged his services as fireman on board *Costa Voyager-D/E*. On November 25, 2012, he boarded the vessel. On April 2013, he felt severe pain after he slipped and hit his right knee on the deck during a regular boat drill.[3] He was initially treated at the ship's hospital, given pain medication, and advised to rest. Sometime in the first week of May 2013, his right knee got swollen and he could hardly walk and sleep. On May 8, 2013, he was brought to a hospital in Turkey and given pain medication. As he could no longer work, he was repatriated on May 13, 2013.[4]

Upon his return to the country, he reported to respondents' office and was referred to the company-designated physician at the Marine Medical Center.[5] He was diagnosed with gouty

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[1] *Rollo*, pp. 21-58.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justice Remedios A. Salazar-Fernando and Associate Justice Mario V. Lopez (now a member of this Court); *id.* at 59-66.

[3] *Id.* at 60.

[4] *Id.* at 81.

[5] *Id.* at 60.

arthritis with meniscal tear (right knee) and advised to undergo surgery. But since he refused surgery, he was further advised to take medication and rehabilitation instead. On June 24, 2013, he requested more time to decide whether or not to go through surgery.[6]

On July 11, 2013, the company-designated physician issued Disability Grade 10. Meantime, he was provided further therapy and medication. On August 16, 2013, the company-designated physician noted he had attained maximum medical cure and was given a final assessment of Disability Grade 10.[7]

On August 17, 2013, he manifested his decision to undergo surgery which respondents agreed to provide. He was admitted for surgery on August 27, 2013 or three (3) months after repatriation. Despite the surgery, his condition did not improve. On October 29, 2013, the company-designated physician noted that he had already attained maximum medical cure with Grade 10 Disability,[8] thus:

> October 29, 2013
>
> ROBERT D. LIM, MD
> Marine Medical Services
> Metropolitan Medical Services
>
> Re: Mr. Richie Chan
>
> > Follow-up on 36 y/o male, S/P Arthroscopic Partial Meniscectomy, Right Knee. Gouty Arthritis is not work-related.
> >
> > Medical Meniscal Tear may be secondary to trauma, wear and tear, can be work-related.
> >
> > Patient has already reached maximum medical improvement.
> >
> > Disability grade remains at Grade 10.
> >
> > Thanks.

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[6] *Id.* at 122.

[7] *Id.*

[8] *Id.* at 123.

Respectfully yours,

WILLIAM CHUASUAN, JR. MD
Lic. No. 95270[9]

Due to persistent pain even after surgery and respondents' continued silence on whether he could resume his seafarer duties, he consulted an independent medical expert who, after a series of examinations, issued a Medical Report dated January 6, 2014, declaring him unfit for sea duty due to persistent pain on the knee, swelling, and limited movement. Thereafter, he asked respondents for total permanent disability benefits but to no avail.[10]

On the other hand, respondents countered that Chan had no cause of action since he failed to follow the procedure in contesting the findings of the company-designated physician. Chan had prematurely filed the complaint without seeking a second opinion from the physician of his own choice. Thus, any medical document that Chan may have later submitted would only be a mere afterthought for the sole purpose of claiming total disability benefits. Too, Chan's delayed treatment which exceeded one hundred twenty (120) days should be attributed to him as he himself requested more time to decide whether to undergo surgery. Assuming Chan was entitled to disability benefits, it should be limited to Grade 10 disability as assessed by the company-designated physician. Chan is not entitled to damages and attorney's fees as respondents were never in bad faith in dealing with him. Lastly, respondent Ms. Doris Ho should be dropped as party respondent since Chan had no employer-employee relationship with her.

The Labor Arbiter's Ruling

By Decision dated January 30, 2015, Labor Arbiter Vivian H. Magsino-Gonzales ruled in Chan's favor. The labor arbiter found that Chan was not informed of the company-designated physician's final assessment even after the lapse of two hundred

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[9] *Id.* at 44.

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

forty (240) days from medical repatriation. Chan, therefore, was left with no other alternative but to consult an independent physician to evaluate his medical condition.[11] The labor arbiter awarded total permanent disability benefit based on the POEA Contract but denied the other claims for lack of basis, thus:

> **WHEREFORE**, foregoing considered, judgment is hereby rendered ordering respondents MAGSAYSAY MARITIME CORPORATION/ C.S.C.S. INTERNATIONAL NV to jointly and severally pay complainant, the sum of US$60,000.00 or its peso equivalent prevailing at the time of payment.
>
> All other claims are dismissed.
>
> **SO ORDERED.**[12]

The NLRC's Ruling

On appeal, the NLRC affirmed with modification awarding attorney's fees to Chan. The NLRC subsequently denied respondents' motion for reconsideration.[13]

The Court of Appeals' Ruling

By Decision dated June 29, 2017, the Court of Appeals reduced the award to Grade 10.

It held that Chan disregarded the conflict resolution procedure under the POEA-SEC when he did not refer the conflicting findings on the extent of his disability to a third doctor. For this reason, the findings of the company-designated physician must prevail. Too, the Court of Appeals held that the seafarer's incapacity to work after the lapse of more than one hundred twenty (120) days from the time he suffered an injury and/or illness is not a magical incantation that automatically warrants the grant of total and permanent disability benefits in his favor since jurisprudence has extended this period to two hundred forty (240) days. Only one hundred sixty-nine (169) days passed

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[11] *Id.* at 262-269.

[12] *Id.* at 269.

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

from Chan's repatriation for medical treatment on May 13, 2013 until the company-designated physician gave him a Grade 10 rating on October 29, 2013.

The Court of Appeals denied Chan's motion for reconsideration.[14]

The Present Petition

Chan now seeks[15] affirmative relief from the Court and prays that the assailed dispositions of the Court of Appeals be reversed and a new one rendered reinstating the NLRC's Resolution dated April 10, 2015.

He first argues that he is not duty bound to avail of the conflict resolution procedure under Section 20-B (3) of the POEA-SEC since respondents deliberately refused to furnish him a copy of the company-designated physician's final assessment after his medical treatment was discontinued. As a result, he was deemed totally and permanently disabled by operation of law. The Grade 10 assessment issued him on October 29, 2013 cannot be the final assessment within the contemplation of law.

He next asserts that the final assessment attached to respondents' position paper was not compliant with law and jurisprudence. There was no categorical declaration of his fitness to work as seafarer despite the Grade 10 assessment issued by the company-designated doctor. There was no discussion either on the implication on his capacity to return to work as seafarer.

Lastly, Grade 2 to 14 (POEA-SEC) assessments must include a certification that the seafarer remains fit to work as seafarer, otherwise, it can only be considered as an interim assessment. Here, there was no such definitive assessment from the company-designated physician.[16]

On the other hand, respondents counter that Chan's Grade 10 disability was already assessed not once but twice, first on

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

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

[16] *Id.* at 21-58.

August 16, 2013 prior to his surgery, and second, on October 29, 2013 after his surgery. Also, the complaint was prematurely filed without seeking a second or third opinion. It was only when Chan filed his position paper that he belatedly presented a medical report issued by his alleged physician of choice, Dr. Runas. Thus, at the time the complaint was filed, petitioner did not as yet consult any personal physician for his disability assessment. In any event, the two (2) conflicting medical findings were not referred to a third doctor, hence, the findings of the company-designated physician pertaining to his Grade 10 disability must prevail.[17]

Issues

1. Is the October 29, 2013 medical assessment of the company-designated physician complete, final and definite?

2. Is referral to a third doctor mandatory?

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

Ruling

To begin with, this Court is not a trier of facts, hence, only questions of law may be raised in a petition for review on *certiorari* under Rule 45. In the exercise of its power of review, the factual findings of the Court of Appeals are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. It is a recognized exception, however, that when the Court of Appeals' findings are contrary to those of the NLRC and the labor arbiter, as in this case, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[18]

The employment of seafarers is governed by the contracts they signed at the time of their engagement. So long as the

[17] *Id.* at 505-522.

[18] See *Camilo A. Esguerra v. United Philippines Lines, Inc., Belships Management (Singapore) PTE LTD., and/or Fernando T. Lising*, 713 Phil. 487, 497 (2013).

stipulations in these contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.[19]

Here, petitioner's employment is governed by law, the contract he executed with respondents on November 19, 2012, and the POEA-SEC.[20] Section 20 (A) of the POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, sets the procedure for disability claims of seafarers, to *wit*:

x x x x x x x x x

SECTION 20. COMPENSATION AND BENEFITS. —

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

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

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

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is

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

[20] Memorandum Circular No. 10, s. 2010.

> declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.
>
> x x x x x x x x x
>
> For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.** (Emphasis Supplied)

On the other hand, Section 20 (A) (6) of the 2010 POEA-SEC highlights that the seafarer's disability shall not be measured by the number of days the seafarer underwent treatment, *viz.*:

> 6. 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.

In ***Olidana v. Jebsens Maritime, Inc.***,[21] the Court ruled that before the disability gradings under Section 32 may be considered, the same should be properly established and

[21] 772 Phil. 234, 245 (2015).

contained in a **valid and timely** medical report of a company-designated physician. Thus, the foremost consideration of the courts is 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 will not be seriously appreciated.

The October 29, 2013 medical assessment is not complete, final nor definite.

As stated, Chan sustained knee injury after he slipped and hit his right knee on the deck during a regular boat drill. He was medically repatriated for treatment on May 13, 2013.[22] On May 14, 2013, he got referred to the company-designated physician at Marine Medical Center.[23] The company-designated physician diagnosed him with gouty arthritis with meniscal tear (right knee) and advised him for surgery. On June 24, 2013, Chan requested for more time to decide whether to undergo surgery.[24] On August 16, 2013, the company-designated physician noted that Chan had already attained maximum medical cure and was given a disability assessment of Grade 10.[25] On August 17, 2013 or after ninety-six (96) days since his repatriation, Chan finally manifested his decision to undergo surgery. Thus, the surgery on his affected knee was done on August 27, 2013.[26] But the surgery did not relieve him of the pain. Even subsequent therapy and medical treatments did not help. Consequently, respondents discontinued to finance Chan's therapy and medical treatment starting on the last week of October 2013.[27] On October 29, 2013, the company-designated physician issued his alleged final assessment, to *wit*:

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[22] *Rollo*, p. 81.

[23] *Id.* at 60.

[24] *Id.* at 122.

[25] *Id.*

[26] *Id.* at 28.

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

October 29, 2013

ROBERT D. LIM, MD
Marine Medical Services
Metropolitan Medical Services

Re: Mr. Richie Chan

Follow-up on 36 y/o male, S/P Arthroscopic Partial Meniscectomy, Right Knee. Gouty Arthritis is not work-related.

Medical Meniscal Tear may be secondary to trauma, wear and tear, can be work-related.

Patient has already reached maximum medical improvement.

Disability grade remains at Grade 10.

Thanks.

Respectfully yours,

WILLIAM CHUASUAN, JR. MD
Lic. No. 95270[28]

True, the company-designated physician issued his medical assessment on Chan's disability twice. First, on August 16, 2013 prior to his surgery, and second, on October 29, 2013 after his surgery. But the latter medical assessment fell short of the parameters laid down by jurisprudence as a final medical assessment.

Under the POEA-SEC, the company-designated doctor is primarily vested with the responsibility to determine the disability grading or fitness to work of seafarers. To be conclusive, however, the medical assessment or report of the company-designated physician must be complete and definite for the purpose of ascertaining the degree of the seafarer's disability benefits.[29]

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[28] *Id.* at 44.

[29] See *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018.

In ***Orient Hope Agencies, Inc. and/or Zeo Marine Corporation v. Michael E. Jara***,[30] the Court emphasized the importance of a final and definite disability assessment. It is necessary in order to truly reflect the extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

Indubitably, a definite declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade.[31]

Here, the medical assessment issued by the company-designated physician cannot be considered complete, final, and definite as it did not show how the disability assessment was arrived at. If at all, the assessment merely stated that petitioner had attained maximum medical treatment and declared petitioner's disability at Grade 10. A declaration of disability in the medical assessment, without more, cannot be considered complete, final and definitive.

In ***Maunlad Trans., Inc./Carnival Cruise Lines, Inc., and Mr. Amado L. Castro, Jr. v. Rodolfo M. Camoral***,[32] the Court declared the seafarer's disability as total and permanent because not only was the medical report and disability assessment submitted beyond one hundred twenty (120) days, it also did not show how the supposed *partial* permanent disability assessment of the seafarer was arrived at. It simply stated he was suffering from Grade 10 disability. Nothing more. At any rate, it was not disputed that both the company-designated doctor and the seafarer's private doctor declared the seafarer unfit to return to his previous occupation. The Court, therefore, held

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[30] G.R. No. 204307, June 6, 2018.

[31] See *Tamin v. Magsaysay Maritime Corporation, et al.*, 794 Phil. 286, 301 (2016).

[32] 753 Phil. 676, 691 (2015).

that this is equivalent to a declaration of permanent and total disability.

The October 29, 2013 medical assessment was not timely nor properly issued.

Although Section 20 (A) (6) of the 2010 POEA-SEC instructs that disability shall not be measured or determined by the number of days a seafarer is under treatment, as to when the fitness of a seafarer for sea duty may be ascertained is still subject to the periods prescribed by law.[33]

Article 192 (c) (1) of the Labor Code provides:

> Art. 192. Permanent total disability. — x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

Section 2, Rule X of the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code is relevant, *viz.*:

> Sec. 2. Period of Entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

In ***Vergara v. Hammonia Maritime Services, Inc., et al.***,[34] the Court laid down the procedure for a seafarer's claim for disability benefits, thus:

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[33] *Supra* note 21.

[34] 588 Phil. 895, 912 (2008).

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

In ***Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.***,[35] the Court further summarized the rules governing a seafarer's claim for total and permanent disability benefits by a seafarer, *viz.*:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the

[35] 765 Phil. 341, 363 (2015).

> seafarer's disability becomes permanent and total, regardless of any justification.

Two (2) requisites, therefore, must concur: 1.) an assessment must be issued within the 120/240-day window, and 2.) the assessment must be final and definitive.[36]

It is true that the company-designated physician here failed to issue the medical assessment within the one hundred twenty (120)-day period owing to petitioner's request for time to decide whether or not to undergo surgery. Although this delay should be attributed to petitioner and might have justified an extension of the period for the company-designated physician to issue an assessment within two hundred forty (240) days, this circumstance does not preclude petitioner from recovering total permanent disability benefits.

For even assuming that the October 29, 2013 medical assessment was complete, final, and definite, the fact that it was not actually relayed to or made known to petitioner within the extended two hundred forty (240)-day period is fatal to the company's defense. On this point, we quote with concurrence the labor arbiter's disposition, thus:

> During the first mandatory conference and even when complainant explicitly manifested that "no disability grading nor fitness to work was issued," the record of the proceedings show that respondents' counsel did not, at all, bother to oppose complainant's assertion. x x x[37]

> In view of the obtaining circumstances and in the absence of any written proof, respondents are now estopped from claiming that complainant was duly informed by the company of his disability grading, or "was offered by the company doctor's assessment several times [during] the conferences, which he refused." There is nothing on record to support respondents' self-serving claim. Without a doubt, an act, declaration or omission of a party can be used in evidence against him.[38]

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[36] See *Talaugon v. BSM Crew Service Centre Phils., Inc.*, G.R. No. 227934, September 4, 2019.

[37] *Rollo*, p. 266.

[38] *Id.*

x x x x x x x x x

In the present case, while respondents' medical report dated 29 October 2013 claims that complainant reached maximum care and that he was assessed by company doctors to be suffering from a disability grade 10, there is no concrete proof that said final assessment was actually relayed to complainant within the 240-day period.[39] (Italics omitted)

In ***Pastor v. Bibby Shipping Philippines, Inc.***,[40] the Court ruled that the company-designated physician failed to timely issue a medical assessment of petitioner's disability within the two hundred forty (240)-day extended treatment period, thus, there is no valid assessment to be contested and the law steps in to transform the latter's temporary total disability into one of total and permanent. So must it be.

The mandatory third-doctor referral is not applicable here.

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 one hundred twenty (120)-day or two hundred forty (240)-day period.[41]

As stated, there is no occasion here for the mandatory third-doctor referral precisely because a complete, final, and definite medical assessment from the company-designated physician

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[39] *Id.* at 267.

[40] G.R. No. 238842, November 19, 2018.

[41] See *Generato M. Hernandez v. Magsaysay Maritime Corporation, Saffron Maritime Limited and/or Marlon R. Roño*, G.R. No. 226103, January 24, 2018, 853 SCRA 104, 113.

is absent, aside from the fact that the so-called October 29, 2013 medical assessment, if at all it exists, was not actually relayed to petitioner. To repeat, it is the issuance and the corresponding conveyance to the employee of the final medical assessment by the company-designated physician that triggers the application of Section 20 (A) (3) of the 2010 POEA-SEC.

In ***Orient Hope Agencies, Inc. v. Jara***,[42] the Court held that the third-doctor rule does not apply when there is no valid final and definitive assessment from a company-designated physician, as in this case.

Moral and Exemplary Damages and Attorney's Fees

Moral damages are awarded as compensation for actual injury suffered and not as a penalty. The award is proper when the employer's action was attended by bad faith or fraud, oppressive to labor, or done in a manner contrary to morals, good customs, or public policy.[43] Bad faith is not simply bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.[44]

Exemplary damages, on the other hand are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions,[45] and may only be awarded in addition to the moral, temperate, liquidated or compensatory damages.[46] In contracts and quasi-contracts, the court may award exemplary damages

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[42] G.R. No. 204307, June 6, 2018.

[43] See *Montinola v. Philippine Airlines*, 742 Phil. 487, 497 (2014).

[44] See *Jebsen Maritime, Inc. v. Gavina*, G.R. No. 199052, June 26, 2019.

[45] See *Magsaysay Maritime Corp. v. Chin, Jr.*, 731 Phil. 608, 614 (2014).

[46] **Article 2229**. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[47]

Here, respondents never evaded liability from petitioner's claims, albeit insisted that petitioner's disability should remain at grade 10. Respondents even provided and financed petitioner's surgery on the affected knee and the consequent therapy and treatment. Thus, respondents were never in bad faith in facilitating the repatriation and treatment of petitioner. For this, petitioner is not entitled to moral damages. Sans the award of moral damages, petitioner is likewise not entitled to exemplary damages. The labor arbiter, therefore, correctly denied petitioner's claim for moral and exemplary damages for lack of basis.

Even then, the fact that petitioner was compelled to litigate to protect his rights, the NLRC correctly awarded attorney's fees of ten percent (10%) of the total monetary award in accordance with Article 2208[48] of the New Civil Code.

In ***Pastor v. Bibby Shipping Philippines, Inc.***,[49] the Court denied therein petitioner's claims for moral and exemplary damages for lack of substantial evidence showing that respondents acted with malice or in bad faith in refusing petitioner's claims. The Court, nevertheless, deemed it proper to award attorney's fees since petitioner was clearly compelled to litigate to satisfy his claim for disability benefits.

Lastly, the Court imposes on the monetary awards legal interest at six percent (6%) per annum from the date of finality of this decision until full payment pursuant to ***Nacar v. Gallery Frames***.[50]

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[47] Article 2332 of the Civil Code.

[48] **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

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x x x x x x

[49] G.R. No. 238842, November 19, 2018.

[50] 716 Phil. 267, 283 (2013).

Final Note

In disability compensation cases, it is not the injury which is compensated, but rather, the incapacity to work resulting in the impairment of one's earning capacity. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than one hundred twenty (120) days, or two hundred forty (240) days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.[51]

All told, Chan is rightfully entitled to total and permanent disability benefits.

ACCORDINGLY, the petition is **GRANTED** and the Decision dated June 29, 2017 and Resolution dated April 25, 2018 of the Court of Appeals in CA-G.R. SP No. 141340, **REVERSED**. The April 10, 2015 Resolution of the NLRC in NLRC LAC No. (M) 03-000258-15 is **REINSTATED** with **MODIFICATION**, imposing legal interest of six percent (6%) *per annum* on the total monetary award from finality of this decision until fully paid.[52]

SO ORDERED.

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

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[51] *Supra* note 30.

[52] See *Jessie C. Esteva v. Wilhelmsen Smith Bell Manning, Inc., et al.,* G.R. No. 225899, July 10, 2019.

[*] Designated as additional member in lieu of *J.* Lopez per raffle dated February 3, 2020.

SECOND DIVISION

[G.R. No. 241905. March 11, 2020]

CARLOS S. PALANCA IV and COGNATIO HOLDINGS, INC., *petitioners, vs.* **RCBC SECURITIES, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; SECURITIES REGULATION CODE (SRC); STOCKBROKER-CLIENT RELATIONSHIP; THE RELATIONSHIP OF AN ENTITY ENGAGED IN SECURITIES BROKERAGE TO ITS CLIENT IS IN THE NATURE OF AN AGENCY, SUCH THAT THE STOCKBROKERS, IN THEIR DEALINGS WITH THEIR CLIENTS, MAY BE HELD LIABLE NOT ONLY UNDER THE SRC, BUT ALSO UNDER THE CIVIL CODE.— It has been established that RSI is engaged "in the brokerage business, for the purchase and sale of any and all kinds of shares, bonds, debentures, **securities** x x x and any and all other kinds of properties x x x"; and that petitioners maintained accounts with RSI as clients of its brokerage business. Petitioners deposited funds to an RSI bank account for credit to their trading accounts; and in turn, RSI sold stock on petitioners' behalf and remitted payments therefrom directly to petitioners' bank accounts. Given these facts, it is clear that RSI is a broker under Section 3.3 of the SRC, because it is "a person engaged in the business of buying and selling securities for the account of others." RSI's operations are therefore subject to the provisions of the SRC and to the jurisdiction and powers of the SEC over brokers. Furthermore, as an entity engaged in securities brokerage, RSI's relationship to its clients, including petitioners, is in the nature of an agency, as it is essentially an agreement by RSI to render services on behalf of its clients, with the consent and authority of the latter. RSI's duties as an agent of petitioners under the law should therefore be deemed written into their agreement. Likewise, the principles of the law on agency, including the liabilities of an agent, are applicable to RSI's dealings with petitioners. Stated differently, stockbrokers, in their dealings with their clients, may be held liable not only under the SRC and allied laws, but also under the Civil Code.

