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OF THE

PHILIPPINES

FOR THE PERIOD

JUNE 15-22, 2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 202049. June 15, 2020]

PHILIPPINE SAVINGS BANK, *petitioner, vs.* **HAZEL THEA F. GENOVE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, WHICH ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR RESPECTIVE JURISDICTIONS, ARE GENERALLY ACCORDED NOT ONLY RESPECT, BUT EVEN FINALITY, AND BIND THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTION. — The issue of whether or not respondent committed gross and habitual neglect of duty, acts of dishonesty and willful breach of trust resulting to loss of confidence by petitioner is factual in nature. It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect, but even finality, and bind the Court when supported by substantial evidence. Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases. However, the Court may take cognizance of and resolve factual issues, when the findings of fact and conclusions of law of the LA are inconsistent with those of the NLRC and the CA. Because of the differing opinions by

the LA, the NLRC and the CA in appreciating the facts surrounding the instant case, this Court deemed it best to resolve with finality the factual issues being raised by the parties.

2. SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN TERMINATION OF EMPLOYMENT SITUATIONS, THE EMPLOYER BEARS THE BURDEN OF PROVING THE EXISTENCE OF JUST OR AUTHORIZED CAUSE FOR DISMISSAL AND THE OBSERVANCE OF DUE PROCESS REQUIREMENTS. — In every dismissal situation, the employer bears the burden of proving the existence of just or authorized cause for dismissal and the observance of due process requirements. This rule implements the security of tenure of the Constitution by imposing the burden of proof on employers in termination of employment situations. The failure on the part of the employer to discharge this burden renders the dismissal invalid. In determining whether the burden of proof is successfully discharged by the employer in dismissal cases, the Court had the occasion to rule that: The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence, which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.

3. ID.; ID.; ID.; JUST CAUSES; GROSS NEGLECT OF DUTY; TO WARRANT REMOVAL FROM SERVICE, THE NEGLIGENCE SHOULD BE GROSS AND HABITUAL. — Gross neglect of duty denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. It refers to 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 insofar as other persons may be affected. Furthermore, to warrant removal from service, the negligence should be gross and habitual. Thus, a single or isolated act of negligence does not constitute a just cause for the dismissal of an employee.

4. ID.; ID.; ID.; ID.; WILLFUL BREACH OF TRUST; IT IS THE BREACH OF THE EMPLOYER'S TRUST, TO THE SPECIFIC EMPLOYEE'S ACT WHICH THE EMPLOYER CLAIMS CAUSED THE BREACH, WHICH THE LAW REQUIRES TO BE WILLFUL, KNOWINGLY AND PURPOSELY DONE BY THE EMPLOYEE TO JUSTIFY THE DISMISSAL ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE. — Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: 1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or 2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money or property. In any of these situations, it is the employee's breach of trust that his or her position holds which results in the employer's loss of confidence. To justify the employee's dismissal on the ground of willful breach of trust (or loss of confidence as interchangeably referred to in jurisprudence), the employer must show that the employee indeed committed act/s constituting breach of trust, which act/s the courts must gauge within the parameters defined by the law and jurisprudence. To reiterate, it is the breach of the employer's trust, to the specific employee's 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. Thus, it must be shown that the employee concerned is responsible for the misconduct or infraction and that the nature of his/her participation therein rendered him/her absolutely unworthy of the trust and confidence demanded by his/her position. 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, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.

5. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE BURDEN OF

PROOF NEEDED IN LABOR CASES IS SUBSTANTIAL EVIDENCE, WHICH IS MORE THAN A MERE SCINTILLA OF EVIDENCE OR RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION. — [R]espondent submits that she willingly took a polygraph test to clear her name of the charges against her, which she eventually passed. The Court in *People v. Adoviso* had the opportunity to discuss the weight of the results of a polygraph test as evidence of guilt or innocence of the examinee x x x. While the Court held that the results of a polygraph test cannot be offered in evidence to prove the guilt or innocence of an accused in a crime, it does not mean that it has no weight at all. Unlike in criminal cases where the prosecution is required to establish proof beyond reasonable doubt, the burden of proof needed in labor cases is merely substantial evidence. Section 5, Rule 133 of the Rules of Court defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Thus, the results of the polygraph test may be used in conjunction with other corroborative evidence to prove an allegation made by a party. x x x The required quantum of proof to hold that respondent is guilty of dishonesty and willful breach of trust resulting to loss of confidence is substantial evidence, which is more than a mere scintilla of evidence or relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

6. SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER'S RIGHT TO DISCIPLINE EMPLOYEES; MUST ALWAYS BE EXERCISED HUMANELY, AND THE PENALTY IT MUST IMPOSE SHOULD BE COMMENSURATE TO THE OFFENSE INVOLVED AND TO THE DEGREE OF ITS INFRACTION. — While an employer has the inherent right to discipline its employees, we have always held that this right must always be exercised humanely, and the penalty it must impose should be commensurate to the offense involved and to the degree of its infraction. The employer should bear in mind that, in the exercise of such right, what is at stake is not only the employee's position, but her livelihood as well. Thus, when the act complained of is not so grave as to result in a complete loss of trust and confidence, a lower penalty such as censure, warning or even suspension would be more circumspect. This

is more true considering that during her nine years of service with petitioner, respondent was not even once reprimanded or suspended from her employment and had maintained a good service record in her work at the said bank.

7. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO BACKWAGES AND REINSTATEMENT, BUT WHEN REINSTATEMENT IS IMPRACTICAL, SEPARATION PAY IN LIEU OF REINSTATEMENT SHOULD BE AWARDED. — [R]espondent is rightfully entitled to reinstatement and backwages, reckoned from the date she was illegally dismissed until the finality of this decision, in accordance with jurisprudence. However, the Court recognizes the impracticality of reinstatement of respondent as a substantial period of time had already lapsed since she was illegally dismissed from her employment. Coupled with the fact that there is an undeniable strained relations existing among petitioner, respondent and Tago, even before the instant case was filed before the courts, it is best that separation pay *in lieu* of reinstatement should be awarded to herein respondent.

APPEARANCES OF COUNSEL

Alonso & Associates for petitioner.
Layese & Associates Law Office for respondent.

D E C I S I O N

REYES, J. JR., J.:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are: 1) the Decision[2] dated August 8, 2011, which reversed and set aside the Resolutions

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[1] *Rollo,* pp. 9-46.

[2] Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando (now Members of the Court), concurring; *id.* at 48-56.

dated May 21, 2007,[3] and August 24, 2007,[4] respectively issued by the National Labor Relations Commission (NLRC) in NLRC Case No. V-000730-06 (RAB VII-02-0324-05); and 2) the Resolution[5] dated May 11, 2012, denying the Philippine Savings Bank's (petitioner's) motion for reconsideration, both of which were promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 03070 entitled "*Hazel Thea F. Genove v. Philippine Savings Bank, Jaime Araneta and Priscilla M. Torres*."

The facts, as culled from the records of the case, are as follows:

On July 19, 1995, Hazel Thea F. Genove (respondent) was employed as a bank teller by herein petitioner and was eventually assigned at its branch located at Cebu Mandaue-San Miguel. It was alleged that respondent was the only teller employed by the said branch since May 2004.

On July 7, 2004, at around 2:00 p.m., the spouses Ildebrando and Emma Basubas (spouses Basubas) went to petitioner's branch at Cebu Mandaue-San Miguel to purchase a cashier's check in the amount of ₱1,358,000.00. They brought two bags of money at the teller's counter and asked respondent to count the money inside the bags. Respondent accommodated their request and started to count the money inside the first bag in bundles of ₱1,000.00. However, since she was the only teller at that time, respondent had to stop her counting from time to time to assist the other customers that came to the bank for their respective transactions.

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[3] Penned by Commissioner Aurelio D. Menzon, with Presiding Commissioner Violeta O. Bantug and Commissioner Oscar S. Uy, concurring; *id.* at 213-217.