2. ID.; ID.; SELF-REGULATORY ORGANIZATIONS; STOCK EXCHANGES AND SECURITIES MARKETS; ALLOWED TO REGULATE THEIR OWN OPERATIONS, SUBJECT TO THE CONTROL AND SUPERVISION OF THE GOVERNMENT REGULATORY AUTHORITY UNDER THE PRINCIPLE OF SELF-REGULATION.— From their earliest inception in the United States, stock exchanges and securities markets have always exercised some form of control over their own regulatory affairs. It has been generally recognized that due to the large number of market participants and the lack of resources, full government regulation of securities markets is impractical. As such, stock exchanges and securities markets are allowed to regulate their own operations, subject to the control and supervision of the government regulatory authority. This principle is known as *self-regulation*; and is embodied in the SRC's declaration of policy, which states *inter alia* that "the State shall establish a socially conscious, free **market that regulates itself** x x x." The principle of self-regulation is enshrined and fleshed out in Section 39 and 40 of the SRC. Rule 3(R) of the 2015 SRC IRR defines a "*Self-Regulatory Organization or SRO*" x x x.

3. ID.; ID.; ID.; THE REGULATORY STRUCTURE IS A TWO-TIERED SCHEME, WITH THE SELF-REGULATORY STRUCTURES AS THE FIRST-LEVEL REGULATORY ENTITIES, SUBJECT TO THE REVIEW, REGULATION, AND SUPERVISION OF THE SECURITIES AND EXCHANGE COMMISSION AS THE SECOND-LEVEL REGULATORY ENTITY.— Under Section 39.1 of the SRC, the SEC is given the "power to register as a self-regulatory organization, or otherwise grant licenses, and to regulate, supervise, examine, suspend or otherwise discontinue, as a condition for the operation of organizations whose operations are related to or connected with the securities market." In turn, associations of securities market participants are allowed to apply for registration as SRO's. Under the SRC, SROs are empowered: 1) to promulgate, amend, and enforce rules and regulations to govern the trading activities of its members; 2) to control the admission of brokers, dealers, salespersons, and associated persons into a securities association; and 3) to impose disciplinary sanctions upon its members. The regulatory structure under the SRC is therefore a two-tiered scheme, with the SROs as the

first-level regulatory entities, subject to the review, regulation, and supervision of the SEC as the second-level regulatory entity. The regulatory jurisdiction of SROs is defined in Section 40.2 of the SRC, which mandates SROs to "comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith x x x." The PSE, as an SRO, established the CMIC as its independent enforcement and compliance monitoring arm. x x x [I]n enacting the principle of self-regulation into statute, Congress delegated a modicum of regulatory power to the SROs. These regulatory powers are exercised "[i]n lieu of direct regulation by the SEC of Exchanges and other securities-related organizations," and are therefore of the same legal nature as that of the SEC's powers.

4. ID.; ID.; ID.; ANY DOUBT AND CONFLICT IN THE INTERPRETATION OF THE SRC AND ITS IMPLEMENTING RULES MUST BE RESOLVED IN A MANNER THAT WILL CARRY OUT THE CORE PRINCIPLE OF THE SECURITIES REGULATION LAWS.— The state policy on securities regulation is articulated in Section 2 of the SRC x x x. It has been observed that the x x x provision lays down seven core principles of our securities regulation laws: self-regulation, encouragement of the widest participation of ownership in enterprises, enhancement of the democratization of wealth, promotion of capital market development, protection of investors, ensuring full and fair disclosure about securities, and minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market, with the unifying principle being the protection of investors. These core principles animate the whole of the SRC; and as such, any doubt or conflict in the interpretation of the SRC and its implementing rules must be resolved in a manner that will carry out the foregoing principles.

5. ID.; ID.; ID.; BOOKS AND RECORDS RULE; MERE REQUESTS FOR PRODUCTION OF RECORDS ARE NOT SUBJECT TO PRESCRIPTION.— [T]he Requests filed by petitioners are exactly that: mere requests for the production of documents. Palanca requested the documents because the trades he made through Valbuena were not reflected in the SOA shown to him by RSI. The Requests neither asked the PSE to gather facts and inquire into the circumstances of the apparent

conflict between Palanca's records and the SOA produced by RSI; nor did they seek to compel RSI to do so. They are simply requests for PSE to exercise its powers as an SRO to compel SRI to furnish petitioners with copies of documents related to their trading account. The PSE and the CMIC are not being requested to conduct any further action on the matter other than the relief sought. x x x As such, the Requests cannot be considered complainants under Article II of the CMIC Rules but as mere requests for production of records under the last paragraph of Article IX, Section 1 of the same Rules x x x. [T]his Court is unable to find in the x x x provision, or in any other part of the CMIC Rules, a rule that sets a prescriptive period for requests for production of records. The inescapable conclusion, therefore, is that the CMIC Rules did not intend to make such requests subject to prescription, as they are simple administrative requests. In contrast, complaints for investigation under Article II, Section 4 are subject to the six-month prescriptive period precisely because they trigger the investigatory powers of the CMIC. Therefore, the Requests filed by petitioners are not subject to prescription, being simple requests for access to records under Article IX, Section 1 of the CMIC Rules.

6. ID.; ID.; ID.; ID.; A TRADING PARTICIPANT IS ALLOWED TO KEEP ITS RECORDS IN ELECTRONIC FORM ON THE CONDITION THAT THE TRADING PARTICIPANT SHALL PROMPTLY AND READILY PROVIDE A COMPREHENSIBLE AND CERTIFIED TRUE PRINTED AND/OR ELECTRONIC COPY OF THE BOOKS AND RECORDS OR ANY PART THEREOF WHEN REQUESTED BY ANY PARTY WHO MAY BE LEGALLY ENTITLED OR AUTHORIZED TO ACCESS SAID BOOKS AND RECORDS.— RSI's contentions that "there is no x x x procedural mechanism under the CMIC Rules that expressly allows a x x x request for assistance to produce documents"; and that Article IX, Section 1 of the CMIC Rules "merely pertains to the requirement of providing records requested by the CMIC, and not through its intervention," is contrary to the text of the provision itself, which clearly states that a trading participant is allowed to keep records in electronic form provided that, "**upon request by the Commission, the CMIC, or any other party who may be legally entitled or authorized to access said books and records**," the trading participant shall provide

a copy of such records. Essentially, the provision allows a trading participant to keep its records in electronic form on the condition that the trading participant "shall promptly and readily provide a comprehensible and certified true printed and/or electronic copy of the books and records or any part thereof" when requested by the SEC, the CMIC, or *any other party who may be legally entitled or authorized to access said books and records.* This reading of the provision is in line with the SRC's overarching principle of investor protection. As a client of a stock brokerage firm with a legally recognized contractual relationship, it is undeniable that petitioners are "legally entitled or authorized" to access their trading records with RSI. To otherwise construe Article IX, Section 1 of the CMIC Rules as a mere investigatory tool available only to the CMIC would deprive the investing public of a remedy to inquire into the status of their investments, contrary to the SRC's core principles of full disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices.

7. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELEMENTS; NOT PRESENT IN CASE AT BAR.—The doctrine of *res judicata* is expressed in Rule 39, Section 47 (b) of the Rules of Court, which states *inter alia* that a "judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity." x x x In the recent case of *Monterona v. Coca-Cola Bottlers Philippines, Inc.*, it was held that: The elements of *res judicata are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of actions.* x x x x x x It is undisputed that the PSE-MRD decision is a final judgment on the merits rendered by a competent tribunal with jurisdiction over RSI. As found by the appellate court, the PSE-MRD decision penalized RSI for violating x x x [certain] regulations x x x. Given the charges and the sanction imposed,

it is quite obvious that the PSE-MRD decision is based on an administrative disciplinary proceeding against RSI, which is rooted in the PSE's self-regulatory powers under Sections 40.2 and 40.6(a) of the SRC. x x x We find that the PSE-MRD Decision does not constitute *res judicata vis-à-vis* the Requests filed by petitioners. A cause of action is an act or omission by which a party violates a right of another. Here, the ultimate act which gave rise to both the PSE-MRD case and the Requests is the series of questionable transactions committed by Valbuena. These transactions simultaneously violated not only the regulations of the PSE, thus giving rise to administrative liability on the part of Valbuena's employer, RSI; but also petitioners' rights under their brokerage relationship with RSI. As to identity of subject matter, on one hand, the PSE-MRD decision concerns RSI's administrative liability for violation of securities rules *in general*, without reference to any particular stock brokerage contract. The PSE-MRD's jurisdiction to sanction RSI stems from the latter's membership in the PSE, which is required under the securities laws and regulations. On the other hand, the subject matter of the Requests filed by petitioners is the trading record pertinent to the particular stock brokerage contracts existing between petitioners and RSI. The Requests do not seek a declaration of liability or an imposition of any penalty whatsoever on RSI. Rather, they are mere requests for the production of documents which RSI is obliged to produce under the CMIC Rules and the law governing its relationship with petitioners. As such, the matter of the release of the requested records was not, in the words of the Rules of Court, "directly adjudged" or "could have been raised in relation" to the PSE-MRD case. It therefore follows that there can be no actual or substantial identity between the parties in the PSE-MRD case and in the Requests, for the relief sought by petitioners in their Requests is of a totally different nature from the sanction imposed on RSI in the PSE-MRD case. The administrative sanction imposed on RSI by the PSE-MRD does not inure to petitioners' benefit insofar as their trading contract with RSI is concerned, for it does not compel RSI to make any payment or other action with respect to any account affected by Valbuena's questionable transactions. Turning now to the RTC cases, x x x [t]he RTC's orders reveal that the RTC cases were dismissed for failure to plead actionable documents. It cannot therefore be said that the dismissals of the two cases were made on the merits, since the RTC did not

actually rule on the issues raised by the complaints, simply and precisely because the complaints failed to plead the documents that state petitioner's cause of action. For this reason, We cannot subscribe to the appellate court's finding that "the documents purportedly being sought by [petitioners] through the Letter-Complaints were already the subject of the RTC Cases, which had already been dismissed with finality by the Supreme Court." Furthermore, as the dismissal of the RTC cases was premised on a ground that does not bar re-filing, petitioners were well within their rights to "demand that [RSI] produce evidence in support of [petitioners'] causes of action," in order that they may obtain the aforesaid actionable documents and attach them to whatever complaint they may file. It is therefore clear that the RTC cases do not constitute *res judicata* as against the Requests.

8. ID.; ID.; FORUM SHOPPING; ACTIONS FILED WITH WILLFUL AND DELIBERATE INTENT TO COMMIT FORUM SHOPPING ARE DISMISSED WITH PREJUDICE.— Forum shopping is the repetitive availment of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another. It is prohibited under Rule 7, Section 5 of the Rules of Court, to prevent "the rendition by two competent tribunals of two separate and contradictory decisions"; and to deter unscrupulous party litigants from repeatedly trying their luck in several different tribunals until a favorable result is reached. Actions filed with willful and deliberate intent to commit forum shopping are dismissed with prejudice.

9. ID.; ID.; ID.; THE TEST TO DETERMINE THE EXISTENCE THEREOF IS WHETHER A FINAL JUDGMENT IN ONE CASE AMOUNTS TO *RES JUDICATA* IN ANOTHER OR, WHETHER THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT.— The test to determine the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or, whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions;

(b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

10. ID.; RULES OF PROCEDURE; DESIGNED TO FACILITATE THE PRECISE APPLICATION OF SPEEDY ENFORCEMENT OF SUBSTANTIVE LAWS.— [T]his Court reiterates that procedural rules are nothing but the handmaids of substantive law. The rules of procedure are designed to facilitate the precise application and speedy enforcement of substantive laws. In the case at bar, the Court has endeavored to uphold the fundamental aims of our securities laws amidst the unintended entanglements brought about by the rules intended for the enforcement thereof. Investor protection and full disclosure are necessary ingredients for the democratization of wealth and the promotion of the development of the capital market.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioners.
DCLAW for respondent RCBC Securities, Inc.

D E C I S I O N

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

The present Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court assails the Decision[1] dated October 27, 2017 and the Resolution[2] dated September 5, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 148920, which reversed the *en banc* Decision dated December 6, 2016 of the

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[1] Special 13th Division, composed of Associate Justices Edwin D. Sorongon *(ponente)*, Jane Aurora C. Lantion (acting chairperson), and Maria Filomena D. Singh; *rollo* (Vol. 1), pp. 46-70.

[2] Former special 13th Division, composed of Associate Justices Edwin D. Sorongon *(ponente)*, Jane Aurora C. Lantion (acting chairperson), and Maria Filomena D. Singh; *id.* at 72-75.

Securities and Exchange Commission (SEC), and reinstated the Letter-Decision dated December 4, 2014 and the Resolution dated June 1, 2015 of the Capital Markets Integrity Corporation (CMIC), which denied the Requests for Assistance filed by petitioners Carlos S. Palanca IV (Palanca) and Cognatio Holdings, Inc. (Cognatio), in connection with the release of certain information concerning alleged fraudulent transactions and other irregularities in their trading accounts with respondent RCBC Securities, Inc. (RSI).

Factual Antecedents

RSI is a Philippine corporation engaged in the business of securities brokerage and trading. Among its clients are Palanca and Cognatio. Sometime in December 2011, RSI discovered that one of its sales agents, one Mary Grace Valbuena (Valbuena), was involved in questionable securities trading transactions. RSI opened its own investigation into the matter, which led to Valbuena's termination from RSI. In turn, on March 12, 2012, the Market Regulation Department of the Philippine Stock Exchange (PSE-MRD) imposed a penalty of ₱5,000,000.00 on RSI for violation of securities laws and rules[3] relative to the transactions involving Valbuena.

As a result, RSI filed several criminal and civil cases against Valbuena. RSI also processed the claims of its clients who were prejudiced by Valbuena's questionable dealings. Among those clients who claimed to have been defrauded by Valbuena were

[3] RSI was found guilty of violating the following: Article V, Section 2, par. b of the Amended Market Regulation Rules in relation to SRC Rule 30.2-6 on Supervision; Article V, Section 1, par. b of the Amended Market Regulation Rules in relation to SRC Rule 30.2-1 on Ethical Standards; Article V, Section 7 of the Amended Market Regulation Rules in relation to SRC Rule 30.2-6 on Suitability Rule and Article VI, Section 3 of the Amended Market Regulation Rules in relation to SRC Rule 30.2-3, par. E on Discretionary Accounts; Article IV of the Amended Market Regulation Rules or Code of Conduct and Professional Ethics for Traders and Salesmen; SRC Rule 34.1-2 on Segregation of Functions (Chinese Wall); and Article VI, Section 10 of the Amended Market Regulation Rules in relation to SRC Rule 24.2-2 on Short Sales: *id.* at 377.

petitioners. However, petitioners' claim was rejected as baseless by RSI.

Aggrieved by the rejection of their claim, on June 5, 2012, petitioners sent RSI demand letters demanding the return of their remaining cash balances and stock positions. RSI responded by reiterating its earlier finding that it has no outstanding liabilities and/or unpaid claims in favor of the petitioners. RSI further argued that Palanca, as a seasoned trader and president of Cognatio, abetted Valbuena's deviations from the normal trading procedure in the handling of petitioners' accounts; and that as such, Palanca should have been more vigilant in dealing with Valbuena.[4] Undaunted, petitioners each filed separate cases[5] for Specific Performance with Damages against RSI with the Regional Trial Court (RTC) of Makati City. The Makati City RTC dismissed both cases in orders dated August 1, 2013 and April 30, 2014, respectively. Palanca and Cognatio filed their respective motions for reconsideration, but these were denied. They then elevated the matter before this Court *via* petitions for review on *certiorari*, which were respectively docketed as G.R. No. 210107 and G.R. No. 212600. G.R. No. 210107 was denied for violating the hierarchy of courts,[6] and entry of judgment was issued therein on March 5, 2015,[7] after the denial of Palanca's motion for reconsideration on August 18, 2014.[8] G.R. No. 212600 was likewise denied,

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[4] *Id.* at 407.

[5] Palanca filed a case on October 12, 2012 against RSI, RCBC Capital Corporation, Rizal Commercial Banking Corporation, Diosdado C. Salang, Jr., Rhodora A. Alberto, and Mary Grace Valbuena, which was docketed as Civil Case No. 12-1001; while Cognatio filed a case against the same respondents on December 17, 2012, which was docketed as Civil Case No. 12-1220, *rollo* (Vol. 2), pp. 455-456.

[6] Resolution of the Supreme Court dated March 26, 2014; *id.* at 628-629.

[7] *Id.* at 605-606.

[8] Resolution of the Supreme Court dated August 18, 2014; *id.* at 603-604.

for being a wrong mode of appeal;[9] this denial became final and executory on February 12, 2015,[10] after the Court denied Cognatio's motion for reconsideration on December 10, 2014.[11]

Meanwhile, on December 20, 2013, Cognatio filed with the SEC a complaint for revocation or suspension of license and registration against Valbuena and RSI. On August 14, 2014, Palanca and Cognatio sent Requests for Assistance to the PSE, seeking the PSE's assistance to direct RSI to furnish them with copies of the following documents: a) confirmation slips of alleged transactions as appearing in the Statement of Account (SOA) provided by RSI, with information as to who received the same; b) application or utilization of deposits made by petitioners to RSI's bank account for their buying transactions which do not appear in the SOA provided by RSI; c) sources of deposits to petitioners' accounts as appearing in the SOA provided by RSI, which are alleged not to have come from petitioners; and d) the identity of the persons who received the monies withdrawn from petitioners' trading accounts based on the SOA provided by RSI, and the identity of the persons who gave instructions for such withdrawals.[12] The PSE referred the requests to the CMIC, as the bourse's independent and self-regulatory audit, surveillance, and compliance arm.[13]

Upon Order of the CMIC, RSI submitted its letter-comment dated September 26, 2014 opposing the petitioners' requests for assistance. RSI argued that the requests for assistance filed by petitioners were actually written complaints which should have been filed within the six-month reglementary period provided for under the CMIC Rules. RSI also asserted that

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[9] Resolution of the Supreme Court dated August 6, 2014; *rollo* (Vol. 1), p. 119.

[10] *Rollo* (Vol. 2), pp. 719-720.

[11] *Id.* at 718.

[12] *Rollo* (Vol. 1), p. 98.

[13] CMIC Rules, Article 1, Section 3: Capital Markets Integrity Corporation, *About CMIC: Powers and Functions*, CMIC, http://www.cmic.com.ph/main/aboutUs.html# (last visited August 29, 2019).

petitioners were guilty of deliberate forum shopping because the reliefs sought by their requests for assistance were similar to the reliefs sought by petitioners in the specific performance cases before the Makati City RTC which were still pending with that court at that time. In their letter-reply dated October 17, 2014, petitioners reiterated their stand that they are simply seeking assistance before the Makati City RTC for the release of the requested documents, and that such relief is different from the reliefs sought in their pending cases for specific performance.

Ruling of the CMIC

After a further exchange of pleadings, on December 4, 2014, the CMIC rendered its Decision[14] denying petitioners' requests for assistance. On the issue of forum shopping, the CMIC held that the Requests for Assistance did not constitute forum shopping. According to the CMIC, the Requests for Assistance are separate and distinct from the specific performance cases and the earlier SEC complaint filed by Palanca and Cognatio, because petitioners sought different reliefs in each case; and that neither in the specific performance cases nor in the SEC complaint did petitioners seek assistance from CMIC to compel RSI to deliver the requested documents and information. According to the CMIC, it cannot see how the grant of the relief sought by the Requests would interfere with, or amount to *res judicata* in, the specific performance cases.

On the issue of prescription, the CMIC held that the Requests were filed beyond the six-month reglementary period for filing a written complaint with the CMIC as prescribed under its Rules, and that these had therefore, prescribed. It characterized the Requests as written complaints that fall under Section 4, Article II of the CMIC Rules, and not just requests for assistance, since a careful reading thereof showed that they are in the nature of written complaints filed directly with the CMIC by a customer, trading participant, or aggrieved party for an alleged violation

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[14] *Rollo* (Vol. 1), pp. 369-379. The Decision was signed by CMIC President Cornelio C. Gison.

of the Securities Laws or the CMIC Rules. The CMIC further said that petitioners' requests for assistance are precisely grounded on the alleged violations by RSI of pertinent securities laws which cannot be made separate from the requests for assistance, which are resultant reliefs from the purported violations.

On the issue of *res judicata*, the CMIC ruled that the Requests were barred by *res judicata*, considering that the allegations contained therein have already been resolved in the 2012 PSE-MRD ruling. Specifically, the CMIC noted that "(a) the resolution issued by then PSE-MRD[15] is already final and, as a matter of fact, was already executed against RSI; (b) the PSE-MRD had the authority to penalize RSI for its violation of the above-mentioned rules; (c) the resolution was on the merits of the case; and (d) there is a *substantial* similarity in the issues presented, the parties involved, and the reliefs sought *vis-à-vis* the resolution previously issued by the PSE-MRD and the instant requests for assistance."[16]

Petitioners sought reconsideration of the foregoing in a letter dated December 15, 2014.[17] But on June 1, 2015, the CMIC denied petitioners' motion through its Resolution No. 11, series of 2015.[18] Petitioners thus appealed to the SEC, in accordance with SEC Memorandum Circular No. 10, series of 2010.[19]

Ruling of the SEC

On December 6, 2016, the SEC *en banc* rendered its Decision[20] on the case. The SEC reversed the CMIC and directed

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[15] The PSE-MRD is the predecessor entity of the CMIC, Capital Markets Integrity Corporation, *About CMIC: Incorporation of CMIC*, CMIC, http://www.cmic.com.ph/main/aboutUs.html (last visited August 29, 2019).

[16] *Rollo* (Vol. 1), p. 378.

[17] *Rollo* (Vol. 1), pp. 291-302.

[18] *Id.* at 303-304.

[19] Entitled "Rules of Procedure on Appeals from Decisions from Self-Regulatory Organizations."

[20] *Rollo* (Vol. 1), pp. 405-413. The decision was signed by Commissioners Manuel Huberto B. Gaite, Antonieta F. Ibe, Ephyro Luis B. Amatong, and

RSI to produce the documents sought by petitioners in their Requests. Subsuming the issues to whether or not Palanca and Cognatio are entitled to the requested records, the SEC *en banc* ruled in the affirmative and held that the Requests are not covered by the six-month prescriptive period under Article II, Section 4 of the CMIC Rules because said Requests cannot come within the purview of the term "investigation," as contemplated in the aforementioned provision; and that the Requests filed by petitioners are plain requests meant to access particular records and did not include a prayer for RSI to conduct a search or inquiry into any "trading-related irregularities or other violations of the securities laws"; and that the allegations of trading irregularities made therein were only made to provide factual context.

The SEC *en banc* moreover ruled that instead of treating the Requests as complaints under Article II, Section 4, the CMIC should have treated them as requests under Article IX, Section 1 of the CMIC Rules, which requires trading participants to "promptly and readily provide a comprehensible and certified true printed and/or electronic copy of the books and records or any part thereof" upon request by the CMIC or by any other party who may be legally entitled or authorized to access such books or records; that given that CMIC has the power to order RSI to produce the requested records, CMIC should have exercised such power instead of denying petitioners' requests on the grounds of prescription and *res judicata*, in view of the CMIC's role of reinforcing investor confidence in the equity securities market; and that petitioners are legally entitled to access the requested records in view of their brokerage relationship with RSI. Citing jurisprudence, the SEC explained that a brokerage relationship is essentially a contract of agency; and that therefore, under the law, RSI was obligated to make a full disclosure of all transactions and material facts relevant to the agency, *i.e.*, the securities trading agreement it had with petitioners.

Blas James G. Viterbo. Chairperson Teresita J. Herbosa inhibited from the case.

The SEC furthermore held that the disclosure requirement under Article IX, Section 1 of the CMIC Rules is substantially reproduced in Rule 52.1.1.13 of the 2015 Implementing Rules and Regulations (IRR) of the Securities Regulation Code (SRC); that under that provision, the parties entitled to request information are the SEC, the PSE, and "any other party who may be legally entitled or authorized to access such books or records"; and that the SEC has authority, independent of the CMIC, to direct brokers and dealers to promptly and readily produce their books and records, under pain of suspension of registration; hence the SEC may order RSI to produce the information requested by petitioners.

Ruling of the Court of Appeals

On January 12, 2017, RSI filed a petition for review with the CA. After an exchange of pleadings, the CA rendered the assailed Decision in favor of RSI. Essentially concurring with the position of the CMIC, the appellate court disposed of the prescription issue in this manner:

> A careful reading of the [Requests] discloses that the same are in the nature of written complaints as defined in Section 2, Article 1 of the CMIC Rules which is any written statement of a customer or any other interested party "*alleging a grievance involving the business of a Trading Participant or issuer or a violation of the Securities Laws by a Trading Participant or Issuer*." The contents of the [Requests] clearly show that they do not merely operate as mere requests, but are, in fact, their supposed causes of action to compel [RSI] to produce certain documents which maybe the subject of the alleged violation of the Securities Laws. Allegations in a pleading determine the nature of an action and not the designation thereof by the parties. Even [petitioners'] Letter-Replies filed with the CMIC show that their principal inducement in filing their [Requests] is to compel the CMIC to investigate [RSI] for supposed violations of the CMIC Rules and Securities laws, alleging, among others, that petitioner is supposedly involved in a "*systematic anomaly that has adversely affected many individuals," and supposed settlements that were purportedly that "direct consequences of violations of the Securities Regulations [sic] Code."*

In fact, the CMIC found [petitioners'] Requests are grounded on — or in view of — the alleged violations by [RSI] of pertinent securities laws. As such, the alleged securities laws violations cannot be made separate from the requests for assistance, which are resultant reliefs from the purported violations. Stated otherwise, these [Requests] are in the nature of written complaints, as intended by the CMIC Rules, not as mere requests for assistance.

In their [Requests], [petitioners] specifically alleged the following: (a) most of the purported transactions reflected in [RSI]'s SOAs were not authorized; (b) no trade confirmation slips for the supposed genuine transactions were received; (c) the alleged transactions are questionable, considering that most, if not all of them, were made at a loss; (d) most of the buying trades made through Ms. Valbuena, which were paid by deposits to [RSI]'s account, did not appear in its SOAs; (e) [RSI's] SOA's did not tally with their actual stock and cash positions; and (f) most of the deposits for credit to its trading account do not appear in [RSI]'s SOA.

The foregoing is a litany of the alleged irregularities committed by the [RSI] which [petitioners] would like to be investigated by CMIC. True, the letters do not actually asked *[sic]* for an investigation to be conducted by CMIC for any trading-related complaints or any violation of Securities Laws. However, the tenor of the letters is actually towards the process of obtaining information or collecting facts regarding trading-related irregularities covering securities laws violation which in effect is already a part and parcel of investigation. Obviously, the purpose is to build a case against [RSI] for alleged trading-related irregularity under the guise of a letter [for] assistance. Thus, the [Requests] are viewed as a whole, a complaint for investigation.

Since these [Requests] are then Letter-Complaints within the meaning of Section 2, Article I of the CMIC Rules, they are governed by Section 4, Article II of the CMIC Rules which expressly limits the period within which to file a complaint with the CMIC to six (6) months from knowledge of the commission of the alleged trading irregularity or alleged violation of the Securities Laws. Thus, given that [petitioners] admittedly discovered the alleged anomalies involving their trading accounts as early as December 28, 2011, they only had six (6) months therefrom, or until June 28, 2012, within which to file a written complaint with the CMIC. But [petitioners] failed to seasonably exercise this remedy and instead opted to file the requests for assistance on

August 14, 2014, or more than two (2) years beyond the prescriptive period under the CMIC Rules.[21]

As regards the issue on the existence of *res judicata*, the CA again adopted the position of the CMIC, *viz.*:

Again, We subscribe to CMIC's finding that the issues in the Letter-Complaints have already been ruled upon by its predecessor, the PSE-MRD, as such the claim of the respondents are barred by *res judicata*.

It must be recalled that, on March 12, 2012, the then Market Regulation Department of the PSE (PSE-MRD) imposed a penalty amounting to PhP5,000,000.00 against [RSI] for its violation of a number of securities laws relative to the transactions involving its former agent Ms. Valbuena, among other issues, *viz.*:

Upon evaluation of your books and records, documents presented during the examination, our discussion during our exit conference dated 1 February 2012 and your letters dated 09 March 2012 and 16 February 2012, the Market Regulation Division [MRD] hereby imposes upon RCBC Securities, Inc. [RSI] a total of five million pesos (₱5,000,000.00) monetary penalty due to RSI's excessive violations of the following provisions of Securities Regulation Code [SRC], its implementing rules and regulations (the "SRC Rules") and the Amended Market Regulation Rules x x x:

a. Article V, Section 2 par. B of the Amended Market Regulation Rules in relation to SRC Rule 30.2-6 on Supervision;

b. Article V, Section 1 par. B of the Amended Market Regulation Rules in relation to SRC Rule 30.2-1 on Ethical Standards Rule;

c. Article V, Section 7 of the Amended Market Regulation in relation to SRC Rule 30.2-6 on Suitability Rule and Article VI, Section 3 of the Amended Market Regulation Rules in relation to SRC Rule 30.2-3 par. E on Discretionary Accounts;

d. Article IV of the Amended Market Regulation Rules or Code of Conduct and Professional Ethics for Traders and Salesmen;

[21] *Id.* at 58-59.

*e. SRC Rule 34.1-2 Segregation [*sic*] of Functions (Chinese Wall); and*

f. Article VI, Section 10 of the Amended Market Regulation Rules in relation to SRC Rule 24.2-2 on Short Sales[.]

x x x x x x x x x

RSI also [sic] hereby ordered to amend its internal control procedures to include measures to prevent similar type of unauthorized transactions from occurring again and to submit its amended internal control procedures x x x.

Based on the above set of facts, it can be concluded that the issues pertinent to, or are contained, in the letters dated August 14, 2014 were already ruled upon by the then PSE-MRD, CMIC's predecessor. Accordingly, the claims of [petitioners] are barred by *res judicata* for the following reasons: (a) the resolution issued by then PSE-MRD is already final and, as a matter of fact, was already executed against [RSI]; (b) the PSE-[MRD] had the authority to penalize [RSI] for its violation of the above-mentioned rules; (c) the resolution was on the merits of the case; and (d) there is a substantial similarity in the issues presented, the parties involved, and the reliefs sought as to the resolution previously issued by the PSE-MRD and the instant [Requests]. Moreover, the documents purportedly being sought by [petitioners] through the [Requests] were already the subject of the RTC Cases, which had already been dismissed with finality by the Supreme Court. Clearly, the [Requests] do not merely request for assistance to produce documents but in fact, demand that RSI produce evidence in support of [petitioners]' causes of action in the dismissed RTC Cases. Moreover, in asking for documents to show the application or utilization of their deposits, the sources of the deposits to their accounts and the persons who received the monies withdrawn from their accounts and who gave instructions for such withdrawals, [petitioners] are, in effect, asking the CMIC to direct [RSI] to justify its refusal to pay their claims, an issue that is clearly already in the RTC Cases that were dismissed.[22] (Italics in the original)

Finally, on the issue of forum shopping, the appellate court adopted and cited RSI's position, as set forth in its memorandum, thus:

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

First, [petitioners]' disguised attempts to resuscitate long-dismissed cases through the expedient refashioning of the reliefs they pray for in different actions precisely violates the prohibition against splitting a cause of action, or filing multiple cases based on the same cause of action, but with different prayers.

[Petitioners]' claims against RSI in the RTC were based, among others, on an unproven theory of agency under Article 1891 of the Civil Code.In their [Requests] before the CMIC, [petitioners] again alluded to their supposed agency relationship with RSI to justify their purported requests for assistance to obtain records. It is unmistakable, therefore, that the causes of action in the [Requests] were adjuncts to the main cause of action of agency in RTC Cases. A party to a civil action cannot be permitted to split demands and seek from different forum for reliefs that are derived from the same causes of action. Besides, "Section 3, Rule 2 of the 1997 Rules of Civil Procedure states that a party may not institute more than one suit for a single cause of action and, if two or more suits are instituted on the basis of the same cause of action, the filing of one on a judgment upon the merits in any one is available as ground for the dismissal of the other or others. A party will not be permitted to split up a single cause of action and make it a basis for several suits. A party seeking to enforce a claim must present to the court by the pleadings or proofs or both, all the grounds upon which he expects a judgment in his favor. He is not at liberty to split up his demands and prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought, and leave the rest to be presented in a second suit if the first fails. The law does not permit the owner of a single or entire cause of action or an entire or indivisible demand to divide and split the cause or demand so as to make it the subject of several actions. The whole cause must be determined in one action."

What we have here are supposedly different prayers of actions in various fora involving the same set of facts, parties and issues. [Petitioners]' attempt to distinguish these cases by superficial differentiation of their prayers simply amounts to the act of splitting causes of action. As previously stated, splitting a cause of action is among the methods by which forum shopping is committed. In attempting to "request assistance" to obtain records from the CMIC based on a theory of agency, which is merely a derivative from the RTC cases, [petitioners] effectively split their causes of action and violated the prohibition against forum shopping.

Second, these are Letter-Complaints under the guise of Requests for Assistance because they seek to subject [RSI] to an investigation that would result in disciplinary sanctions, including production of trading documents. In fact, these requests came about only after [petitioners] instituted cases before the trial court to hold [RSI] liable for the trade transactions purportedly made without their authorization based, among others, on Article 1891 of the Civil Code.Incidentally these cases were all dismissed. And as we have already mentioned earlier, these cases were brought straight to the Supreme Court by the [petitioners], but still to no avail. The dismissals eventually became final and executory. After that, [petitioners] filed these Requests for Assistance with the CMIC requesting it "to exercise its administrative powers as a self-regulatory organization." CMIC treated their Letter Requests as Letter-Complaints and dismissed the same on the grounds of prescription and *res judicata*. Unperturbed, [petitioners] went up on appeal to the SEC *En Banc* similarly based, among others, on Article 1891 of the Civil Code, in another attempt to procure a favorable judgment.

More importantly, the [December 2013] Case [filed by Cognatio] remains pending with the SEC. It is very clear that [petitioners] are likewise invoking the administrative powers of the SEC against [RSI], the same remedies in their request for assistance with CMIC. Essentially, [petitioners] asked two (2) different fora to exercise their administrative powers at the same time against the same entity based on the same facts and circumstances.[23] (Italics in the original; citations omitted)

Hence the present petition for review.[24]

The Issues

Four errors are raised in the instant petition.

1. THE APPELLATE COURT SERIOUSLY ERRED IN HOLDING THAT THE REQUESTS WERE IN THE NATURE OF WRITTEN COMPLAINTS.

2. THE APPELLATE COURT SERIOUSLY ERRED IN HOLDING THAT THE REQUESTS WERE FILED BEYOND THE APPLICABLE PRESCRIPTIVE PERIOD.

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[23] *Id.* at 64-66.

[24] *Id.* at 11-44.

3. THE APPELLATE COURT SERIOUSLY ERRED IN HOLDING THAT THE FILING OF THE REQUESTS WAS BARRED BY *RES JUDICATA*.

4. THE APPELLATE COURT SERIOUSLY ERRED IN HOLDING THAT PETITIONERS COMMITTED DELIBERATE FORUM-SHOPPING.[25]

The foregoing errors can be condensed into three core issues, namely, the proper characterization of the requests and the proper period for filing thereof under the CMIC Rules; the applicability of *res judicata* as a bar to the filing of the requests in view of the PSE-MRD ruling and the other cases filed by petitioners before the trial courts and the SEC; and the existence of deliberate forum shopping.

Ruling of the Court

A. Preliminary considerations

The Court, in this petition, finds itself wedged between the substantive law of securities regulation and the procedural aspect of its enforcement. To shine a brighter light on the issues presented, the Court finds it necessary to discuss certain matters which bear pertinently on the resolution thereof.

1. Nature of stockbroker-client relationship

It has been established that RSI is engaged "in the brokerage business, for the purchase and sale of any and all kinds of shares, bonds, debentures, **securities** x x x and any and all other kinds of properties x x x";[26] and that petitioners maintained accounts with RSI as clients of its brokerage business.[27] Petitioners deposited funds to an RSI bank account for credit to their trading accounts, and in turn, RSI sold stock on petitioners' behalf and remitted payments therefrom directly to petitioners' bank

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[25] *Id.* at 20.

[26] *Rollo* (Vol. 2), p. 453; *rollo* (Vol. 1), pp. 406-407.

[27] *Rollo* (Vol. 1), p. 14; *rollo* (Vol. 2), p. 454; *rollo* (Vol. 1), pp. 406-407.

accounts.[28] Given these facts, it is clear that RSI is a broker under Section 3.3 of the SRC, because it is "a person engaged in the business of buying and selling securities for the account of others." RSI's operations are therefore subject to the provisions of the SRC and to the jurisdiction and powers of the SEC over brokers. Furthermore, as an entity engaged in securities brokerage, RSI's relationship to its clients, including petitioners, is in the nature of an agency, as it is essentially an agreement by RSI to render services on behalf of its clients, with the consent and authority of the latter.[29] RSI's duties as an agent of petitioners under the law should therefore be deemed written into their agreement.[30] Likewise, the principles of the law on agency, including the liabilities of an agent, are applicable to RSI's dealings with petitioners. Stated differently, stockbrokers, in their dealings with their clients, may be held liable not only under the SRC and allied laws, but also under the Civil Code.

2. Self-regulatory organizations: concept, powers, and jurisdiction

From their earliest inception in the United States, stock exchanges and securities markets have always exercised some form of control over their own regulatory affairs.[31] It has been generally recognized that due to the large number of market participants and the lack of resources, full government regulation of securities markets is impractical.[32] As such, stock exchanges

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[28] *Rollo* (Vol. 1), p. 407.

[29] *Abacus Securities Corp. v. Ampil*, 518 Phil. 478 (2006); 12 Am. Jur. 2d §148; and Civil Code, Art. 1868.

[30] *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Sec. Reyes, et al.*, 758 Phil. 724, 765 (2015), citing *Heirs of San Miguel v. Court of Appeals*, 416 Phil. 943, 954 (2001); and *Surviving Heirs of Alfredo R. Bautista v. Lindo, et al.*, 728 Phil. 630 (2014).

[31] See *Stuart Alan Banner*, Anglo-American Securities Regulation: Cultural and Political Roots, 1690-1860, 250-280 (1998).

[32] Rafael A. Morales, *The Philippine Securities Regulation Code* (Annotated) 270 (2005).

and securities markets are allowed to regulate their own operations, subject to the control and supervision of the government regulatory authority. This principle is known as *self-regulation*; and is embodied in the SRC's declaration of policy, which states *inter alia* that "the State shall establish a socially conscious, free **market that regulates itself** x x x."[33] As explained by a commentator:

> In lieu of direct regulation by the SEC of Exchanges and other securities-related organizations, the statutory scheme involves, in the first instance, the adoption by SROs of rules that are subject to SEC review and approval, and the enforcement of such rules by the SROs against their members. Under this SEC-supervised self-regulation, the SEC will step in only if the SROs are unable to perform properly their functions. In the process, the SEC is able to conserve its own resources, since the SROs effectively serve as its instrumentalities in the surveillance of the markets.[34]

The principle of self-regulation is enshrined and fleshed out in Sections 39 and 40 of the SRC. Rule 3 (R) of the 2015 SRC IRR defines a "*Self-Regulatory Organization or SRO*" as:

> an organized Exchange, registered clearing agency, organization or association registered as an SRO under Section 39 of the Code, and which has been authorized by the Commission to: (1) **enforce compliance with relevant provisions of the Code and rules and regulations adopted thereunder**; (2) **promulgate and enforce its own rules** which have been approved by the Commission, by their members and/or participants; and, (3) **enforce fair, ethical and efficient practices** in the securities and commodity futures industries including securities and commodities exchanges.

Under Section 39.1 of the SRC, the SEC is given the "power to register as a self-regulatory organization, or otherwise grant licenses, and to regulate, supervise, examine, suspend or otherwise discontinue, as a condition for the operation of organizations whose operations are related to or connected with

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[33] SRC, Section 2.

[34] Morales, *supra* note 31 at 269, citing History/Background of the Securities Regulation Code (September 15, 2001).

the securities market." In turn, associations of securities market participants are allowed to apply for registration as SROs. Under the SRC, SROs are empowered: 1) to promulgate, amend, and enforce rules and regulations to govern the trading activities of its members;[35] 2) to control the admission of brokers, dealers, salespersons, and associated persons into a securities association;[36] and 3) to impose disciplinary sanctions upon its members.[37]

The regulatory structure under the SRC is therefore a two-tiered scheme, with the SROs as the first-level regulatory entities, subject to the review, regulation, and supervision of the SEC as the second-level regulatory entity. The regulatory jurisdiction of SROs is defined in Section 40.2[38] of the SRC, which mandates SROs to "comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith x x x." The PSE, as an SRO, established the CMIC as its independent enforcement and compliance monitoring arm. Article II, Section 1 of the CMIC Rules provides:

Section 1. ***Jurisdiction of CMIC.*** — CMIC shall have the jurisdiction to investigate and resolve: (1) All violations of the Securities Laws or these Rules by Trading Participants; and, (2) Trading-Related Irregularities and Unusual Trading Activities involving Issuers, based on any of the following complaints, findings, reports or determinations:

(a) Written complaints filed directly with CMIC by customers, Trading Participants, or any aggrieved party for alleged violation of the Securities laws or these Rules;

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[35] SRC, Sections 40.2, 40.3, and 40.4.

[36] SRC, Section 39.4.

[37] SRC, Sections 40.6 and 40.7.

[38] SEC. 40. Powers with Respect to Self-Regulatory Organizations. — x x x 40.2. Every self-regulatory organization shall comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith, notwithstanding any provision of the Corporation Code to the contrary, by its members, persons associated with its members or its participants.

(b) Examination Findings of CMIC based on regular annual examinations or for cause examinations of Trading Participants;
(c) Reports of Trading-related Irregularities or Unusual Trading Activities; and
(d) Matters which CMIC has determined should be investigated and resolved to enforce the Securities Laws and these Rules, including matters referred to CMIC by the Commission, the Clearing Agency, and the Exchange, including the [Disclosure Department].

Any Complaint or referral to CMIC for investigation and/or resolution should be sent in writing to CMIC President and should state the particulars of the Complaint or referral. CMIC may act on anonymous complaints or referrals provided these contain sufficient leads or particulars to enable the taking of further action.

It is readily apparent from the foregoing that, in enacting the principle of self-regulation into statute, Congress delegated a modicum of regulatory power to the SROs. These regulatory powers are exercised "[i]n lieu of direct regulation by the SEC of Exchanges and other securities-related organizations," and are therefore of the same legal nature as that of the SEC's powers.

3. Construction of securities laws in accordance with the policy statement of the SRC

The state policy on securities regulation is articulated in Section 2 of the SRC, which reads:

SECTION 2. Declaration of State Policy. — The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market.

To achieve these ends, this Securities Regulation Code is hereby enacted.