[4] *Id.* at 263-265.

[5] Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando (now Members of the Court), concurring; *id.* at 58-59.

In the meantime, Mrs. Basubas secured the cashier's check from the branch cashier, Luvimin S. Tago (Tago),[6] and left the bank while Mr. Basubas stayed behind to wait for respondent to finish counting the money.

When respondent opened the second bag, she saw that instead of ₱1,000.00 bills, the monies inside consisted of various denominations and the spouses Basubas did not prepare a denomination breakdown thereof. Respondent then called the attention of Mr. Basubas to oversee the counting of the monies inside the second bag. After all the denominations inside the second bag were counted and tallied by respondent, she found that the total amounted only to ₱1,345,000.00 or a difference of ₱13,000.00 from the amount of the cashier's check issued to them. Mr. Basubas then handed the said difference in the amount to respondent to cover the supposed deficiency and left the bank thereafter.

Shortly before 4:00 p.m., the spouses Basubas returned and informed respondent that their collections had lacked ₱13,000.00. Thus, respondent recounted the amount of cash she had at hand and compared it with the recorded transactions within that day and found that the amounts balanced with each other. Having informed of the results thereto, the spouses Basubas left the bank again.

However, after the bank had already closed, the spouses Basubas called respondent and asked for another recount. Respondent asked Tago if the spouses Basubas could be allowed to enter the bank premises for the said recounting, which the latter assented to. A few minutes thereafter, the spouses Basubas arrived with their supplier, the spouses Fernandez.

Respondent conducted another recount of her cash at hand and compared it with her recorded transactions for the day, and the resulting amounts remained balanced with each other, as with the previous recounting done earlier that day. Not satisfied, the spouses Basubas requested for a body search of respondent,

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[6] *Id.* at 347.

her personal belongings and the teller's cage. When respondent agreed to the search, the bank's security guard, Sg. Joel Misal (Sg. Misal) began to frisk her body and combed through her personal belongings, as well as the teller's cage, but yielded nothing. Therefore, the spouses Basubas and the spouses Fernandez left the bank premises.

Tago then instructed respondent to make an incident report regarding the events that transpired that day. Soon after, Tago noticed a piece of paper with money under a cabinet near the teller's cage. Tago requested respondent to pick it up, and it turned out to be a deposit slip with Twelve Thousand Pesos (₱12,000.00) folded and taped together like a fan or a flattened cone. Tago requested for Sg. Misal and the janitor to search the area again, thinking that the remaining ₱1,000.00 bill was merely blown away somewhere nearby. Moments later, the janitor reports that he found one piece of ₱1,000.00 bill taped inside the sliding door cabinet under the old and discarded bill arranger.

Immediately thereafter, Tago called the spouses Basubas to return the ₱13,000.00 to them. After receiving the ₱13,000.00 from Tago, the spouses Basubas insisted for an investigation regarding the incident and claimed that that they could no longer trust the bank.

On August 5, 2004, petitioner sent a show-cause letter[7] to respondent, directing the latter to submit a written explanation on why her services should not be terminated for dishonesty and/or qualified theft, gross negligence and violation of the bank's policies and Code of Conduct. Furthermore, in a Memorandum dated September 16, 2004, respondent was made to undergo a polygraph test at the National Bureau of Investigation (NBI), Manila and attend the administrative hearing that was set on October 29, 2004.

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[7] *Id.* at 407-408.

Thus, on November 12, 2004, petitioner issued its Memorandum[8] notifying respondent of its decision to terminate her employment with the bank upon receipt of the same, explaining that she had failed to conduct the initial counting of the monies in the presence of the spouses Basubas and the fact that the missing ₱13,000.00 were found within respondent's cubicle.

Aggrieved, respondent filed a complaint for illegal dismissal, non-payment of 13th month pay, separation pay, leave benefits and tellers' allowances against herein petitioner before the Regional Arbitration Branch (RAB) No. VII of the NLRC in Cebu City.