It has been observed that the aforequoted provision lays down seven core principles of our securities regulation laws: self-regulation, encouragement of the widest participation of

ownership in enterprises, enhancement of the democratization of wealth, promotion of capital market development, protection of investors, ensuring full and fair disclosure about securities, and minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market, with the unifying principle being the protection of investors.[39] These core principles animate the whole of the SRC; and as such, any doubt or conflict in the interpretation of the SRC and its implementing rules must be resolved in a manner that will carry out the foregoing principles.[40] We therefore resolve the issues before Us with these principles in mind, giving particular attention to the principles of full disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices.

B. Prescription

RSI argues that the Requests should be treated as complaints under Article II, Section 4 of the CMIC Rules, which must be filed within six months from knowledge of the commission of the violation. According to RSI, the Requests are rooted in the questionable transactions undertaken by Valbuena, which were discovered by petitioners in December 2011; hence the filing of the Requests almost three years later in August 2014 is already barred by prescription.

Petitioners, by contrast, contend that the Requests should be treated as such, *i.e.*, as mere requests for assistance to produce books and records falling under Article IX of the CMIC Rules, and not as complaints under Article II.

At this point, the Court deems it appropriate to quote in full the Request for Assistance submitted by Palanca:

I am Carlos S. Palanca IV, a client of RCBC Securities, Inc. (RSEC) since 2007. I am seeking the assistance of this Honorable Office to

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[39] Morales, *supra* note 31 at 7-9.

[40] *Id.* at 7; Lucila M. Decasa, *Securities Regulation Code Annotated with Implementing Rules and Regulations 2 (2013)*.

direct RSEC to furnish me the complete records of my transactions with the latter.

Beginning in 2007, I regularly traded stocks through RSEC. I coursed my orders through the latter's former Sales Director, Ms. Mary Grace "MG" Valbuena ("Ms. Valbuena"; attached as Annex "A" is Ms. Valbuena's business card). I deposited funds to RSEC's bank account (SA No. 100802699) for credit to my trading account in accordance with the instructions posted in RSEC's website (please see Annexes "B" to "OO", consisting of RSEC's website deposit instructions, deposit slips, checks, check vouchers, and provisional receipts). I received payment for the stocks that I sold through RSEC by way of funds remitted directly to my bank account.

On December 26, 2011, I received information that Ms. Valbuena, RSEC's Sales Director, was terminated by RSEC. On December 28, 2011, I met with various RSEC officials, including Messrs. Raul Leopando, Jerome Tan, Diosdado Salang Jr., Annie Lim, and Atty. Macel Estavillo to try to understand what has transpired within RSEC.

During that meeting, the said RSEC Officials gave me a copy of what they claimed were my authentic SOAs for the period January 1, 2007 to December 23, 2011 (Annex "PP"), which I saw only for the first time. In the same meeting, the RSEC officials informed me that most of the trade confirmation slips, and all of the SOAs that I received from Ms. Valbuena, were spurious. After going over the purported genuine SOAs, I immediately noticed that I did not authorize most of the purported transactions reflected therein, and that I never received any trade confirmation slips for those supposed genuine transactions.

I also noted that the entries in the SOA would readily show that the alleged transactions reflected therein are highly questionable, considering that most, if not all of them, were made at a loss. Furthermore, most of the buying trades I made through Ms. Valbuena, which were paid by deposits to RSEC's account, did not appear in the alleged genuine SOA. The alleged genuine SOA given by RSEC to me in December 2011 did not tally with my actual stock and cash positions. Worse, most of my deposits for credit to my trading account (Annexes "C' to "OO") do not appear in the alleged genuine SOA. After reviewing the alleged genuine SOA, I wrote RSEC on January 3, 2012, within the prescribed period set forth in the alleged official SOA, taking exception to the contents of the said SOA which did not conform to my transactions with RSEC. I also questioned the delayed manner in which the SOAs were given to me (please see Annex "PP").

In view of the above circumstances, I respectfully seek your Honorable Office's assistance to direct RSEC to furnish me copies of the following documents:

(a) Confirmation slips of my alleged transactions as appearing in the SOA that RSEC provided, with information as to who received the same.

(b) The application or utilization of my deposits to RSEC's bank account, for my buying transactions as appearing in Annexes "C" to "OO", which do not appear in the supposed genuine SOA.

(c) The sources of the deposits to my account as appearing in the allegedly genuine SOA. Most, if not all of these deposits, did not come from me;

(d) Who received the monies withdrawn from my trading account based on the purported genuine SOA, and who game instructions for such withdrawals, as most of these withdrawn amounts did not reach me.

Thank you for your assistance on this matter.

Very truly yours,

Carlos S. Palanca IV[41]

The aforequoted text makes it clear that the Requests filed by petitioners are exactly that: mere requests for the production of documents. Palanca requested the documents because the trades he made through Valbuena were not reflected in the SOA shown to him by RSI. The Requests neither asked the PSE to gather facts and inquire into the circumstances of the apparent conflict between Palanca's records and the SOA produced by RSI; nor did they seek to compel RSI to do so. They are simply requests for PSE to exercise its powers as an SRO to compel RSI to furnish petitioners with copies of documents related to their trading account. The PSE and the CMIC are not being requested to conduct any further action on the matter other than the relief sought. As correctly held by the SEC:

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[41] *Rollo* (Vol. 1), pp. 97-98. The Request filed by Cognatio "substantially reproduced" Palanca's Request. Petition for Review, *Rollo* (Vol. 1), p. 16.

In this case, Palanca IV and Cognatio did not pray for an investigation to be conducted by the CMIC for any trading-related irregularities or any violation of securities laws committed by RSI, pursuant to Section 4, Article II of the CMIC Rules. No complaint for an investigation was made by the appellants for the CMIC to find out, to obtain information, or collect facts concerning any trading-related irregularities or any violation of securities laws committed by RSI. Instead, appellants Palanca IV and Cognatio merely requested the CMIC for assistance in obtaining trading records from RSI. Further, contrary to the interpretation of the CMIC, the Letter-Request only indicated, as a background, the circumstances regarding any alleged trading irregularity. Thus, [the] Letter-Request [for] RSI cannot be deemed to be a complaint for investigation.[42]

As such, the Requests cannot be considered complaints under Article II of the CMIC Rules but as mere requests for production of records under the last paragraph of Article IX, Section 1 of the same Rules, which reads:

Section 1. ***Books and Records Rule***. — x x x With the prior approval of the Commission and in addition to the computerized and effective recording and accounting system mandated by SRC 28.1(1)(E)(2)(x), a Trading Participant may make, keep current and maintain the books and records required by this Article IX and SRC Rule 52.1 in electronic form and/or medium (including electronic records, which the Exchange trading system may allow to be so made, kept current and maintained), provided that **upon request by the Commission, the CMIC, or any other party, who may be legally entitled or authorized to access said books and records, the Trading Participant shall promptly and readily provide a comprehensible and certified true printed and/or electronic copy of the books and records or any part thereof**.

Furthermore, this Court is unable to find in the aforequoted provision, or in any other part of the CMIC Rules, a rule that sets a prescriptive period for requests for production of records. The inescapable conclusion, therefore, is that the CMIC Rules did not intend to make such requests subject to prescription, as they are simple administrative requests. In contrast, complaints for investigation under Article II, Section 4 are subject to the

[42] *Id.* at 411.

six-month prescriptive period precisely because they trigger the investigatory powers of the CMIC. Therefore, the Requests filed by petitioners are not subject to prescription, being simple requests for access to records under Article IX, Section 1 of the CMIC Rules.

RSI's contentions that "there is no x x x procedural mechanism under the CMIC Rules that expressly allows a x x x request for assistance to produce documents"; and that Article IX, Section 1 of the CMIC Rules "merely pertains to the requirement of providing records requested by the CMIC, and not through its intervention,"[43] is contrary to the text of the provision itself, which clearly states that a trading participant is allowed to keep records in electronic form provided that, "**upon request by the Commission, the CMIC, or any other party who may be legally entitled or authorized to access said books and records**," the trading participant shall provide a copy of such records. Essentially, the provision allows a trading participant to keep its records in electronic form on the condition that the trading participant "shall promptly and readily provide a comprehensible and certified true printed and/or electronic copy of the books and records or any part thereof" when requested by the SEC, the CMIC, or *any other party who may be legally entitled or authorized to access said books and records*. This reading of the provision is in line with the SRC's overarching principle of investor protection. As a client of a stock brokerage firm with a legally recognized contractual relationship, it is undeniable that petitioners are "legally entitled or authorized" to access their trading records with RSI. To otherwise construe Article IX, Section 1 of the CMIC Rules as a mere investigatory tool available only to the CMIC would deprive the investing public of a remedy to inquire into the status of their investments, contrary to the SRC's core principles of full disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices.

Furthermore, even assuming *arguendo* that there is no independent proceeding for requesting records under the CMIC

[43] *Rollo* (Vol. 2), pp. 479-480.

Rules, it is undeniable that the SEC has the power to order RSI to produce the requested records. As correctly pointed out in the SEC decision, the disclosure provision of Article IX, Section 1 of the CMIC Rules is substantially reproduced in Rule 52.1.1.3 of the 2015 IRR of the SRC, *viz.*:

> 52.1.1.3. With the prior approval of the Commission and in addition to the computerized and effective recording and accounting system mandated by SRC Rule 28.1, a Broker Dealer may make, keep current and maintain the books and records in electronic form and/or medium (including electronic records, which the Exchange trading system may allow to be so made, kept current and maintained), Provided that, **upon directive by the Commission**, the Exchange, or any other party, who may be legally entitled or authorized to access said books and records, **the Broker Dealer shall promptly and readily provide** a comprehensible and certified true printed and/or electronic copy of the books and records or any part thereof. Failure to do so shall result in immediate suspension of the Broker Dealer's registration. Such suspension shall continue until such time as the books and records are made available to the requesting organization and the said organization has satisfied itself that the books and records have not been modified or otherwise changed or altered during the period of suspension.

Thus, the SEC did not exceed its jurisdiction when it ordered RSI to release the records requested by petitioners, as it was well within its powers under the SRC to do so.

C. Res judicata

Petitioners likewise argue that the Requests are not barred by *res judicata*. They assert that the PSE-MRD decision was based on RSI's multiple violations of the PSE's rules, an issue which is completely different from RSI's refusal to release petitioners' trading records; that furthermore, petitioners were not involved howsoever in the PSE-MRD case. As such, it is asserted that there is no identity of parties, subject matter, and cause of action between the PSE-MRD case and the Requests. RSI counters that the Requests are barred by *res judicata*, not only by the PSE-MRD decision, but also by the specific performance cases which were dismissed by the RTC of Makati

City; that the PSE-MRD Decision and the Requests both involve the same violations of the securities laws; that petitioners "are effectively 'privy-in-law' to the PSE-MRD case," because they "have aligned their claims with those of the parties involved in the PSE-MRD case" when they cited the PSE-MRD decision in their Letter-Replies; argued that the Requests filed by petitioners are intended to commence an investigation against RSI on the basis of Valbuena's questionable transactions, which will result in the imposition of the same sanctions that have already been imposed on RSI by the PSE-MRD decision. As regards the specific performance cases filed by petitioners with the RTC of Makati City, RSI argues that the dismissals thereof were made on the merits, and that they share "substantially similar" causes of action.

The doctrine of *res judicata* is expressed in Rule 39, Section 47 (b) of the Rules of Court, which states *inter alia* that a "judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity." *Presidential Decree No. 1271 Committee v. De Guzman* states the reason for the rule:

> *Res judicata* is premised on the principle that a party is barred from presenting evidence on a fact or issue already judicially tried and decided. In *Philippine National Bank v. Barreto*:
>
> It is considered that a judgment presents evidence of the facts of so high a nature that nothing which could be proved by evidence *aliunde* would be sufficient to overcome it; and therefore it would be useless for a party against whom it can be properly applied to adduce any such evidence, and accordingly he is estopped or precluded by law from doing so.[44] (Citations omitted)

In the recent case of *Monterona v. Coca-Cola Bottlers Philippines, Inc.*,[45] it was held that:

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[44] 801 Phil. 731, 764-765 (2016).

[45] G.R. No. 209116, January 14, 2019.

The elements of *res judicata are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. x x x Should identity of parties, subject matter, and causes of action be shown in the two cases, then res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.

In turn, *Bachrach Corporation v. CA*[46] clarifies the distinction between cause of action and subject matter:

A cause of action, broadly defined, is an act or omission of one party in violation of the legal right of the other. The subject matter, on the other hand, is the item with respect to which the controversy has arisen, or concerning which the wrong has been done, and it is ordinarily the right, the thing, or the contract under dispute. x x x[47]

It is undisputed that the PSE-MRD decision is a final judgment on the merits rendered by a competent tribunal with jurisdiction over RSI. As found by the appellate court, the PSE-MRD decision penalized RSI for violating the following regulations: Article V, Section 2 par. B of the Amended Market Regulation Rules in relation to SRC Rule 30.2-6 on Supervision; Article V, Section 1 par. B of the Amended Market Regulation Rules in relation to SRC Rule 30.2-1 on Ethical Standards Rule; Article V, Section 7 of the Amended Market Regulation in relation to SRC Rule 30.2-6 on Suitability Rule and Article VI, Section 3 of the Amended Market Regulation Rules in relation to SRC Rule 30.2-3 par. E on Discretionary Accounts; Article IV of the Amended Market Regulation Rules or Code of Conduct and Professional Ethics for Traders and Salesmen; SRC Rule 34.1-2 on Segregation of Functions; and Article VI, Section 10 of the Amended Market Regulation Rules in relation to SRC Rule 24.2-2 on Short Sales. RSI was imposed the penalty of five

[46] 357 Phil. 483 (1998).

[47] *Id.* at 491.

million pesos (₱5,000,000.00) due to its "*excessive violations of the* [aforementioned] *provisions of the Securities Regulation Code, its implementing rules and regulations*, x x x *and the Amended Market Regulation Rules*." RSI was likewise "*ordered to amend its internal control procedures to include measures to prevent similar type of unauthorized transactions from occurring again and to submit its amended internal control procedures*." Given the charges and the sanction imposed, it is quite obvious that the PSE-MRD decision is based on an administrative disciplinary proceeding against RSI, which is rooted in the PSE's self-regulatory powers under Sections 40.2 and 40.6 (a) of the SRC.

Given the foregoing, We find that the PSE-MRD Decision does not constitute *res judicata vis-à-vis* the Requests filed by petitioners.

A cause of action is an act or omission by which a party violates a right of another.[48] Here, the ultimate act which gave rise to both the PSE-MRD case and the Requests is the series of questionable transactions committed by Valbuena. These transactions simultaneously violated not only the regulations of the PSE, thus giving rise to administrative liability on the part of Valbuena's employer, RSI; but also petitioners' rights under their brokerage relationship with RSI. As to identity of subject matter, on one hand, the PSE-MRD decision concerns RSI's administrative liability for violation of securities rules *in general*, without reference to any particular stock brokerage contract. The PSE-MRD's jurisdiction to sanction RSI stems from the latter's membership in the PSE, which is required under the securities laws and regulations.[49] On the other hand, the subject matter of the Requests filed by petitioners is the trading record pertinent to the particular stock brokerage contracts existing between petitioners and RSI. The Requests do not seek a declaration of liability or an imposition of any

[48] Rules of Court, Rule 2, Section 2.

[49] Rule 28.1, 2003 Implementing Rules and Regulations of the SRC; reiterated in Rule 28.1, 2015 Implementing Rules and Regulations of the SRC.

penalty whatsoever on RSI. Rather, they are mere requests for the production of documents which RSI is obliged to produce under the CMIC Rules and the law governing its relationship with petitioners. As such, the matter of the release of the requested records was not, in the words of the Rules of Court, "directly adjudged" or "could have been raised in relation" to the PSE-MRD case. It therefore follows that there can be no actual or substantial identity between the parties in the PSE-MRD case and in the Requests, for the relief sought by petitioners in their Requests is of a totally different nature from the sanction imposed on RSI in the PSE-MRD case. The administrative sanction imposed on RSI by the PSE-MRD does not inure to petitioners' benefit insofar as their trading contract with RSI is concerned, for it does not compel RSI to make any payment or other action with respect to any account affected by Valbuena's questionable transactions.

Turning now to the RTC cases, the dismissals of which were affirmed by this Court, it is apropos to revisit the orders of dismissal rendered by the trial courts.

In a Consolidated Order dated August 1, 2013,[50] the Makati City RTC, Branch 133 dismissed Palanca's complaint for failure to state a cause of action against RSI. According to the RTC, Palanca's complaint cited the Customer Account Information Form (CAIF) and the Safekeeping Agreement as the actionable documents which form the basis of his action, but failed to attach said documents to the complaint.[51] The RTC held that since Palanca admitted that he had to open an account with a brokerage firm in order to trade securities, the documentary evidence of the existence of his account with RSI was necessary to show that he had a contractual relationship with RSI;[52] that since Palanca failed to submit documentary evidence of a contractual relationship between him and RSI, his cause of action

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[50] *Rollo* (Vol. 1), pp. 188-199. The order was penned by Judge Elpidio R. Calis.

[51] *Id.* at 195-196.

[52] *Id.* at 196.

for violation of the duties embodied in the said Safekeeping Agreement must fail.[53]

Cognatio's complaint was likewise dismissed by Branch 134 of the same court in an Order dated April 30, 2014.[54] As with the August 1, 2013 Consolidated Order, Cognatio's complaint was dismissed for failure to attach the CAIF and the Safekeeping Agreement thereto. The trial court held that those documents, which serve as evidence of the agency relationship between RSI and Cognatio, are "primal to [Cognatio's] cause of action and it is therefore incumbent upon [Cognatio] to state the substance of these documents and attach the original or a copy of these documents to the complaint."[55] More tellingly, the trial court held that the complaint shows no allegations of fact which establish Cognatio's legal right, based on an agency relation, to demand from RSEC the properties it entrusted to the latter.[56]

The RTC's orders reveal that the RTC cases were dismissed for failure to plead actionable documents. It cannot therefore be said that the dismissals of the two cases were made on the merits, since the RTC did not actually rule on the issues raised by the complaints, simply and precisely because the complaints failed to plead the documents that state petitioners' cause of action. For this reason, We cannot subscribe to the appellate court's finding that "the documents purportedly being sought by [petitioners] through the Letter-Complaints were already the subject of the RTC Cases, which had already been dismissed with finality by the Supreme Court." Furthermore, as the dismissal of the RTC cases was premised on a ground that does not bar re-filing,[57] petitioners were well within their rights to "demand that [RSI] produce evidence in support of [petitioners']

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[53] *Id.* at 197-198.

[54] *Id.* at 105-118. The order was penned by Judge Perpetua T. Atal-Paño (now Associate Justice of the Court of Appeals).

[55] *Id.* at 115.

[56] *Id.* at 116.

[57] Rules of Court, Rule 16, Section 5.

causes of action,"[58] in order that they may obtain the aforesaid actionable documents and attach them to whatever complaint they may file. It is therefore clear that the RTC cases do not constitute *res judicata* as against the Requests.

D. Forum shopping

Forum shopping is the repetitive availment of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another.[59] It is prohibited under Rule 7, Section 5 of the Rules of Court, to prevent "the rendition by two competent tribunals of two separate and contradictory decisions"; and to deter unscrupulous party litigants from repeatedly trying their luck in several different tribunals until a favorable result is reached.[60] Actions filed with willful and deliberate intent to commit forum shopping are dismissed with prejudice.[61]

The test to determine the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or, whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[62]

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[58] CA Decision, p. 19; *rollo* (Vol. 1), p. 64.

[59] *Lanao del Norte Electric Coop., Inc. v. Provincial Government of Lanao del Norte, et al.*, 817 Phil. 263, 279 (2017), citing *Grace Park International Corp. v. Eastwest Banking Corp.*, 791 Phil. 570 (2016).

[60] *Villamor & Victolero Construction Co. v. Sogo Realty and Development Corp.*, G.R. Nos. 218771 & 220689, June 3, 2019.

[61] *Supra* note 59.

[62] *Supra* note 60.

As elsewhere discussed, it has already been established that neither the PSE-MRD case nor the RTC cases constitute *res judicata* against the Requests. Our discussion thereon also debunks the appellate court's ratiocination that petitioners are splitting their cause of action, for it is clear that the PSE-MRD decision and the Requests filed by petitioners have different subject matters and pertain to different liabilities of RSI. While it is indeed true that the PSE-MRD ruling and the Requests originate from the same incident involving the questionable trades made by Valbuena, the two cases pertain to different liabilities created thereby. The PSE-MRD decision pertains *solely* to RSI's administrative liability as a member of a self-regulatory organization, while the Requests pertain to RSI's duty to release trading records to its clients.

In conclusion, this Court reiterates that procedural rules are nothing but the handmaids of substantive law. The rules of procedure are designed to facilitate the precise application and speedy enforcement of substantive laws.[63] In the case at bar, the Court has endeavored to uphold the fundamental aims of our securities laws amidst the unintended entanglements brought about by the rules intended for the enforcement thereof. Investor protection and full disclosure are necessary ingredients for the democratization of wealth and the promotion of the development of the capital market.

WHEREFORE, premises considered, the petition is hereby **GRANTED.** The Decision dated October 27, 2017 and the Resolution dated September 5, 2018 of the Court of Appeals in CA-G.R. SP No. 148920 are hereby **REVERSED** and **SET ASIDE**. The Decision dated December 6, 2016 of the Securities and Exchange Commission in SEC En Banc Case No. 07-15-379 is hereby **REINSTATED**.

SO ORDERED.

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

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[63] Rules of Court, Rule 1, Section 6.

THIRD DIVISION

[G.R. No. 243941. March 11, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMIAH S. ABDULAH,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In every prosecution for illegal sale of dangerous drugs, the prosecution must establish the following elements: "(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."

2. ID.; ID.; ID.; *CORPUS DELICTI*; SEIZURE AND IDENTIFICATION OF THE PROHIBITED DRUG MUST BE PROVEN BEYOND REASONABLE DOUBT.— In *People v. Nacua*, the *corpus delicti*, or the body of the crime itself, is further explained in this wise: ***Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug.*** In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and *the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt*.

3. ID.; ID.; ID.; CHAIN OF CUSTODY REQUIREMENTS; STRICT OBSERVANCE THEREOF ENSURES THE SEIZED ITEM'S INTEGRITY.— The Comprehensive Dangerous Drugs Act spells out the chain of custody requirements for the safeguarding and custody of items seized in a buy-bust operation. Complying with these stringent measures preserves the seized items' authenticity and integrity. x x x Strict observance of the chain of custody requirements ensures the seized items' integrity. When the integrity of the seized items cannot be trusted—as when there are procedural lapses in the chain of custody—the prosecution has failed to establish the *corpus delicti*. It has fallen short of proving an element of the offense of illegal sale of dangerous drugs, which engenders reasonable doubt on the accused's guilt.

4. ID.; ID.; ID.; ID.; ID.; WHEN NON-COMPLIANCE THEREWITH MAY BE EXCUSED.— [I]n situations that render strict compliance impossible or impracticable, deviations from Section 21's requirements do not invalidate the seizure of illegal items. Noncompliance may be excused when "(a) there is a justifiable ground for such non-compliance, and (b) the integrity and evidentiary value of the seized items are properly preserved." The prosecution bears the burden of proving that the items presented are authentic without any indication of tampering.

5. ID.; ID.; ID.; ID.; REQUIREMENT ON MARKING OF THE SEIZED ITEMS; SERVES TO SEPARATE THE MARKED EVIDENCE FROM THE CORPUS OF ALL OTHER SIMILAR OR RELATED EVIDENCE.— The first in the chain of custody's interconnected links is the marking stage, in which the arresting officer or poseur-buyer affixes "initials or other identifying signs on the seized items . . . in the presence of the accused shortly after arrest." This crucial step "serves to separate the marked evidence from the corpus of all other similar or related evidence[.]" In *People v. Gonzales*: The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.

6. ID.; ID.; ID.; ID.; ID.; NO FORM OF RELIGIOUS DISCRIMINATION CAN BE COUNTENANCED TO JUSTIFY THE PROSECUTION'S FAILURE TO COMPLY WITH THE LAW; CASE AT BAR.— To sustain the police officers' equating of a so-called "Muslim area" with dangerous places does not only approve of a hollow justification for deviating from statutory requirements, but reinforces outdated stereotypes and blatant prejudices. Islamophobia, the hatred against the Islamic community, can never be a valid reason to justify an officer's failure to comply with Section 21 of Republic Act No. 9165. Courts must be wary of readily sanctioning

lackadaisical justifications and perpetuating outmoded biases. No form of religious discrimination can be countenanced to justify the prosecution's failure to comply with the law.

7. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT OVERCOME THE PRESUMPTION OF INNOCENCE WHEN THERE IS REASONABLE DOUBT ON THE CULPABILITY OF THE ACCUSED.— [T]his Court emphasizes that in cases involving violations of the Comprehensive Dangerous Drugs Act, the prosecution cannot merely rely on the oft-cited presumption of regularity in the performance of official duty to justify noncompliance with the law's mandate. The presumption of innocence enjoyed by the accused stands so long as there is reasonable doubt on their culpability. To overcome the presumption of innocence, the prosecution must prove the accused's criminal liability beyond reasonable doubt; it cannot be overcome by merely relying on the weakness of the defense. The prosecution's duty to prove the accused's criminal liability must rise or fall upon its own merits.

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.*:

Deviations from the Comprehensive Dangerous Drugs Act's chain of custody requirements are permitted only on the strictest and most exceptional grounds. It is the burden of law enforcers to declare and demonstrate not only the specific reasons impelling them to deviate from the law, but also the concrete steps they took to ensure the integrity and evidentiary value of items allegedly seized.

Cursory and shallow averments of unsafe conditions premised on the profile of a given locality's population reveals indolence, if not bigotry. Such trite references fall woefully short of the law's lofty standards and cast doubt on the conduct of buy-bust operations. They justify the acquittal of those whose prosecutions are anchored on noncompliant police operations.

For this Court's resolution is a Notice of Appeal[1] assailing the Decision[2] of the Court of Appeals, which affirmed the Regional Trial Court Decision[3] convicting Samiah S. Abdulah (Abdulah) of the illegal sale of dangerous drugs.

In an Amended Information, Abdulah and another accused, a child in conflict with law identified as "EB," were charged with violating Section 5[4] of Republic Act No. 9165. It reads:

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[1] *Rollo*, pp. 14-17.

[2] *Id.* at 2-13. The Decision dated July 24, 2018 was penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion of the Second Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 61-71. The Decision dated November 29, 2016 was penned by Presiding Judge Lorna F. Catris-Chua Cheng of Branch 168, Regional Trial Court, Marikina City.

[4] Republic Act No. 9165 (2002), Sec. 5 provides:

SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

That on or about the 21st day of November 2014, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named child in conflict with the law (CICL) EB*, a seventeen (17) year old minor at the time of the commission of the crime, acting with discernment and SAMIAH S. ABDULLAH (sic), conspiring and confederating together, they mutually helping and aiding each other, did then and there willfully, unlawfully, and knowingly sell, deliver and give away without authority from law to PO3 ERICH JOEL TEMPORAL, of the District Anti-Illegal Drug-Special Operation Task Group (DAID-SOTG), Eastern Police district of Pasig City, posing as a buyer, one (1) small heat-sealed plastic sachet containing 0.25 gram of white crystalline substance marked with "EJT 11/21/14 BUY BUST", which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[5]

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[5] CA *rollo*, p. 61.

On arraignment, both Abdulah and EB pleaded not guilty to the crime charged. Trial on the merits then ensued.[6]

The prosecution presented as its witnesses Police Officer 3 Erich Joel Temporal (PO3 Temporal), Police Officer 2 Rosauro B. Gayatao (PO2 Gayatao), PO3 Galahad Altarejos, Jr. (PO3 Altarejos), Police Superintendent Jose Samson Ogbac (Superintendent Ogbac), and Police Chief Inspector Rhea dela Cruz-Alviar (Chief Inspector dela Cruz-Alviar).[7]

Based on their collective testimonies, the prosecution averred that at around 1:30 p.m. on November 20, 2014, a confidential informant went to the District Anti-Illegal Drug of the Eastern Police District in Pasig City, reporting that two (2) girls were selling illegal drugs on Singkamas Street in Tumana, Marikina City. Superintendent Ogbac at once instructed PO3 Temporal and the informant to verify the tip.[8]

At the area, the informant introduced PO3 Temporal to "Erika" and "Lalay"—later identified as EB and Abdulah—as a potential buyer of *shabu*. However, PO3 Temporal was advised to just return the following day, as they had no *shabu* at that time.[9]

PO3 Temporal reported the incident, and Superintendent Ogbac formed a buy-bust team accordingly. The team was composed of him, Senior Police Officer 1 (SPO1) Garcia, SPO1 Villanueva, PO3 Serpino, PO3 Temporal, PO2 Gayatao, and Police Inspector Javier. PO3 Temporal was designated as the poseur-buyer, PO2 Gayatao as his back-up, and the others as the support group. PO3 Temporal was given a ₱500.00 bill to be used as buy-bust money, which he marked with his initials, "EJT."[10]

On November 21, 2014, the buy-bust team went to the target area where they saw EB and Abdulah. At first, the girls hesitated

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[6] *Rollo*, p. 3.

[7] *Id.* Altarejos was sometimes spelled as "Altajeros."

[8] *Id.* at 4.

[9] *Id.*

[10] *Id.*

approaching PO3 Temporal as he was with PO2 Gayatao, so PO3 Temporal advised the other to distance himself. Abdulah then approached PO3 Temporal and inquired about his order. The officer handed her the marked ₱500.00 bill, which she then passed to EB. In turn, EB placed the money in a sling bag and retrieved from it a small plastic sachet containing white crystalline substance, which she handed to the officer.[11]

At this, PO3 Temporal immediately introduced himself as a police officer and apprehended Abdulah and EB. PO2 Gayatao proceeded to frisk the girls while PO3 Temporal seized the sling bag from EB, recovering the buy-bust money and another sachet of white crystalline substance.[12]

Believing that the area was unsafe for being "a Muslim area,"[13] the team brought Abdulah and EB to the barangay hall where they marked, inventoried, and photographed the seized items. The proceeding was witnessed by Barangay Tanod Reynaldo Garcia, Barangay Kagawad Francisco delos Santos, Abdulah, and EB.[14]

The team then proceeded to the Eastern Police District headquarters. There, SPO1 Garcia prepared the Request for Laboratory Examination while PO3 Temporal prepared the Chain of Custody Form. PO3 Temporal later brought the request and the seized items to the Crime Laboratory and passed them to PO3 Altarejos, who then gave the items to Chief Inspector dela Cruz-Alviar for examination. The test results revealed that the confiscated items tested positive for *shabu*.[15]

The defense, on the other hand, presented Abdulah as its sole witness.[16] She denied selling drugs, insisting that she was

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[11] *Id.*

[12] *Id.*

[13] *Id.* at 11.

[14] *Id.* at 5.

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

[16] *Id.* at 6.

merely sleeping in her house during the incident. She further testified that EB is her nephew's wife.[17]

By escaping the Department of Social Welfare and Development, under whose custody she had been placed, EB was considered to have waived her right to present evidence.[18]

On November 29, 2016, the Regional Trial Court rendered a Decision[19] convicting Abdulah and EB of the crime charged, thus:

> **WHEREFORE**, the Court finds **CICL EB** and accused **SAMIAH ABDULLAH** (*sic*) guilty beyond reasonable doubt of the crime of Violation of Sec. 5, Article II, of R.A. 9165. Considering the privileged mitigating circumstance of minority, CICL EB is hereby sentenced to suffer the indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of *prision mayor* as minimum to FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal* as maximum and to pay the fine of Php500,000.00.
>
> As regards accused SAMIAH ABDULLAH (*sic*), she is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, without subsidiary imprisonment in case of insolvency.
>
> Accused Samiah Abdullar (*sic*) and CICL EB shall be credited in full of their preventive imprisonment they already served in confinement.
>
> The methamphetamine hydrochloride (shabu) submitted as evidence in this case is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposal.
>
> SO ORDERED.[20] (Emphasis in the original)

Aggrieved, Abdulah appealed to the Court of Appeals.[21]

In her Brief, Abdulah argued that the Regional Trial Court erred when it rendered conviction despite the apprehending

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[17] CA *rollo*, p. 67.

[18] *Rollo*, p. 6 and CA *rollo*, p. 67.

[19] CA *rollo*, pp. 61-71.

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

[21] *Id.* at 12.

officers' failure to comply with Section 21 of Republic Act No. 9165.[22] She noted that the inventory and photographs were taken only at the barangay hall, without the presence of representatives from the media and the National Prosecution Service.[23]

The Office of the Solicitor General, on behalf of the People of the Philippines, maintained that noncompliance with the chain of custody rule does not render the confiscated items inadmissible. It insisted that the determination of a person's guilt is based on the prosecution's ability to safeguard the integrity and evidentiary value of the seized items.[24]

In its July 24, 2018 Decision,[25] the Court of Appeals sustained the Regional Trial Court Decision:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED**, the Decision of the Regional Trial Court, Branch 168, Marikina City dated November 29, 2016 in Criminal Case No. 2014-4543-D MK is **AFFIRMED**.
>
> **SO ORDERED.**[26] (Emphasis in the original)

On August 16, 2018, Abdulah filed a Notice of Appeal.[27]

In its March 20, 2019 Resolution,[28] this Court noted the records of this case forwarded by the Court of Appeals and required the parties to file their supplemental briefs.

Both accused-appellant[29] and the Office of the Solicitor General[30] manifested that they would no longer file their supplemental briefs.

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

[23] *Id.* at 49.

[24] *Id.* at 84-87.

[25] *Rollo*, pp. 2-13.

[26] *Id.* at 13.

[27] *Id.* at 14-17.

[28] *Id.* at 20-21.

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

[30] *Id.* at 24-28.

For this Court's resolution is the issue of whether or not the Court of Appeals correctly upheld the conviction of accused-appellant Samiah S. Abdulah for the illegal sale of dangerous drugs.

In every prosecution for illegal sale of dangerous drugs, the prosecution must establish the following elements: "(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."[31]

In *People v. Nacua*,[32] the *corpus delicti*, or the body of the crime itself, is further explained in this wise:

> ***Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug.*** In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and *the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.*[33] (Emphasis supplied)

The Comprehensive Dangerous Drugs Act spells out the chain of custody requirements for the safeguarding and custody of items seized in a buy-bust operation. Complying with these stringent measures preserves the seized items' authenticity and integrity. Section 21 of Republic Act. No. 9165, as amended by Republic Act No. 10640, provides in part:

> 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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[31] *People v. Nandi*, 639 Phil. 134, 142 (2010) [Per J. Mendoza, Second Division].

[32] 702 Phil. 739 (2013) [Per J. Leonardo-De Castro, First Division].

[33] *Id.* at 751.

> (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.*** (Emphasis supplied)

Strict observance of the chain of custody requirements ensures the seized items' integrity. When the integrity of the seized items cannot be trusted—as when there are procedural lapses in the chain of custody—the prosecution has failed to establish the *corpus delicti*. It has fallen short of proving an element of the offense of illegal sale of dangerous drugs, which engenders reasonable doubt on the accused's guilt.

Nonetheless, in situations that render strict compliance impossible or impracticable, deviations from Section 21's requirements do not invalidate the seizure of illegal items. Noncompliance may be excused when "(a) there is a justifiable ground for such non-compliance, and (b) the integrity and evidentiary value of the seized items are properly preserved."[34] The prosecution bears the burden of proving that the items

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[34] *People v. Viterbo*, 739 Phil. 593, 603 (2014) [Per *J.* Perlas-Bernabe, Second Division].

presented are authentic without any indication of tampering. In *People v. Namil*:[35]

> [B]efore substantial compliance with the procedure is permitted, not only must the integrity and evidentiary value of the drugs seized be preserved, there must be a justifiable ground for its noncompliance in the first place. ***The prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed.***[36] (Emphasis supplied)

The first in the chain of custody's interconnected links is the marking stage, in which the arresting officer or poseur-buyer affixes "initials or other identifying signs on the seized items . . . in the presence of the accused shortly after arrest."[37] This crucial step "serves to separate the marked evidence from the corpus of all other similar or related evidence[.]"[38] In *People v. Gonzales*:[39]

> The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[40]

Here, the marking of the seized drugs was not done immediately after accused-appellant's arrest. In his own words,

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[35] G.R. No. 218947, June 20, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64269> [Per *J*. Martires, Third Division].

[36] *Id.*

[37] *People v. Junaide*, 733 Phil. 315, 318 (2014) [Per *J*. Abad, Third Division].

[38] *People v. Coreche*, 612 Phil. 1238, 1245 (2009) [Per *J*. Carpio, First Division].

[39] 708 Phil. 121 (2013) [Per *J*. Bersamin, First Division].

[40] *Id.* at 130-131.

PO3 Temporal revealed that the team decided to mark and inventory the items at the barangay hall after deeming the target area to be unsafe, it being "a Muslim area":

> Q: Why did you mark the evidence at the Barangay Tumana and not at the place where the incident happened?
> A: Ma'am *the area is not safe* so we decided to bring the items at the barangay
>
> Q: What made you say that the area is not safe?
> A: *It is a Muslim area,* ma'am."
>
> . . . . . .
>
> Q: Why were you in Barangay Tumana when you put the marking, Mr. witness, and not at the place where the incident happened?
> A: Because the place is risky so the group agreed that we do the marking at the Barangay Tumana, ma'am.[41] (Emphasis supplied, citations omitted)

The prosecution's attempt to justify the delay in marking and inventorying the items is too weak, if not callous, a reason to validate the police officers' noncompliance with the chain of custody requirements.

In the recent case of *People v. Sebilleno*,[42] this Court denounced the prosecution's reasoning that the target area was a "notorious Muslim community" to justify noncompliance with Section 21. We stressed that such invocation constitutes a bigoted view that only stirs conflict among Filipinos of different religious affiliations.

To sustain the police officers' equating of a so-called "Muslim area" with dangerous places does not only approve of a hollow justification for deviating from statutory requirements, but reinforces outdated stereotypes and blatant prejudices.

Islamophobia, the hatred against the Islamic community, can never be a valid reason to justify an officer's failure to comply with Section 21 of Republic Act No. 9165. Courts must be

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[41] *Rollo*, p. 11.

[42] G.R. No. 221457, February 12, 2020 [Per J. Leonen, Third Division].

wary of readily sanctioning lackadaisical justifications and perpetuating outmoded biases. No form of religious discrimination can be countenanced to justify the prosecution's failure to comply with the law.

Worse, the manner by which the allegedly seized drugs were handled after their confiscation, and while in transit to the barangay hall, remains unaccounted for. All that was alleged was that PO3 Temporal kept them himself.

This Court has previously decried police officers' plain claims of having close, personal custody of allegedly seized items in transit. This lone assertion, as pointed out in *People v. Dela Cruz*,[43] is "fraught with dangers," "reckless, if not dubious," and "a doubtful and suspicious way of ensuring the integrity of the items":

> The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.
>
> The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.
>
> Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.
>
> Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming

[43] 744 Phil. 816 (2014) [Per *J.* Leonen, Second Division].

out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.[44]

Another glaring failure was the absence of representatives from the media and the National Prosecution Service during the physical inventory and photographing of the seized items. The prosecution gave no excuse to justify their absence, either.

Yet, worse, the prosecution did not even show that the police officers exerted any effort to call in these representatives. The officers had sufficient time to secure their presence, since a surveillance operation had been conducted prior to the buy-bust operation. By then, the necessary arrangements could have been made.

Finally, this Court emphasizes that in cases involving violations of the Comprehensive Dangerous Drugs Act, the prosecution cannot merely rely on the oft-cited presumption of regularity in the performance of official duty to justify noncompliance with the law's mandate. The presumption of innocence enjoyed by the accused stands so long as there is reasonable doubt on their culpability. To overcome the presumption of innocence, the prosecution must prove the accused's criminal liability beyond reasonable doubt; it cannot be overcome by merely relying on the weakness of the defense. The prosecution's duty to prove the accused's criminal liability must rise or fall upon its own merits.[45]

WHEREFORE, the July 24, 2018 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 08883 is **REVERSED and SET ASIDE.** Accused-appellant Samiah S. Abdulah is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED**

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[44] *Id.* at 834-835.

[45] *People v. Mirantes*, 284-A Phil. 630, 642 (1992) [Per J. Regalado, Second Division].

from detention unless she is confined for some other lawful cause.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women for immediate implementation. The Superintendent is directed to report to this Court the action she has taken within five (5) days from receipt of this Decision. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 248763. March 11, 2020]

SPOUSES JESUS and AIDA CASTRO, *petitioners, vs.* **SPOUSES FELIMON and LORNA ESPERANZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; ACTION FOR INJUNCTION; DISCUSSED.— An action for injunction is a recognized remedy in this country. It is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or the defendant's compulsion to continue performance of a particular act. It has an independent existence. It is similar to the special civil action of prohibition under Rule 65, except

that the latter, in common with other special civil actions, deals with special matters requiring a special procedure, *i.e.*, it is concerned with public officers or entities performing public duties: tribunals, corporations, boards, or persons exercising functions judicial or ministerial, whereas the former, an ordinary suit, generally involves acts and transactions of private individuals. The action for injunction is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. And, of course, in an action of injunction, the auxiliary remedy of a preliminary injunction, prohibitory or mandatory, may issue. An injunction may either be: (1) a prohibitory injunction, which commands a party to refrain from doing a particular act; or (2) a mandatory injunction, which commands the performance of some positive act to correct a wrong in the past.

2. ID.; ID.; ID.; MANDATORY INJUNCTION; DISCUSSED.— A mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the status quo between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he or she does not have a clear legal right and, therefore, the issuance of a writ of mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.

3. CIVIL LAW; PROPERTY; OWNERSHIP AND ITS MODIFICATIONS; EASEMENT; LEGAL AND VOLUNTARY EASEMENT; THE OPENING OF AN ADEQUATE OUTLET TO A HIGHWAY CAN EXTINGUISH ONLY LEGAL EASEMENT, NOT VOLUNTARY EASEMENT.— [A]n easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements. Generally, the owner of an estate may claim a legal or compulsory right of way only after

he or she has established the existence of these four (4) requisites: (a) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (b) after payment of the proper indemnity; (c) the isolation was not due to the proprietor's own acts; and (d) the right of way claimed is at a point least prejudicial to the servient estate. Notably, the opening of an adequate outlet to a highway can extinguish only legal or compulsory easements, not voluntary easements. The fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity. x x x A complaint for injunction is the proper remedy to ensure that a right-of-way is respected.

4. ID.; DAMAGES; ATTORNEY'S FEES; REQUIRES FACTUAL, LEGAL AND EQUITABLE JUSTIFICATION. — As for the award of ₱50,000.00 as attorney's fees, the Court of Appeals reasoned that "*[t]his Court, however, finds the propriety of granting an award of attorney's fees in favor of appellants since they were apparently compelled to litigate their cause and incurred the necessary expenses to protect their rights.*" Yet, this justification is not enough. Even if a party is compelled to litigate with third persons or to incur expenses to protect his or her rights, attorney's fees will not be awarded if no bad faith could be reflected in a party's persistence in a case. To award attorney's fees, the court must have factual, legal, and equitable justification. The court must state the award's basis in its decision. These rules are based on the policy that no premium should be placed on the right to litigate. Here, there is no clear showing that petitioners, in persistently asserting their exclusive right over the foot path, acted in bad faith, thus, they cannot be held liable for attorney's fees.

APPEARANCES OF COUNSEL

Mejorada Mejorada Mejorada Alegarbes & Mejorada Law Firm for petitioners.