In her Position Paper,[9] respondent admitted that she began to count the monies given to her by the spouses Basubas without their presence, but when she found out that the second bag consisted of different denominations than what was stated in their wrapper, she called Mr. Basubas to oversee the counting of the remaining bundles of money. She also pointed out that she submitted herself and her personal belongings to a search conducted by the security guard of the bank. Her cubicle was also combed thoroughly by the security guard and yielded nothing in result. She even went to the NBI to take a polygraph test as requested by the management.

Respondent justified the lapses she committed in the performance of her duties as a mistake borne from the heavy workload she had to complete that particular day as the lone teller of the bank. She also pointed out that she had served petitioner for almost 10 years without any issue regarding her honesty. Furthermore, she was terminated from her employment by the management by reason of mere suspicion regarding her honesty in re-counting the monies given to her by the spouses Basubas.

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

[9] *Id.* at 73-101.

On the ground of gross negligence, respondent countered that a single or isolated act of negligence does not constitute a just cause for her dismissal from her employment. Petitioner had not even shown that her negligence was gross and habitual. While she admitted that she took a risk in not following the proper procedure in deference to a valued and well-known client of the bank, it was tolerated and accepted by the latter as shown by the previous and similar transactions she facilitated earlier that day and even before she was transferred to the Cebu Mandaue-San Miguel branch of petitioner. In fact, she did her best to accommodate the spouses Basubas in counting more than a million pesos in different denominations while also entertaining other clients of the bank, being the only teller of the same. Finally, the breach in trust and confidence reposed to her by petitioner must be willful and substantial to constitute as a valid cause for termination.

Ruling of the RAB

On March 20, 2006, the RAB rendered a Decision partially in favor of petitioner and respondent, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Philippine Savings Bank to pay complainant Hazel Thea F. Genove the amount of EIGHTY-SIX THOUSAND FIVE HUNDRED FIFTY-THREE PESOS AND 33/10 (₱86,553.33) representing proportionate 13th month pay, teller's allowance and monetary value of her unused leave credits.
>
> The other claims and the case against the individual respondents are dismissed for lack of merit.
>
> SO ORDERED.[10]

The RAB ruled that respondent was dismissed for cause and in accordance with law by reason that as a confidential employee, whose trust and confidence reposed on her by petitioner was breached, the latter cannot be expected to continue her employment with the same. There is enough basis for petitioner

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[10] *Id.* at 131.

to recall their trust and confidence with respondent as she had committed operational lapses in her transaction with the spouses Basubas. Also, the fact that the missing ₱13,000.00 was found in her cubicle serves as sufficient basis for petitioner to suspect that respondent was responsible for its disappearance.

However, petitioner is still liable for the proportionate 13th month pay due to respondent for the year 2004, her teller's allowance for the same year and her accumulated unused leave credits since these were not controverted by the former.

Not contented with the ruling of the RAB, herein respondent seasonably filed her appeal with the NLRC.

Ruling of the NLRC

On February 28, 2007, the NLRC, in its Decision, reversed the ruling of the RAB, stating that:

> WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED insofar as the issue of dismissal. Complainant was dismissed without a valid cause. As such, respondent Philippine Savings Bank is hereby directed to reinstate complainant to her former position without loss of seniority rights with full backwages from the time of dismissal until actual reinstatement. In addition, complainant should be paid of her monetary benefits granted in the appealed Decision plus ten percent (10%) attorney's fees on the total monetary awards.
>
> SO ORDERED.[11]

The NLRC found that the charge of dishonesty against respondent was not satisfactorily established. It was not shown that respondent kept the missing ₱13,000.00 to herself. In fact, a search of her person, her personal belongings and her cubicle yielded nothing. Moreover, she complied with the request of the management to undergo a polygraph test conducted by the NBI. The tribunal also took into consideration that respondent had been exposed to heavy volumes of transactions daily since May 2004 as the lone teller of the branch of herein petitioner

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

in Cebu-Mandaue, San Miguel. The fact that the money was found under respondent's desk does not automatically indicate dishonesty. It might have been inadvertently dropped from the bags since some bills were not intact.