Bernardo Placido Chan & Lasam Law Offices for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review assails the Decision[1] dated July 12, 2019 of the Court of Appeals in CA-G.R. CV No. 05047-MIN entitled "*Spouses Felimon and Lorna Esperanza v. Spouses Jesus and Aida Castro,*" disposing, thus:

> **WHEREFORE,** the Appeal is **GRANTED**. The Resolution dated 18 April 2018 of the Regional Trial Court, Branch 8, Dipolog City, is hereby **REVERSED** and **SET ASIDE**.
>
> Accordingly, judgment is rendered as follows:
>
> 1) Appellees Spouses Jesus and Aida Castro are **DIRECTED** to remove the concrete fence and other structures they built on Lot No. 2759-C-2-B-12, Psd-09-013524, commonly known as "Foot Path";
>
> 2) Appellees Spouses Jesus and Aida Castro are permanently **enjoined or restrained** from obstructing appellants and the other neighboring lot owners from having access to and using the Foot Path, as their outlet to the national highway; and
>
> 3) Appellees Spouses Jesus and Aida Castro are **ORDERED** to pay appellants Spouses Felimon and Lorna Esperanza the amount of Fifty-Thousand Pesos (₱50,000.00) as attorney's fees.
>
> SO ORDERED.[2]

Proceedings before the Trial Court

Respondents Spouses Felimon and Lorna Esperanza filed their Petition[3] dated January 20, 1997 for mandatory injunction

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[1] Penned by Associate Justice Evalyn M. Arellano-Morales with the concurrence of Associate Justices Edgardo T. Lloren and Florencio M. Mamauag, Jr., all members of the Special Twenty-Second Division, *rollo*, pp. 34-44.

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

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

with damages against petitioners Spouses Jesus and Aida Castro. Respondents essentially alleged:

They are absolute owners of Lot No. 2759-C-2-A, a residential lot covered by TCT No. T-7060 and Tax Declaration No. 002-1051 located in Minaog, Dipolog City. The lot is particularly described as follows:

"Bounded on the North by Dry Creek; NW, by Lot 2759-C-l; SE., by Lot 2759-C-2-B; SW., by Lot 2759-C-2-B. Area: 300 sq. meters more or less. Assessed at ₱1,260.00"[4]

On the other hand, petitioners are the owners of Lot Nos. 2759-C-2-B-7, 2759-C-2-B-5 and 2759-C-2-B-6, all situated in the same area.[5]

On the southwest part of their lot lies Lot 2759-C-2-B-12, covered by TCT No. T-7735 and measuring 262 square meters, and is known as the "Foot Path." The foot path lies between their lot and the three (3) lots owned by petitioners. They and the owners of the neighboring lots use the foot path as an ingress to and egress from the national highway.[6]

Sometime in May 1996, petitioners constructed an interlinked wire fence and closed off the foot path, thereby preventing them and their neighbors from using the same. The closure of the foot path meant they could no longer access the national highway and even their own property.[7]

They demanded that petitioners desist from closing off the road but were ignored. They filed a complaint with the barangay captain, who, in turn, made verbal and written demands on petitioners to reopen the foot path. But petitioners ignored the barangay captain's demands.[8]

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[4] *Id*. at 56.

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

[6] *Id*.

[7] *Id*. at 57.

[8] *Id*.

The closure of the foot path caused them irreparable injury, if not great inconvenience because they had to wade through a creek to access the outside world. They prayed for actual damages, moral damages, exemplary damages, attorney's fees and cost of suit.[9]

On the other hand, petitioners countered that respondents' property was bounded on the east by a dry creek. Respondents had been using this dry creek as a way in and out of their property for a long time now. The western part of respondents' lot was bounded by Lot Nos. 2759-C-2-B-5,2759-C-2-B-4, and 2759-C-2-B-12, all of which are part of the foot path. Further, the foot path lies among the five (5) lots that they also own: Lot Nos. 2759-C-2-B-5, 2759-C-2-B-6, 2759-C-2-B-7, 2759-C-2-B-2 and2759-C-2-B-1.[10]

The foot path did not exist when respondents acquired Lot No. 2759-C-2-A. They had to enclose their properties with a fence to protect their interests. They also spent ₱200,000.00 to convert Lot No. 2759-C-2-B-12 from a deep swamp to a dry foot path by filling it with soil. Respondents never contributed a cent for the construction of the foot path. Besides, respondents used the dry creek to gain access to the national highway.[11]

Respondents acquired their property from a certain Nestor Reluya through a deed of absolute sale. In that document, it was emphasized that the dry creek was the means to access the national highway. Even respondent's very own TCT No. T-7060 bears an entry to the effect that ingress and egress was through a dry creek. Respondents never demanded from Nestor Reluya for a right of way to the national highway.[12]

Ruling of the Trial Court

After due proceedings, the trial court, by Resolution[13] dated April 18, 2018, dismissed the petition. It held that respondents

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[9] *Id*. at 58.

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

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

[12] *Id*. at 71.

[13] *Id*. at 49-55.

failed to establish the requisites of a right of way on petitioners' properties. Specifically, respondents failed to prove that there was no adequate outlet from their property to the national highway. Based on the trial court's ocular inspection, the dry creek had already been converted to a gravel road that was wider than the foot path. The neighbors also use the gravel road in going to the national highway. It would be prejudicial to petitioners, who had bought all the surrounding lots, if they would be compelled to provide a foot path on their properties just to connect respondents to their own lots. Besides, the foot path was a voluntary easement granted by Nestor Reluya to the owners of Lot Nos. 2759-C-2-B-1 to 12 and to respondents' lot as well. In the deed of absolute sale between Nestor Reluya and respondents, there was no mention of a right of way granted to the latter. TCT No. T-2575 issued to Nestor Reluya states that a right of way was granted only to a certain Agosto Nazareth for Lot 1759-C-4-A for a consideration of ₱390.00. The trial court further observed:

> The Foot Path is not a compulsory legal easement which cannot be disturbed or recalled. Being a voluntary easement the control still belongs to the owner of the same, Nestor Reluya who had long died, and whose other properties, including those who bought from him, had also been sold to Respondents. Practically the said Foot Path is now under the control of the new owner, the Respondents having bought the surrounding lots. Said Foot Path serves no one anymore, since the whole lot area is now practically owned by Respondents. The purpose of its birth had become mooted by the disappearance of its other users. After all it came about only for the use of the Lot B owners (i.e. B-1 to B-11, with the further note that B-10 is a Road Lot which serves the purpose already of a compulsory servitude, while Lot B-12, the Foot Path itself, to the mind of the (sic) this court was intended only for the Lot B subdivision owners and not for the petitioners who have an adequate outlet via the dried creek).
>
> Granting that said Foot Path is demandable as a compulsory or given and existing servitude, still Petitioners under the requisites of servitude cannot have it. It is too burdensome on the Respondents, and the rule is that convenience is not the gauge but adequacy and not artificial necessity. Besides, he never paid any indemnity for it.[14]

[14] *Id*. at 55.

Consequently, the trial court decreed:

> **WHEREFORE,** premises considered it not being clear by preponderance of evidence that a road right of way was given to Petitioners, or that the existing Foot Path was for their benefit, this petition is hereby DISMISSED.
>
> Petitioner instead shall use the adequate outlet (the dried creek) towards the Road Lot, for his ingress and egress to the national highway.
>
> **SO ORDERED.**[15]

Proceedings before the Court of Appeals

On respondents' appeal, they faulted the trial court for: a) failing to consider petitioners were not the owners of the foot path and therefore had no right to bar anyone from gaining access to it; b) holding that they had not proven the four (4) requisites to establish a right of way; and c) not awarding them damages.

By its assailed Decision dated July 12, 2019, the Court of Appeals reversed. It found that the foot path had its own separate title, specifically TCT No. T-7735, bearing the name of "Foot Path" and was not among the lots sold or transferred to third persons by Nestor Reluya who remained its owner. Even petitioner Jesus Castro testified that he was not the owner of the foot path. Neither Nestor Reluya nor his heirs had relinquished their right thereto or changed its purpose, thus, the foot path retained its nature as a passageway. Since petitioners only owned the adjoining lots and not the foot path itself, they had no exclusive, nay, absolute right to close it.

The Court of Appeals, thus, directed petitioners to remove the concrete fence and other structures they built on the foot path and permanently enjoined them from obstructing the ingress and egress of respondents and the other neighbors. Petitioners were also ordered to pay respondents ₱50,000.00 as attorney's fees.

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[15] *Id.*

The Present Petition

Petitioners now invoke this Court's discretionary appellate jurisdiction to reverse and set aside the Court of Appeals' decision. They essentially reiterate their argument that although the foot path has a separate title, it is intended for their benefit and not for the benefit of respondents who already had the dry creek as their means to access the national highway. Being a voluntary easement, control over the foot path remained with Nestor Reluya, and after his death, control over the foot path had been transferred to them as his successors-in-interest. Since the whole area practically belonged to them already, the foot path no longer has any use to third persons, including respondents. Besides, respondents failed to prove the four (4) requisites for the establishment of a compulsory easement.[16]

In their Comment[17] dated December 16, 2019, respondents riposte that petitioners are not the owners of the foot path. Further, the foot path is the only legitimate ingress to and egress from their property. By Letter dated March 22, 2004, the City Building Officer of Dipolog informed petitioners that the construction of the fence was illegal for failing to secure the necessary permit. The foot path was already existing when petitioners bought their lots.

Issue

Do respondents have the right to use the foot path as ingress and egress and the requisite standing as well to pray that petitioners remove the fence they constructed to close off the foot path?

Ruling

We affirm.

An action for injunction is a recognized remedy in this country. It is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the

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[16] *Id*. at 13-32.

[17] *Id*. at 80-90.

commission or continuance of a specific act, or the defendant's compulsion to continue performance of a particular act. It has an independent existence. It is similar to the special civil action of prohibition under Rule 65, except that the latter, in common with other special civil actions, deals with special matters requiring a special procedure, *i.e.*, it is concerned with public officers or entities performing public duties: tribunals, corporations, boards, or persons exercising functions judicial or ministerial, whereas the former, an ordinary suit, generally involves acts and transactions of private individuals. The action for injunction is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. And, of course, in an action of injunction, the auxiliary remedy of a preliminary injunction, prohibitory or mandatory, may issue.[18] An injunction may either be: (1) a prohibitory injunction, which commands a party to refrain from doing a particular act; or (2) a mandatory injunction, which commands the performance of some positive act to correct a wrong in the past.[19]

Here, respondents prayed for a writ of mandatory injunction and *"render its decision to perpetually restrain respondents closing the FOOT PATH, and mandatory injunction be made permanent."*[20] A mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the status quo between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he or she does not have a clear legal right and, therefore, the issuance of a writ of mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least

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[18] *Manila Banking Corporation v. Court of Appeals*, 265 Phil. 142, 150 (1990).

[19] *Dela Rosa v. Heirs of Juan Valdez*, 670 Phil. 97, 109 (2011).

[20] *Rollo*, p. 59.

tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.[21]

Here, respondents hinge their claim to remove the fence enclosure of the foot path on the voluntary easement made by Nestor Reluya thereon and the fact that the same is covered by its own title, TCT No. T-7735. As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements.[22]

Generally, the owner of an estate may claim a legal or compulsory right of way only after he or she has established the existence of these four (4) requisites: (a) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (b) after payment of the proper indemnity; (c) the isolation was not due to the proprietor's own acts; and (d) the right of way claimed is at a point least prejudicial to the servient estate.[23]

Notably, the opening of an adequate outlet to a highway can extinguish only legal or compulsory easements, not voluntary easements. The fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity.[24]

The foot path was a voluntary easement constituted by Nestor Reluya and this fact was confirmed by the trial court and the Court of Appeals. Further, the Court of Appeals noted that the

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[21] *Sps. Ngo, et al. v. Allied Banking Corp.*, 646 Phil. 681, 685 (2010).

[22] *Unisource Commercial and Development Corp. v. Chung*, 610 Phil. 642, 649 (2009).

[23] *Sps. Mejorada v. Vertudazo*, 561 Phil. 682, 687 (2007).

[24] *La Vista Association, Inc. v. Court of Appeals*, 344 Phil. 30, 49 (1997).

separate title to the foot path was retained by Nestor Reluya and later on passed on to his heirs after his death. Also, there is no showing that the Heirs of Nestor Reluya had withdrawn the right-of-way. Hence, although the dry creek had been turned into a gravel road that gives access to the national highway, the foot path has not lost its nature as a voluntary easement which benefits respondents and third persons. Surely, petitioners cannot claim the foot path as their own and exclude third persons from using it.

Verily, the respondents had the right and legal standing to seek a writ of mandatory injunction against petitioners, who had no authority to close off the foot path from general use. Too, as early as 1914, ***Resolme v. Lazo***[25] had already decreed that a complaint for injunction is the proper remedy to ensure that a right-of-way is respected thus:

> We are of opinion that the trial judge correctly held that the record sustains the plaintiffs' claim of a right of way as indicated by the arrows marked number 1 on the plan of the land submitted by the commissioner and filed with the record. We think however that the form of the judgment entered by him must be modified. He directed merely that this road "be opened for the public use" and by inference imposed upon the defendant the duty of so doing. But there is nothing in the record which would justify a finding that the defendant is charged with a duty to maintain or construct a road across his land. So far as the record discloses his only obligation in regard to this right of way over his land is a negative one, that is to say, not to obstruct or hinder the free passage over it of any persons entitled to make use of it. **While the prayer of the complaint does not clearly indicate the relief sought by the plaintiffs, we think that it may fairly be construed as a prayer for a permanent injunction, and as that is the relief to which the plaintiffs are entitled upon the facts alleged and proven, the trial court should have granted a permanent injunction prohibiting the defendant from obstructing, by the maintenance of fences or otherwise, the plaintiffs' passage over the ancient right of way, which the trial court found to be in a direct line as indicated by the arrows marked No. 1 on the commissioner's plan.** (Emphasis supplied)

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[25] 27 Phil. 416, 418 (1914).

So must it be.

As for the award of ₱50,000.00 as attorney's fees, the Court of Appeals reasoned that *"[t]his Court, however, finds the propriety of granting an award of attorney's fees in favor of appellants since they were apparently compelled to litigate their cause and incurred the necessary expenses to protect their rights."*[26] Yet, this justification is not enough. Even if a party is compelled to litigate with third persons or to incur expenses to protect his or her rights, attorney's fees will not be awarded if no bad faith could be reflected in a party's persistence in a case. To award attorney's fees, the court must have factual, legal, and equitable justification. The court must state the award's basis in its decision. These rules are based on the policy that no premium should be placed on the right to litigate.[27] Here, there is no clear showing that petitioners, in persistently asserting their exclusive right over the foot path, acted in bad faith, thus, they cannot be held liable for attorney's fees.

ACCORDINGLY, the petition is **DENIED.** The assailed Decision dated July 12, 2019 of the Court of Appeals in CA-G.R. CV No. 05047-MIN is **AFFIRMED with MODIFICATION** deleting the award of attorney's fees.

SO ORDERED.

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

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[26] *Rollo,* p. 43.

[27] *Lui Enterprises, Inc. v. Zuellig Pharma Corp.*, 729 Phil. 440, 483 (2014).

EN BANC

[B.M. No. 3490. April 29, 2020]

REGIONALIZATION OF THE NEXT BAR EXAMINATIONS

SYLLABUS

REMEDIAL LAW; RULES OF COURT; RULE 138 ON ATTORNEYS AND ADMISSION TO BAR; SECTION 11 ON ANNUAL EXAMINATION; AMENDMENT; CEBU CITY DESIGNATED AS A REGIONAL SITE FOR THE NEXT BAR EXAMINATIONS, AND OTHER MATTERS RELATED THERETO.— [A]cting on the recommendations of Associate Justice Marvic M.V.F. Leonen, this Court, sitting *En Banc*, resolves to **APPROVE** the following: (a) Cebu City shall be designated as a regional site for the next Bar Examinations. A site visit shall be conducted to find a suitable venue for the examinations, the schedule of which shall be determined once domestic travel restrictions have been lifted; (b) The Bar Examinations in Manila shall be held at the University of Santo Tomas in Manila. The final venue for the regional Bar Examinations in Cebu City shall be announced at a later date; (c) Law graduates from the Visayas and Mindanao shall be given the option to take the next Bar Examinations in Manila or Cebu City. The guidelines for applications of those who wish to take the examinations in Cebu City will be announced later through a Bar bulletin; (d) The Bar application fees shall correspondingly be increased to cover the costs of a regional examination site in Cebu City. The Office of the Bar Confidant is directed to submit a budget proposal taking into account social distancing measures and safety precautions in view of the COVID-19 pandemic. Rule 138, Section 11 of the Rules of Court is **AMENDED** accordingly."

N O T I C E

Sirs/Mesdames :

Please take notice that the Court En Banc issued a Resolution dated April 29, 2020, which reads as follows:

"B.M. No. 3490 (*Regionalization of the Next Bar Examinations*)

R E S O L U T I O N

WHEREAS, pursuant to its constitutional authority to promulgate rules concerning the admission to the practice of law, the Supreme Court promulgated Rule 138, Section 11[1] of the Rules of Court, which provides that the Bar Examinations shall be held in Manila;

WHEREAS, Bar Matter No. 1142[2] dated August 13, 2002, which states that the Integrated Bar of the Philippines-Cebu City Chapter had proposed Cebu City to be another site of the Bar Examinations, manifests early on existing clamor to have a regional site for the examinations;

WHEREAS, in Bar Matter No. 1142-A[3] dated March 24, 2009, there was another request, this time by the National President of the Association of Law Schools in the Philippines,

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[1] RULES OF COURT, Rule 138, Sec. 11 provides:

SECTION 11. Annual Examination. — Examinations for admission to the bar of the Philippines shall take place annually in the City of Manila. They shall be held in four days to be designated by the chairman of the committee on bar examiners. The subjects shall be distributed as follows: First day: Political and International Law (morning) and Labor and Social Legislation (afternoon); Second day: Civil Law (morning) and Taxation (afternoon); Third day: Mercantile Law (morning) and Criminal Law (afternoon); Fourth day: Remedial Law (morning) and Legal Ethics and Practical Exercises (afternoon).

[2] Re: Resolution No. 04, series of 2002, of the Cebu City Chapter of the Integrated Bar of the Philippines (IBP).

[3] Re: Resolution No. 04, Series of 2002, of the Cebu City Chapter of the Integrated Bar of the Philippines [IBP].

for the Bar Examinations in Manila to be simultaneously conducted in other sites in the Visayas and Mindanao;

WHEREAS, in Bar Matter No. 2310[4] dated January 11, 2011, the Sangguniang Panlungsod of Talisay City and the Sangguniang Panlungsod of Mandaue City both requested that this Court hold the Bar Examinations for Visayas and Mindanao examinees in Cebu City;

WHEREAS, in 2016, this Court had previously agreed to a proposal by retired Court of Appeals Justice Portia Hormachuelos to simultaneously hold the Bar Examinations in Manila and Cebu City if the regional site had 1,000 Bar candidates,[5] but later disallowed it merely because less than a thousand expressed such interest;[6]

WHEREAS, retired Court of Appeals Justice Portia Hormachuelos attributed the low turnout to the inadequate time to survey all prospective examinees, as well as the distance among the provinces that hampered the delivery of survey results;[7]

WHEREAS, the Philippine Association of Law Schools, through its current leadership, convened meetings with law school deans to discuss the possibility of having a regional site for the next Bar Examinations;

WHEREAS, the proposal to have a regional site for the next Bar Examinations was received favorably by the law school deans who have expressed their full support;

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[4] In Re: 4th SP Resolution No. 2010-84 of the City of Talisay, Cebu; Resolution No. 12-603-2010 of the Sangguniang Panlungsod, City of Mandaue, Cebu.

[5] Gerome M. Dalipe, *Law school deans, IBP execs back efforts to hold Bar exams in Cebu*, SUNSTAR PHILIPPINES, February 24, 2016, available at <https://www.sunstar.com.ph/article/60061> (last visited on May 26, 2020).

[6] Michael Vyncenth H. Braga, *Law dean still hopeful for Bar's regionalization*, THE FREEMAN, May 31, 2016, available at <https://www.philstar.com/the-freeman/cebu-news/2016/05/31/1588649/1aw-dean-still-hopeful-bars-regionalization> (last visited on May 26, 2020).

[7] *Id.*

WHEREAS, based on a February 21, 2020 survey[8] conducted by the Philippine Association of Law Schools, 89% of the respondents[9] were in favor of a regional site for the next Bar Examinations, preferably in Cebu City, with positive comments on the proposal even from respondents in Metro Manila and Luzon schools;

WHEREAS, the social impact of providing a regional site for the Bar Examinations cannot be overemphasized, and may even lead to more regional sites in future examinations;

WHEREAS, the holding of the Bar Examinations in Manila has been a continuous financial and emotional burden on Bar candidates from the Visayas and Mindanao, who must spend inordinate sums to sustain their stay in Manila and be separated from their loved ones who could provide them with tangible and emotional support;

WHEREAS, this Court must be responsive to the pleas and needs of the Bar candidates from the provinces in order to reduce inequities;

WHEREAS, providing a regional site for the Bar Examinations would address these inequities by allowing Bar candidates from the Visayas and Mindanao to cut their expenses, continue with their employment, and receive the much-needed support from their family and friends while they review and take the examinations;

WHEREAS, recent governmental restrictions in light of the COVID-19 pandemic has limited movement between provinces, making regionalization more crucial than ever;

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[8] Report on the Survey Responses from Deans of Law Schools Members of the Philippine Law Schools dated February 21, 2020.

[9] *Id.* at 1-2. The report also states:

[P]lease note that out of a total of 127 possible responses, 28 Deans submitted survey responses. No analyses or conclusions however are made herein as to whether or not any significance on the acceptability of the proposed Bar Reforms can be attached to the fact that only around 22% of the law schools provided responses to the survey.

WHEREAS, a regional testing site for the next Bar Examinations will lessen the logistical problems caused by travel restrictions and curfew regulations that the Bar candidates will face in the coming months;

WHEREAS, a corresponding increase in the Bar application fees is necessary to cover the additional costs of regionalization;

NOW, THEREFORE, acting on the recommendations of Associate Justice Marvic M.V.F. Leonen, this Court, sitting *En Banc*, resolves to **APPROVE** the following:

(a) Cebu City shall be designated as a regional site for the next Bar Examinations. A site visit shall be conducted to find a suitable venue for the examinations, the schedule of which shall be determined once domestic travel restrictions have been lifted;

(b) The Bar Examinations in Manila shall be held at the University of Santo Tomas in Manila. The final venue for the regional Bar Examinations in Cebu City shall be announced at a later date;

(c) Law graduates from the Visayas and Mindanao shall be given the option to take the next Bar Examinations in Manila or Cebu City. The guidelines for applications of those who wish to take the examinations in Cebu City will be announced later through a Bar bulletin;

(d) The Bar application fees shall correspondingly be increased to cover the costs of a regional examination site in Cebu City. The Office of the Bar Confidant is directed to submit a budget proposal taking into account social distancing measures and safety precautions in view of the COVID-19 pandemic.

Rule 138, Section 11 of the Rules of Court is **AMENDED** accordingly."

Peralta (Chief Justice), Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

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Registrar of Deeds, such decree has not yet attained finality and therefore may still be subject to cancellation in the same land registration case; upon cancellation of such decree, the decree owner (adjudicatee or his heirs) may then pray for the issuance of a new decree number and, consequently, pray for the issuance of an Original Certificate of Title based on the newly issued decree of registration. (*Id.*)

— The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land; the purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred. (*Id.*)

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Section 3(e) — Section 3(e) of R.A. No. 3019 is as follows: (a) the accused must be a public officer discharging administrative, judicial, or official function; (b) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. (Roy III *vs.* The Honorable Ombudsman, *et al.*, G.R. No. 225718, March 4, 2020) p. 267

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208)

Elements — The elements of Trafficking in Persons are as follows: (1) The act of recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders; (2) The means used which include threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another; and (3) The purpose of

Modes of appeal — The Court explained: The first mode of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law; the second mode of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate jurisdiction, and resolves questions of fact or mixed questions of fact and law; the third mode of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law. (Heirs of Nicanor Garcia, Represented by Spouses Doblada, *et al*. *vs.* Spouses Burgos, *et al.*, G.R. No. 236173, March 4, 2020) p. 345

Petition for review on certiorari to the Supreme Court under Rule 45 — A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts; for a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. (Coca-Cola Femsa Philippines, Inc. (formerly known as Coca-Cola Bottlers Phils., Inc.) *vs.* Alpuerto, G.R. No. 226089, March 4, 2020) p. 282

— As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts; to do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law. (Pascual *vs.* Pangyarihan-Ang, *et al*., G.R. No. 235711, March 11, 2020) p. 1035

— In a Rule 45 petition, this Court only considers questions of law; it is not our function to re-analyze evidence. (Adamson University Faculty and Employees Union, represented by its president, *et al*. *vs.* Adamson University, G.R. No. 227070, March 9, 2020) p. 462

considered, would justify a different conclusion. (Unera, *et al. vs.* Shin Heung Electrodigital, Inc., / Mr. Seung Rae Cho / Jennifer Villamayor, G.R. No. 228328, March 11, 2020) pp. 1008-1014

— The requirement that a petition for review on *certiorari* should be accompanied by "such material portions of the record as would support the petition" is left to the discretion of the party filing the petition; except for the duplicate original or certified true copy of the judgment sought to be appealed from, there are no other records from the court *a quo* that must perforce be attached before the Court can take cognizance of a Rule 45 petition. (Republic *vs.* Fule, *et al.*, G.R. No. 239273, March 2, 2020) p. 152

— The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45; as a rule, the Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. (Icon Development Corporation *vs.* National Life Insurance Company of the Philippines, G.R. No. 220686, March 9, 2020) p. 441

— This Court is not a trier of facts, hence, only questions of law may be raised in a petition for review on *certiorari* under Rule 45; in the exercise of its power of review, the factual findings of the Court of Appeals are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. (Chan *vs.* Magsaysay Maritime Corporation, *et al.*, G.R. No. 239055, March 11, 2020) p. 1061

— When the petitioner asks for a review of the decisions made by a lower court based on the evidence presented, without delving into their probative value but simply on their sufficiency to support the legal conclusions made, then a question of law is raised. (Republic *vs.* Fule, *et al.*, G.R. No. 239273, March 2, 2020) p. 152

— When there is a showing that the Court of Appeals manifestly overlooked facts which would justify a different

has been bestowed or will be used. (Castro *vs.* Barin, A.C. No. 9495, March 2, 2020) p. 1

Disbarment — Administrative cases against lawyers belong to a class of their own, distinct from and may proceed independently of civil and criminal cases; there is no prejudicial question nor proscription that will prevent it from proceeding; double jeopardy or in *pari delicto* are also not available as defenses as to bar the disciplinary proceedings against an erring lawyer. (AA Total Learning Center for Young Achievers, Inc., Represented by Loyda L. Reyes *vs.* Atty. Caronan, A.C. No. 12418, March 10, 2020) p. 564

— In administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant; in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. (Castro *vs.* Barin, A.C. No. 9495, March 2, 2020) p. 1

— It can be initiated *motu proprio* by the Supreme Court or the IBP and even without a complaint and can proceed regardless of lack of interest of the complainants, if the facts proven so warrant; disciplinary proceedings against lawyers are *sui generic*; neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but are rather investigations by the Court into the conduct of one of its officers; not being intended to inflict punishment, they are in no sense a criminal prosecution. (AA Total Learning Center for Young Achievers, Inc., Represented by Loyda L. Reyes *vs.* Atty. Caronan, A.C. No. 12418, March 10, 2020) p. 564

— There is neither a plaintiff nor a prosecutor therein; public interest is their primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. (*Id.*)

COMMISSION ON AUDIT (COA)

Powers — As the constitutionally mandated guardian of public funds, the COA is vested with latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds; its findings are generally accorded not only respect, but at times finality if such findings are supported by substantial evidence. (National Power Corporation Board of Directors Margarito B. Teves, *et al*. *vs*. Commission on Audit, G.R. No. 242342, March 10, 2020) p. 671

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — A long line of cases decided by the Court has demonstrated that the exacting procedures for observation during a buy-bust operation more often rise or fall on either the adherence to or non-compliance with the chain of custody rule; the chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure, to receipt in the forensic laboratory, to safekeeping, to presentation in court. (Tañamor *vs.* People, G.R. No. 228132, March 11, 2020) p. 982

— An unbroken chain of custody is necessary in order to establish before the court that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt; this rule is imperative, under pain of rendering all seized evidence in the course of the operation incredible. (*Id.*)

— Due to the peculiar nature of a buy-bust operation, the law concomitantly requires strict compliance with procedures laid down by it to ensure that all the rights of the accused are guaranteed and the credibility of the *corpus delicti* safeguarded, in sober recognition of the

fact that the character of anti-narcotics operations and the decided ease with which illegal drugs may be planted open them to a great possibility of abuse. (*Id.*)

— In drug cases, the State bears the burden not only of proving the elements of the crime, but also its body or *corpus delicti*, which in these cases pertains to the dangerous drug itself; in cases involving illegal drugs, buy-bust operation has been declared as a valid and effective procedure for apprehending drug peddlers and distributors and a legally sanctioned means of trapping lawbreakers in felonious acts. (*Id.*)

— In *People v. Adobar*, the Court held in no uncertain terms: the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure; if this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office. (*Id.*)

— In *People v. Castillo*, the Court categorically clarified: the requirement of conducting inventory and taking of photographs immediately after seizure and confiscation necessarily means that the required witnesses must also be present during the seizure and confiscation; the presence of third-party witnesses is not an empty formality in the conduct of buy-bust operations; it is not a mere rubberstamp to validate the actions taken and self-serving assurances proffered by law enforcement officers; far from a passive gesture, the attendance of third-party witnesses ensures the identity, origin, and integrity of the items seized. (*Id.*)

— In *People v. Gonzales*: The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference; the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal

proceedings, thereby forestalling switching, planting, or contamination of evidence. (People *vs.* Abdulah, G.R. No. 243941, March 11, 2020) p. 1124

— In situations that render strict compliance impossible or impracticable, deviations from Section 21's requirements do not invalidate the seizure of illegal items; noncompliance may be excused when (a) there is a justifiable ground for such non-compliance, and (b) the integrity and evidentiary value of the seized items are properly preserved; the prosecution bears the burden of proving that the items presented are authentic without any indication of tampering. (*Id.*)

— In the event of the prosecution's acknowledgment of the police officers' failure to comply with the general rule, the liberal application of the alternative place of inventory and photographing may only be triggered upon offer of sufficient justification; in other words, mere invocation of an inconvenience that rendered the inventory impracticable at the site of seizure does not translate to compliance with Section 21 and its IRR, especially if such invocation is not sufficiently explained in the records of the case and supported by credible evidence. (Tañamor *vs.* People, G.R. No. 228132, March 11, 2020) p. 982

— Section 21, Article II of RA 9165, as amended by RA 10640, provides for the procedure that police operatives are required to observe in order to assure the integrity of the confiscated drugs; the said provision requires that: (1) the seized items be inventoried and photographed immediately after confiscation at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (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, and (c) a representative of the National Prosecution Service or the media; and (3) the accused or his/her representative and all of the aforesaid witnesses shall be required to

case against the accused; to warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. (*Id.*)

Illegal sale of dangerous drugs — In every prosecution for illegal sale of dangerous drugs, the prosecution must establish the following elements: "(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." (People *vs.* Abdulah, G.R. No. 243941, March 11, 2020) p. 1124

— In *People v. Nacua*, the *corpus delicti*, or the body of the crime itself, is further explained in this wise: sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug; in prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. (*Id.*)

CONTRACTORS' LICENSE LAW (R.A. NO. 4566)

Application of — A contractor under R.A. No. 4566 does not refer to a specific practice of profession, *i.e.* architecture, engineering, medicine, accountancy and the like; suffice it to say that a corporation or juridical person, in this case a construction firm, cannot be considered a "professional" that is being exclusively restricted by the Constitution and our laws to Filipino citizens; the licensing of contractors is not to engage in the practice of a specific profession, but rather to engage in the business of contracting/construction. (Philippine Contractors Accreditation Board *vs.* Manila Water Company, Inc., G.R. No. 217590, March 10, 2020) p. 577

— Section 14, Article XII of the Constitution refers to the privilege of a natural person to exercise his profession in the Philippines; on the other hand, under Article IV of R.A. No. 4566, even partnerships, corporations and organizations can qualify for a contractor's license through

being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. (Pascual *vs.* Sitel Philippines Corporation, *et al.*, G.R. No. 240484, March 9, 2020) p. 525

CREATION OF THE SPECIAL EDUCATION FUND (R.A. NO. 5447)

Application of — The Court agrees with the petitioner that the authority to expend the SEF for the operation and maintenance of extension classes of public schools carries with it the authority to utilize the SEF not only for the salaries and allowances of the teaching personnel, but those of the non-teaching personnel alike who were hired as a necessary and indispensable auxiliary to the teaching staff. (Province of Camarines Sur, represented by Gov. Miguel Luis R. Villafuerte *vs.* The Commission on Audit, G.R. No. 227926, March 10, 2020) p. 634

CRIMINAL PROCEDURE

Information — *Romualdez v. People* provides an additional perspective in determining the sufficiency of the allegations in an information: to restate the rule, an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage matters that are appropriate for the trial. (Espinosa *vs.* Sandiganbayan, *et al.*, G.R. No. 191834, March 4, 2020) p. 180

— The mere fact that the date alleged in the Information is different from the one eventually established during the trial will not invalidate the Information; it is well-settled that in crimes where the date of commission is not a material element, as in this case, it is not necessary to allege such date with absolute specificity or certainty

Probable cause — 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. (Imingan *vs.* The Office of the Honorable Ombudsman, *et al.*, G.R. No. 226420, March 4, 2020) p. 306

— For the purpose of filing a criminal information, probable cause has been defined to constitute such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. (*Id.*)

— The term probable cause does not mean "actual or 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; it is enough that it is believed that the act or omission complained of constitutes the offense charged. (*Id.*)

DAMAGES

Attorney's fees — Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer; Article 2208 of the Civil Code specifically provides for the instances when attorney's fees may be recovered; the power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. (Buce *vs.* Spouses Galeon, *et al.*, G.R. No. 222785, March 2, 2020) p. 68

— It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. (*Id.*)

Award of — It is jurisprudentially settled that when death occurs due to a crime, the following may be recovered:

lands covered by R.A. No. 6657, otherwise known as the [CARL], as amended, and other related agrarian laws." (*Id.*)

EASEMENT

Right to — An easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. (Spouses Castro *vs.* Spouses Esperanza, G.R. No. 248763, March 11, 2020) p. 1139

— Easements are established either by law or by the will of the owner; the former are called legal, and the latter, voluntary easements; generally, the owner of an estate may claim a legal or compulsory right of way only after he or she has established the existence of these four (4) requisites: (a) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (b) after payment of the proper indemnity; (c) the isolation was not due to the proprietor's own acts; and (d) the right of way claimed is at a point least prejudicial to the servient estate. (*Id.*)

— The opening of an adequate outlet to a highway can extinguish only legal or compulsory easements, not voluntary easements; the fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity. (*Id.*)

EDUCATION ACT OF 1982 (B.P. BLG. 232)

Grave misconduct — Misconduct is not considered serious or grave when it is not performed with wrongful intent; if the misconduct is only simple, not grave, the employee cannot be validly dismissed; a teacher exclaiming *"anak ng puta"* after having encountered a student is an unquestionable act of misconduct; however, whether it is serious misconduct that warrants the teacher's dismissal

and judgment, all aspects of employment; this flows from the established rule that labor law does not authorize the substitution of the judgment of the employer in the conduct of its business. (*Id.*)

Misconduct — In determining the sanction imposable on an employee, the employer may consider the former's past misconduct and previous infractions; also known as the principle of totality of infractions. (Adamson University Faculty and Employees Union, represented by its president, *et al*. *vs*. Adamson University, G.R. No. 227070, March 9, 2020) p. 462

— What constitutes misconduct to justify dismissal: misconduct is defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." (*Id.*)

Resignation — As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment. (Pascual *vs.* Sitel Philippines Corporation, *et al.*, G.R. No. 240484, March 9, 2020) p. 525

— It is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to disassociate oneself from employment; it is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. (*Id.*)

— The intent to relinquish must concur with the overt act of relinquishment; the acts of the employee before and after the alleged resignation must be considered in determining whether the employee concerned, in fact, intended to terminate his employment. (*Id.*)

Retrenchment — Retrenchment or lay-off is the termination of employment initiated by the employer, through no

the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage. (Artates *vs.* People, G.R. No. 235724, March 11, 2020) p. 1045

EVIDENCE

Admissibility of — In *People v. Teehankee, Jr.*, this Court explained the procedure for out-of-court identification and the test to determine the admissibility of such identifications in this manner: out-of-court identification is conducted by the police in various ways; it is done thru show-ups where the suspect alone is brought face-to-face with the witness for identification; it is done thru mug shots where photographs are shown to the witness to identify the suspect; it is also done thru lineups where a witness identifies the suspect from a group of persons lined up for the purpose. (People *vs.* Moreno, G.R. No. 191759, March 2, 2020) p. 17

— In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, *viz:* (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure. (*Id.*)

Burden of proof — The prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence; any doubt shall be resolved in favor of the accused. (Gemenez *vs.* People, G.R. No. 241518, March 4, 2020) p. 369

Circumstantial evidence — An accused may be convicted when the circumstances established form an unbroken

to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. (*Id.*)

EXPROPRIATION

Action for — Jurisprudence clearly provides for the landowner's remedies when his property is taken by the government for public use without the government initiating expropriation proceedings and without payment of just compensation: he may recover his property if its return is still feasible or, if it is not, he may demand payment of just compensation for the land taken. (Sps. De Guzman *vs.* Republic, *et al*., G.R. No. 199423, March 9, 2020) p. 427

FORUM SHOPPING

Elements — Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes; it degrades the administration of justice and adds to the already congested court dockets. (Sps. De Guzman *vs.* Republic, *et al*., G.R. No. 199423, March 9, 2020) p. 427

— Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. (*Id*.)

Principle of — Forum shopping is the repetitive availment of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase the chances of obtaining

— The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions; if the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. (*Id.*)

Verifications and certifications against forum shopping — Verifications and certifications against forum shopping purportedly signed in behalf of the corporation but without the requisite board resolution authorizing the same are defective; such defect, however, merely affects the form of the pleading and does not necessarily warrant the outright dismissal of the case; courts may order the correction of the unverified pleading or even act on it despite the infirmity to ensure that the ends of justice are served. (Philippine Heart Center *vs.* The Local Government of Quezon City, *et al.*, G.R. No. 225409, March 11, 2020) p. 930

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Application of — Section 2 of the Volume 2 Manual of Procedures for the Procurement of Goods and Services talks, among others, about preparing for the procurement of goods and provides the factors to be considered in planning for the procurement of goods; it likewise includes what are the technical specifications to be considered in procuring goods as well as the procuring entity's requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. (Abogado *vs.* Office of the Ombudsman, *et al.*, G.R. No. 241152, March 9, 2020) p. 541

— Section 10. *Competitive Bidding*. All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act. (*Id.*)

reinstatement of the corporation to its former status of successful operation. (*Id.*)

— An insurance company placed under conservatorship is facing financial difficulties which require the appointment of a conservator to take charge of its assets, liabilities, and management aimed at preserving its resources and restoring its viability as a going business enterprise. (*Id.*)

— As regards the ordinary details of administration, the conservator has implied authority by virtue of his appointment to proceed without the approval of the Insurance Commissioner; he is clothed with such discretion in conducting and managing the affairs of the insurance company placed under his control. (*Id.*)

— Conservatorship proceedings against a financially distressed insurance company are resorted to only when such company is in a state of continuing inability to maintain a condition of solvency or liquidity deemed adequate to protect the interest of policyholders and creditors. (*Id.*)

— Conservatorship, under Section 248 of the Insurance Code, is in the nature of a rehabilitation proceeding; rehabilitation signifies a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency; the conservator may only act with the approval of the Insurance Commissioner with respect to the major aspects of rehabilitation. (*Id.*)

— The board of directors and corporate officers continue to exercise their power as such, including the collection of debts *via* foreclosure of mortgaged properties; their actions, however, can be revoked by the conservator if they are prejudicial to the corporation and worsen the financial difficulty that the company is facing. (*Id.*)

— The conservatorship of an insurance company should be likened to that of a bank rehabilitation; a cursory reading of Section 28-A of the Central Bank Act, as

the existence of intent to kill, namely: "(1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused [as well as] the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim." (Gemenez *vs*. People, G.R. No. 241518, March 4, 2020) p. 369

INJUNCTION

Action for — An action for injunction is a recognized remedy in this country; it is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or the defendant's compulsion to continue performance of a particular act; it has an independent existence. (Spouses Castro *vs.* Spouses Esperanza, G.R. No. 248763, March 11, 2020) p. 1139

— An injunction may either be: (1) a prohibitory injunction, which commands a party to refrain from doing a particular act; or (2) a mandatory injunction, which commands the performance of some positive act to correct a wrong in the past. (*Id.*)

— It is similar to the special civil action of prohibition under Rule 65, except that the latter, in common with other special civil actions, deals with special matters requiring a special procedure, *i.e.*, it is concerned with public officers or entities performing public duties: tribunals, corporations, boards, or persons exercising functions judicial or ministerial, whereas the former, an ordinary suit, generally involves acts and transactions of private individuals. (*Id.*)

— The action for injunction is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding; in an action of injunction, the

Code of Judicial Conduct provides that "a judge should not seek publicity for personal vainglory." (*Id.*)

Duties — A judge should possess the virtue of *gravitas*; he should be learned in the law, dignified in demeanor, refined in speech and virtuous in character; having the requisite learning in the law, he must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint. (Re: Anonymous Complaint Against Judge Laarni N. Dajao, Presiding Judge, Regional Trial Court, Branch 27, Siocon, Zamboanga Del Norte, A.M. No. RTJ-16-2456, March 2, 2020) p. 8

— He should be considerate, courteous and civil to all persons who come to his court; a judge who is inconsiderate, discourteous or uncivil to lawyers, litigants or witnesses who appear in his sala commits an impropriety. (*Id.*)

JUDGMENTS

Enforcement of — The jurisdiction of the court to execute its judgment continues even after the judgment has become final for the purpose of enforcement of judgment; it is axiomatic that after a judgment has been fully satisfied, the case is deemed terminated once and for all; it is when the judgment has been satisfied that the same passes beyond review, for satisfaction thereof is the last act and end of the proceedings. (Sunfire Trading, Inc. *vs.* Guy, G.R. No. 235279, March 2, 2020) p. 142

Execution of — A final and executory judgment may be executed by motion within five (5) years from entry of judgment; execution by independent action is available in cases where the five-year period had already expired; the action then must be filed before it is barred by the statute of limitations which under the Civil Code is ten (10) years from finality of judgment. (Terocel Realty, Inc. (now Pechaten Corporation) *vs.* Mempin, G.R. No. 223335, March 4, 2020) p. 242

— In *Vda. de Paman v. Judge Señeris*, the Court held that a case in which an execution has been issued is regarded as still pending so that all proceedings on the execution

— The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, *i.e.*, (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case. (*Id.*)