With regards to the charge of gross negligence and violation of bank policies and Code of Conduct, the NLRC held that the negligent acts committed by respondent were not so gross as to warrant her separation from work. It pointed out that petitioner tolerated the practice of long-time clients leaving their cash deposits with the teller. Respondent might have simply got overwhelmed by her workload on that day that she failed to call the attention of the spouses Basubas in a timely manner when she started to count the monies inside the first bag.

However, the tribunal did not mean that such acts of negligence should be encouraged or countenanced considering that a bank's operation is imbued with public interest. It was merely evaluating the facts and circumstances which brought about the incident and relating these circumstances as to what may be considered a tolerable degree of negligence. Thus, in the eyes of the said tribunal, respondent merely committed an error of judgment or simple negligence. And since respondent's termination was not done in bad faith, fraudulent or oppressive to labor, respondent's claim for damages has no basis in law. But it granted her claim for attorney's fees as she was forced to litigate her claims and engaged a counsel to protect her interests.

Petitioner filed its Motion for Reconsideration[12] of the Decision of the NLRC on April 16, 2007. In a complete turnabout, the NLRC granted the motion in its Resolution dated May 21, 2007, and reversed its finding that respondent had been illegally dismissed from her employment, which reads as follows:

> WHEREFORE, premises considered, the motion for reconsideration of respondents is hereby GRANTED. The Decision of the Commission promulgated on February 28, 2007 is RECONSIDERED and complainant is declared to have been validly dismissed from employment. As such,

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[12] *Id.* at 180-208.

she is not entitled to reinstatement, payment of backwages and attorney's fees.

SO ORDERED.[13]

The tribunal found the procedural lapses committed by respondent as "undeniably gross and [inexcusable]." It pointed out that she should have exercised utmost diligence and care in handling the cash given to her by the spouses Basubas, in order to protect the interests of the bank, as well as its clients. Respondent should have required the spouses Basubas to prepare a denomination breakdown of the monies they have given to her and called Mr. Basubas to witness the counting of the same right from the start in order to avoid confusion and undue exposure of the bank to a certain risk. Finally, the missing ₱13,000.00 was found in respondent's cubicle, where only she had the access thereto.

Aggrieved by such reversal of its previous ruling, respondent filed her own motion for reconsideration, but to no avail. Thus, respondent sought recourse with the CA *via* petition for *certiorari*.

Ruling of the CA

On August 8, 2011, the CA issued the now appealed Decision reversing and setting aside the rulings made by the NLRC, thus:

WHEREFORE, premises considered, the instant petition is partly granted. The Resolutions of the National Labor Relations Commission dated May 21, 2007 and August 24, 2007 are hereby SET ASIDE.

Accordingly, the Philippine Savings Bank is hereby ordered to pay to [sic] petitioner Hazel Thea F. Genove separation pay *in lieu* of reinstatement computed at the rate of one (1) month pay for every year of service from the time of her employment up to the time of her dismissal, and other monetary claims as provided for and computed in the RAB Decision dated March 20, 2006, plus attorney's fees equivalent to 10% of the total award.

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[13] *Id.* at 217.

SO ORDERED.[14]

The CA ruled that the facts show that there was neither a willful disregard nor malice on the part of respondent to commit any violation of bank policies nor was there willful breach of the trust and confidence reposed unto her by petitioner. It blamed petitioner's tolerance for violations or lapses in its procedures committed by respondent and its management of its personnel to have contributed largely to the unfortunate incident. The fact that Mrs. Basubas was issued the cashier's check before the monies had been counted by respondent attested to the tolerance exercised by the bank in this case. Furthermore, although there were supposed to be two tellers assigned to the Cebu-Mandaue, San Miguel branch of petitioner, the other teller was assigned to the loans department sometime in May 2004 until the time of the incident, thereby leaving the workload meant for two tellers to herein respondent.

As such, petitioner failed to substantiate the loss of its trust and confidence demanded of respondent as a bank teller, making her dismissal illegal. However, since respondent herself committed such infractions and procedural lapses in the policies enacted by the bank to avoid these kinds of incidents, the appellate court held that she is not entitled to the award of backwages, but only to separation pay *in lieu* of reinstatement and attorney's fees.

With its motion for reconsideration denied by the CA, petitioner filed its Petition for Review on *Certiorari* before the Court.

Now, on the merits of the case.

Petitioner posits the following assignment of errors, to wit:

I.

IT WAS SERIOUS ERROR FOR THE HONORABLE [CA] TO CONCLUDE THAT PRIVATE RESPONDENT WAS DISMISSED WITHOUT VALID CAUSE, NOTWITHSTANDING THE EXISTENCE OF CLEAR EVIDENCE TO THE CONTRARY.

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[14] *Id.* at 55.

II.

IT WAS SERIOUS ERROR TO AWARD PRIVATE RESPONDENT WITH SEPARATION PAY AND ATTORNEY'S FEES, WHEN SHE WILLFULLY BREACHED THE TRUST AND CONFIDENCE OF THE BANK, AND DECIDED TO STEAL MONEY FROM THE CLIENT.

III.

THERE WAS AN ERROR IN THE INTERPRETATION AND EVENTUAL COMPUTATION OF PRIVATE RESPONDENT'S ACCUMULATED UNUSED LEAVE CREDITS WHICH THE LABOR ARBITER [(LA)] AWARDED TO HER IN ITS 20 MARCH 2011 DECISION, AND WHICH THE HONORABLE [CA] ADOPTED IN ITS ASSAILED DECISION.[15]

The Court finds the petition to be without merit.

As the first and second issues are closely intertwined, they would be discussed jointly. Petitioner contends that respondent's dismissal was not merely based on simple or plain procedural lapses. She was found guilty of dishonesty, gross negligence, violation of the bank's policies and Code of Conduct, and qualified theft as duly established by the facts herein. Petitioner laments the fact that even though respondent had admitted to committing procedural lapses or infractions which eventually led to the incident with the spouses Basubas, the appellate court still blindly believed her self-serving claims that such lapses or infractions were justified because petitioner tolerated the same.

The Court can take cognizance of and resolve factual issues, only when the findings of fact and conclusions of law of the LA or the NLRC are inconsistent with those of the CA

The issue of whether or not respondent committed gross and habitual neglect of duty, acts of dishonesty and willful breach

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[15] *Id.* at 22.

of trust resulting to loss of confidence by petitioner is factual in nature. It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect, but even finality, and bind the Court when supported by substantial evidence.[16] Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.[17]

However, the Court may take cognizance of and resolve factual issues, when the findings of fact and conclusions of law of the LA are inconsistent with those of the NLRC and the CA.[18] Because of the differing opinions by the LA, the NLRC and the CA in appreciating the facts surrounding the instant case, this Court deemed it best to resolve with finality the factual issues being raised by the parties.

The burden of proof in proving that an employee was legally dismissed from his/her employment rests on the employer

In every dismissal situation, the employer bears the burden of proving the existence of just or authorized cause for dismissal and the observance of due process requirements. This rule implements the security of tenure of the Constitution by imposing the burden of proof on employers in termination of employment situations. The failure on the part of the employer to discharge this burden renders the dismissal invalid.[19]

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[16] *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation*, 662 Phil. 225, 235 (2011).

[17] *Id.* at 236, citing *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. 65, 75 (2006).

[18] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission, id.* at 74.

[19] *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, 788 Phil. 62, 75 (2016).

In determining whether the burden of proof is successfully discharged by the employer in dismissal cases, the Court had the occasion to rule that:

> The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence, which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[20]

Petitioner has not discharged its burden of proving that the dismissal of respondent was justified based on a just and/or authorized cause

The Court finds that petitioner had failed to prove by substantial evidence that respondent was dismissed from her employment on just or authorized causes, as provided for under the Labor Code.