— This Court has consistently ruled that an actual case or controversy is necessary even in cases where the constitutionality of a law is being questioned; it is not enough that the statute has been passed; there must still be a real act; the law must have been implemented, and the party filing the case must have been affected by the act of implementation. (Del Rosario, *et al. vs.* Commission on Elections, et al., G.R. No. 247610, March 10, 2020) p. 698

Standing to sue — Following this definition, a party was held to have standing upon proof of the following: (1) the suing party has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought. (Del Rosario, *et al. vs.* Commission on Elections, *et al.*, G.R. No. 247610, March 10, 2020) p. 698

— For purposes of assailing the constitutionality of statutes, has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged; the gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which

sufficient provocation on the part of the person claiming self-defense. (PO1 Bayle *vs.* People, G.R. No. 210975, March 11, 2020) p. 838

— Unlawful aggression is present, not only when there is actual physical assault, but also when there is a threat to inflict real imminent injury; in case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. (*Id.*)

LABOR RELATIONS

Unfair labor practice — Unfair labor practices are violative of the constitutional right of workers to self-organize; in *UST Faculty Union v. University of Santo Tomas,* this Court ruled that the person who alleges the unfair labor practice has the burden of proving it with substantial evidence; in determining whether an act of unfair labor practice was committed, the totality of the circumstances must be considered. (Adamson University Faculty and Employees Union, represented by its president, *et al*. *vs.* Adamson University, G.R. No. 227070, March 9, 2020) p. 462

LAND REGISTRATION

Transfer Certificate of Title — TCT No. T-285312 is null and void, as the same was derived from tampered TCT No. 265777/T-1325 and traced back to parties who acquired no right over the subject property. (VSD Realty & Development Corporation *vs.* Uniwide Sales, Inc., G.R. No. 170677, March 11, 2020) p. 761

LEASE

Builder in good faith — In a plethora of cases, this Court has held that Article 448 of the Civil Code, in relation to Article 546 of the same Code, which allows full reimbursement of useful improvements and retention of the premises until reimbursement is made, applies only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof; it does not apply where one's only interest is that of a lessee under

— HUCs, as conceptualized in our local government laws, are essentially cities that have attained a level of population growth and economic development which the legislature has deemed sufficient for devolution of governmental powers as self-contained political units; as such, these cities are intended to function as first-level political and administrative subdivisions in their own right, on par with provinces; for this reason, Article X, Section 12 of the Constitution provides that "cities that are highly urbanized, as determined by law, x x x shall be independent of the province." (*Id.*)

— The economic factors contemplated in the determination of "political units directly affected" by an LGU change or conversion pertain strictly to fiscal or budgetary relations among the political units concerned, specifically, the sharing of internal revenue allotments, budgetary allocations, and taxing powers, all of which are governed by the pertinent provisions of the LGC and other laws. (*Id.*)

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Local taxation — It is the "taxable person" with beneficial use who shall be responsible for payment of real property taxes due on government properties; any remedy for the collection of taxes should then be directed against the "taxable person," the same being an action *in personam*. (Philippine Heart Center *vs.* The Local Government of Quezon City, *et al.*, G.R. No. 225409, March 11, 2020) p. 930

— Local government units are empowered to create their own sources of revenues and to levy taxes, fees, and charges subject to guidelines and limitations as Congress may provide; Section 232 of RA 7160 recognizes the power of the local government units to tax real property not otherwise exempt; Section 234(a) of RA 7160 further exempts real property owned by the Republic from real property taxes. (*Id.*)

concomitantly be assumed and discharged by the parties to the marriage; it must be characterized by gravity, juridical antecedence, and incurability. (*Id.*)

— Jurisprudence defined psychological incapacity to no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that must concomitantly be assumed and discharged by the parties to the marriage; it ought to pertain to only the most serious cases of personality disorders that clearly demonstrate the party's/parties' utter insensitivity or inability to give meaning and significance to the marriage. (Republic *vs.* Calingo, *et al.*, G.R. No. 212717, March 11, 2020) p. 873

— Sexual infidelity is not a satisfactory proof of psychological incapacity; to be a ground to nullify a marriage based on Article 36 of the Family Code, it must be shown that the acts of unfaithfulness are manifestations of a disordered personality which makes him/her completely unable to discharge the essential obligations of marriage. (*Id.*)

— To be accurate, such incapacity must be characterized by gravity, juridical antecedence, and incurability: the incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage, and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved. (*Id.*)

MITIGATING CIRCUMSTANCES

Voluntary surrender — For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present, to wit: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. (Talabis *vs.* People, G.R. No. 214647, March 4, 2020) p. 216

grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (*Id.*)

Probable cause — The Court, as a general rule, does not interfere with the Ombudman's finding of an existence or absence of probable cause; however, certain exceptions must be made such as the case at bar; in the case of *Brocka v. Enrile*, this Court enumerated several exceptions to the principle of interference, one of them is when there is no *prima facie* case against the respondent. (Roy III *vs*. The Honorable Ombudsman, *et al*., G.R. No. 225718, March 4, 2020)

PARTIES

Transfer of interest — Rule 3, Section 19 of the 1997 Rules of Procedure gives the trial court discretion to allow or disallow the substitution or joinder by the transferee; discretion is permitted because, in general, the transferee's interest is deemed by law as adequately represented and protected by the participation of his transferors in the case; there may be no need for the transferee *pendente lite* to be substituted or joined in the case because, in legal contemplation, he is not really denied protection as his interest is one and the same as his transferors, who are already parties to the case. (Sunfire Trading, Inc. *vs.* Guy, G.R. No. 235279, March 2, 2020) p. 142

— We held that a transferee stands exactly in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him; it is not legally tenable for a transferee *pendente lite* to still intervene; the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor and the transferee *pendente lite*. (*Id.*)

PARTNERSHIP

Contract of — By the contract of partnership two or more persons bind themselves to contribute money, property,

Company-designated physician — Courts are not automatically bound by the company-designated physician's findings because its merit must still be weighed and considered; if the assessment of the company-designated physician was tardy, incomplete, and doubtful, the medical report shall be disregarded. (Castillon, *et al. vs.* Magsaysay Mitsui Osk Marine, Inc. and/or Francisco D. Menor and/or MOL Ship Management Co., Ltd., G.R. No. 234711, March 2, 2020) p. 92

— If the company-designated physician fails to conduct all proper and recommended tests, the medical assessment cannot be given credence for being indefinite and inconclusive. (*Id.*)

— The Philippine Overseas Employment Administration Standard Employment Contract prescribes the primary responsibility of the company-designated physician to determine the disability grading or fitness to work of the seafarers. (*Id.*)

— The rules favor the assessment of the company-designated physician because it is assumed "that they have closely monitored and actually treated the seafarer and are therefore in a better position to form an accurate diagnosis"; to be deemed sufficient, the medical assessment or reports of the company-designated physician must be complete and definite to give the proper disability benefits. (*Id.*)

Compensation and benefits for death — Even if the illness is disputably presumed as work-related, a claimant must still present substantial evidence that the "work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work connection, not direct causal relation is required." (Castillon, *et al. vs.* Magsaysay Mitsui Osk Marine, Inc. and/or Francisco D. Menor and/or MOL Ship Management Co., Ltd., G.R. No. 234711, March 2, 2020) p. 92

— For a seafarer's death to be compensable, the 2010 Philippine Overseas Employment Administration Standard

Employment Contract stipulates that the claimants must establish that (a) the seafarer's death is work-related, and (b) the death occurred during the term of the employment contract. (*Id.*)

— For death arising from work-related illness to be compensable, the claimant must satisfy the requirements under the provision, which reads: SECTION 32-A. Occupational Diseases. For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer. (*Id.*)

— For the purpose of compensability, the Philippine Overseas Employment Administration Standard Employment Contract does not require that the illness must be one of those enumerated under Section 32-A; to the contrary, Section 20(A)(4) explicitly provides that illnesses not listed under Section 32-A are disputably presumed as work-related; as long as the work-relatedness and compensability is established, the illness or death benefit claimed by the seafarer may be granted. (*Id.*)

— In instances where the illness or disease does not fall under Section 32-A, Section 20(A)(4) states that a disputable presumption arises that the illness or disease is work-related; in *Romana v. Magsaysay Maritime Corp.*: the legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits. (*Id.*)

— 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. (*Id.*)

— It must be pointed out that the seafarer will, in all instances, have to prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer; nevertheless, the presumption of work-relatedness, like any presumption, may be controverted by the contrary evidence; the employer or principal may show that the conditions on board the vessel were such that there can be reasonable conclusion that the condition of the claimant could not have been aggravated by his work. (*Id.*)

— Jurisprudence has settled that in determining work-relatedness, it is not necessary that the nature of the seafarer's work is the sole cause of the illness; in *Magsaysay Maritime Services v. Laurel*: Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. (*Id.*)

— Should the employer contest the illness's work-relatedness, the burden shifts to the seafarer to prove otherwise (*i.e.* the illness is not pre-existing, or even if it was pre-existing, the work contributed to or aggravated the illness); in doing so, the seafarer is also able to comply with the condition of compensability under Section 32-A, particularly: (1) that the seafarer's work must involve the risks described herein; (2) that the disease was contracted as a result of the seafarer's exposure to the described risks; and (3) that the disease was contracted within a period of exposure and under such other factors necessary to contract it. (*Id.*)

— The presumption of work-relatedness established under Section 20(A)(4) is not tantamount to a presumption of compensability; in *Romana*: the established work-

medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body. (*Id.*)

— In *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.*, the Court further summarized the rules governing a seafarer's claim for total and permanent disability benefits by a seafarer, *viz.*: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days; the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. (*Id.*)

— In *Orient Hope Agencies, Inc. and/or Zeo Marine Corporation v. Michael E. Jara,* the Court emphasized the importance of a final and definite disability assessment; it is necessary in order to truly reflect the extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such; otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered; indubitably, a definite declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade. (*Id.*)

their indefeasibility once the claim of ownership is established and recognized. (Philippine Bank of Communications *vs.* The Register of Deeds for the Province of Benguet, G.R. No. 222958, March 11, 2020) p. 901

— It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein; it is conclusive evidence with respect to the ownership of the land described therein. (*Id.*)

— Ownership of registered land is evidenced by the certificate of title, which is indefeasible and incontrovertible; P.D. 1529 or the ''Property Registration Decree" mandates the issuance of this certificate of title in duplicates, the original certificate of title, which is either an original certificate of title or TCT to be kept by the Register of Deeds and an owner's duplicate certificate of title to be kept by the registered owner; P.D. 1529 provides: SEC. 41. *Owner's duplicate certificate of title*. The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. (*Id.*)

— Section 109 of P.D. 1529; the foregoing provision unequivocally shows that the Court's authority in a petition for the replacement of a lost owner's duplicate certificate of title is limited to determining: (1) whether the procedure prescribed in Section 109 has been complied with; and (2) whether the owner's duplicate certificate of title has, in fact, been lost/destroyed; if the requisites are satisfied, the court, after notice and hearing, should direct the issuance of a new duplicate certificate in its original form and condition, with a memorandum of the fact that it is being issued in place of the lost duplicate certificate. (*Id.*)

— The nature and purpose of the Torrens system and the absolute indispensability of the owner's duplicate certificate of title mandates that the Court give primacy to the registered owner's substantive right to possess

and accordingly, to seek a replacement of an owner's duplicate certificate of title that has been lost or destroyed. (*Id.*)

— The requirement that the owner's duplicate certificate of title be presented for voluntary transactions is precisely what gives the registered owner "security" and "peace of mind" under the Torrens system; without the owner's duplicate certificate of title, transfers and conveyances like sales and donations, mortgages, and leases, and agencies and trusts while valid, will not bind the registered land. (*Id.*)

— There is no doubt that the owner's duplicate certificate of title is a fundamental aspect of the Torrens system; while a registered owner is free to exercise and enjoy all manner of rights over his/her property *i.e.*, (1) *Jus possidendi* or the right to possess; (2) *Jus utendi* or the right to use and enjoy; (3) *Jus fruendi* or the right to the fruits; (4) *Jus accessionis* or right to accessories; (5) *Jus abutendi* or the right to consume the thing by its use; (6) *Jus disponendi* or the right to dispose or alienate; and (7) *Jus vindicandi* or the right to vindicate or recover and non-registration thereof does not affect the validity of said acts as between the parties, no voluntary transaction affecting the land will be registered and thus bind third persons without the presentation of the owner's duplicate certificate of title as mandated by P.D. 1529. (*Id.*)

QUALIFYING CIRCUMSTANCES

Treachery — In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: *(1)* the employment of means, method, or manner of execution that would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, and *(2)* the means, method, or manner of execution was deliberately or consciously adopted by the offender. (People *vs.* Moreno, G.R. No. 191759, March 2, 2020) p. 17

— There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself/herself arising from the defense which the offended party might make. (*Id.*)

QUITCLAIMS

Effect of — While a quitclaim has the effect and authority of *res judicata* upon the parties, a quitclaim may be rendered null and void when found contrary to public policy; thus, respondents cannot cite *res judicata* to bar petitioners from claiming the full value of the benefits. (Castillon, *et al. vs.* Magsaysay Mitsui Osk Marine, Inc. and/or Francisco D. Menor and/or MOL Ship Management Co., Ltd., G.R. No. 234711, March 2, 2020) p. 92

Validity of — Generally, the law frowns upon quitclaims executed by employees for being contrary to public policy; however, when it is executed voluntarily, fully understanding its terms and with a corresponding reasonable consideration, the quitclaim is valid and binding; legitimate waivers or quitclaims are regarded as the law between the employers and employees. (Castillon, *et al. vs.* Magsaysay Mitsui Osk Marine, Inc. and/or Francisco D. Menor and/or MOL Ship Management Co., Ltd., G.R. No. 234711, March 2, 2020) p. 92

— In *Goodrich Manufacturing Corporation v. Ativo*: In certain cases, the Court has given effect to quitclaims executed by employees if the employer is able to prove the following requisites, to wit: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. (*Id.*)

— The employer bears the burden to prove that the quitclaim is a reasonable settlement of the employee's benefits,

Rape by sexual assault — Article 266-A, paragraphs 1 and 2, of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provide the following elements for the crimes of statutory rape and rape by sexual assault: ARTICLE 266-A. *Rape: When and How Committed.* Rape is committed: 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances: a. Through force, threat, or intimidation; b. When the offended party is deprived of reason or otherwise unconscious; c. By means of fraudulent machination or grave abuse of authority; and d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (People *vs.* Sumayod, *et al*., G.R. No. 230626, March 9, 2020) p. 499

Qualified rape — In order to sustain a conviction of qualified rape, the following elements must be present: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim being under eighteen (18) years of age at the time of the rape; and that (5) the offender is a parent (whether legitimate, illegitimate, or adopted) of the victim. (People *vs.* XXX, G.R. No. 244288, March 4, 2020) p. 389

— It bears stressing that even without the use of force or intimidation or failure to prove the presence thereof, the moral ascendency that exists with accused-appellant being the private complainants' father is sufficient; in cases of incestuous rape of a minor, it has been established that moral ascendancy of the ascendant substitutes force or intimidation. (*Id.*)

Statutory rape — In *People v. Gutierez*, this Court explained the elements of statutory rape: statutory rape is committed when (1) the offended party is under 12 years of age and

Principle of — *Res judicata* has been defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment; *res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit." (Philippine Bank of Communications *vs.* The Register of Deeds for the Province of Benguet, G.R. No. 222958, March 11, 2020) p. 901

— *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. (Heirs of Aurio T. Casiño, Sr., Namely, Patricia T. Casiño, *et al. vs.* Development Bank of the Philippines, Malaybalay Branch, Bukidnon, *et al*., G.R. Nos. 204052-53, March 11, 2020) p. 810

— *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." (Heirs of Aurio T. Casiño, Sr., Namely, Patricia T. Casiño, *et al. vs.* Development Bank of the Philippines, Malaybalay Branch, Bukidnon, *et al*., G.R. Nos. 204052-53, March 11, 2020) p. 810

— The doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment; the second concept which is conclusiveness of judgment states that a fact or question which was in issue in a former suit and was judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity

other forest products without license as an offense as grave as and equivalent to the felony of qualified theft. (*Id.*)

Section 80 — In *People v. Court of First Instance of Quezon*, this Court held that "reports and complaints" cover only such reports and complaints as might be brought to the forest officer assigned to the area by other forest officers, or any deputized officers or officials, for violations of forest laws not committed in their presence; in both cases, the forest officer shall investigate the offender and file a complaint with the appropriate official authorized by law to conduct a preliminary investigation and file the necessary information in court. (Talabis *v*s. People, G.R. No. 214647, March 4, 2020) p. 216

— Section 80 of PD 705 contemplates situations where acts in violation of the law were committed in the presence of forest officers, or when reports or complaints of violations of PD 705, *albeit* not committed in their presence, are brought to the attention of forest officers by other forest officers or any deputized officers or officials; in such cases, PD 705 specifically recognizes the special authority of forest officers to file the necessary complaint with the appropriate official authorized by law to conduct a preliminary investigation of criminal cases after said forest officer has conducted a warrantless arrest, seizure or confiscation of property, or after his receipt of a complaint of report of violations of PD 705, as the case may be. (*Id.*)

— Section 80 of PD 705 contemplates two instances when a forest officer may commence a prosecution for violations of PD 705; the first instance, on one hand, contemplates a situation where a forest officer arrests without a warrant any person who has committed or is committing, in his presence, any of the offenses described in PD 705; on the other hand, the second instance contemplates a situation where an offense described in PD 705 is not committed in the presence of the forest officer and the

Self-regulatory organizations — It has been generally recognized that due to the large number of market participants and the lack of resources, full government regulation of securities markets is impractical; stock exchanges and securities markets are allowed to regulate their own operations, subject to the control and supervision of the government regulatory authority; this principle is known as *self-regulation* and is embodied in the SRC's declaration of policy, which states *inter alia* that "the State shall establish a socially conscious, free market that regulates itself. (Palanca IV, *et al. vs.* RCBC Securities, Inc., G.R. No. 241905, March 11, 2020) p. 1086

— The regulatory jurisdiction of SROs is defined in Section 40.2 of the SRC, which mandates SROs to "comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith." (*Id.*)

— Under Section 39.1 of the SRC, the SEC is given the "power to register as a self-regulatory organization, or otherwise grant licenses, and to regulate, supervise, examine, suspend or otherwise discontinue, as a condition for the operation of organizations whose operations are related to or connected with the securities market." (*Id.*)

— Under the SRC, SROs are empowered: 1) to promulgate, amend, and enforce rules and regulations to govern the trading activities of its members; 2) to control the admission of brokers, dealers, salespersons and associated persons into a securities association; and 3) to impose disciplinary sanctions upon its members; the regulatory structure under the SRC is therefore a two-tiered scheme, with the SROs as the first-level regulatory entities, subject to the review, regulation, and supervision of the SEC as the second-level regulatory entity. (*Id.*)

Stockbroker-client relationship — The relationship of an entity engaged in securities brokerage to its client is in the nature of an agency, such that the stockbrokers, in their dealings with their clients, may be held liable not only under the SRC, but also under the Civil Code.

(Philippine Heart Center *vs.* The Local Government of Quezon City, *et al.*, G.R. No. 225409, March 11, 2020) p. 930

— Under Article 420 of the Civil Code, the following things are property of public dominion: (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; and (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth; given the mandate and purpose of the PHC, its properties are thus propeties of public dominion intended for public use or service; as such, they are exempt from real property tax under Section 234(a) of the Local Government Code. (*Id.*)

UNJUST ENRICHMENT

Principle of — The principle of unjust enrichment is found in Article 22 of the Civil Code; there is unjust enrichment when: (1) A person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another. (Icon Development Corporation *vs.* National Life Insurance Company of the Philippines, G.R. No. 220686, March 9, 2020) p. 441

— Under the principle of *quantum meruit*, a person may recover a reasonable value for the thing he delivered or the service that he rendered; literally meaning "as much as he deserves," this principle acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. (Province of Camarines Sur, represented by Gov. Miguel Luis R. Villafuerte *vs.* The Commission on Audit, G.R. No. 227926, March 10, 2020) p. 634

WITNESSES

Credibility of — Accused-appellant even goes so far as to question the failure of the private complainants to shout or ask for help when they were supposedly raped by him; however, such failure was sufficiently explained

prosecution witness. (People *vs.* Moreno, G.R. No. 191759, March 2, 2020) p. 17

— Minor inconsistencies in the narration of the witness do not detract from its essential credibility as long as it is, on the whole, coherent and intrinsically believable. (Artates *vs.* People, G.R. No. 235724, March 11, 2020) p. 1045

— The evaluation of the credibility of witnesses and their reliability is an issue best raised before the trial court, which possesses the unique opportunity to examine the witnesses first-hand and observe their demeanor, conduct, and attitude throughout their testimony. (People *vs.* XXX, G.R. No. 244288, March 4, 2020) p. 389

— The fact that it took private complainant more than three (3) months to report the incidents of assault on her does not affect her credibility in the slightest; the moral ascendancy accused-appellant Eliseo had over her is enough to explain why she neither resisted the abuse as it was happening nor reported it afterwards for fear of being deprived of food, water, or a roof over her head. (People *vs*. Sumayod, *et al*., G.R. No. 230626, March 9, 2020) p. 499

— The factual findings of the trial court, its appreciation of the testimonies of the witnesses, and the conclusions reached on the basis of such findings, when affirmed by the appellate court, are generally binding and conclusive upon this Court. (People *vs.* XXX, G.R. No. 244288, March 4, 2020) p. 389

— The trial court has the best opportunity to observe the demeanor of the witness so as to determine if there is indeed truth to his or her testimony in the witness stand; the Court gives high respect to its evaluation of the testimony of a witness. (People *vs.* Catig, G.R. No. 225729, March 11, 2020) p. 964

— This Court has consistently ruled that witnesses frequently concentrate on the facial features and movements of the accused; victims of violence tend to strive to see the

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