Articles 282, 283 and 284 (now Articles 296, 297 and 298)[21] of the Labor Code enumerate the grounds that justify the dismissal of an employee. These include: serious misconduct or willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime and causes analogous to any of these, all under Article 282; closure of establishment and reduction of personnel, under Article 283; and disease, under Article 284.[22]

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[20] *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, 687 Phil. 351, 369-370 (2012).

[21] Per Republic Act No. 10151 (June 21, 2011), the Labor Code Articles beginning with 130 have been renumbered.

[22] *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, *supra* note 19.

Petitioner imputes gross negligence (or gross neglect of duty) against respondent for her failure to comply with the bank's policies and rule of procedure when she: 1) initially counted the monies inside the two bags without the presence of the spouses Basubas; and 2) did not require the spouses Basubas to prepare a deposit slip showing the breakdown of the denominations inside the said bags of money.

Gross neglect of duty denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. It refers to 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 insofar as other persons may be affected.[23] Furthermore, to warrant removal from service, the negligence should be gross and habitual.[24] Thus, a single or isolated act of negligence does not constitute a just cause for the dismissal of an employee.[25]

Respondent's failure to initially count the monies inside the two bags provided for by spouses Basubas, in their presence, and not requiring the latter to prepare a denomination breakdown of the same merely shows simple negligence on her part, considering that respondent was the lone teller attending to all clients of the bank at the time of the incident. While respondent admits that she committed lapses in following the bank's policy and procedures in handling the transaction with the spouses Basubas, it was not shown that she had completely abandoned due diligence and want of care in performing her duties to the spouses Basubas' request. In fact, respondent had managed to finish counting the whole ₱1,358,000.00 in different denominations while completing her tasks with the bank's other clients at the same time, serves as a testament to her ability as an employee.

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[23] *Philippine National Bank v. Arcobillas*, 716 Phil. 75, 87 (2013).

[24] *Union Motor Corporation v. National Labor Relations Commission*, 487 Phil. 197, 209 (2004).

[25] *Genuino Ice Company, Inc. v. Magpantay*, 526 Phil. 170, 183 (2006).

Furthermore, it should have been expected that a single teller cannot handle all the transactions coming from its clients every day, all at the same time. Mistakes are bound to happen given that employees are also human beings that are very susceptible to fatigue and exhaustion, especially if overworked on a regular basis.

Petitioner had impliedly shown its tolerance to infractions committed by its employees

The Court also notes that while petitioner ascribes fault on respondent for not strictly complying with the bank policies and procedural rules, it tries to justify the deviation committed by Tago of the same rules in issuing the cashier's check to Mrs. Basubas, even though respondent had not finished counting the monies inside the bags.

As stated by respondent in her comment to petitioner's position paper,[26] a client should first go to the New Accounts clerk and inform the latter of the former's intention to purchase a cashier's check. The said clerk is then required to give the client an application form to be filled up and direct the latter to the teller, who will receive the payment for the cashier's check such client wishes to purchase. Only after payment and confirmation by the cashier would the cashier's check be signed by the same and issued to the client thereof. This rule of procedure was confirmed by petitioner in its memorandum[27] dated August 5, 2004, wherein it stated that the "[b]ank policy further states that all cash received by tellers should be counted and verified in the presence of the depositor prior to validation."

Petitioner had undeniably shown its tolerance and/or acceptance to such practice of showing leniency to its long-time and valued clients when it comes to applying its policies and rules through its indifference and continued defense of

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[26] *Rollo,* pp. 108-115.

[27] *Id.* at 407-408.

infractions committed by Tago, at the expense of herein respondent.

It is clear that whether or not Mr. Basubas was left behind to oversee the counting of the monies inside the bag, the cashier's check should not have been issued to Mrs. Basubas before the counting had been completed by respondent and verified by the bank's cashier, Tago. Under normal circumstances, a cashier's check valued at ₱1,358,000.00 would not have been issued off-handedly to a client without confirmation and/or validation that the bank had received the exact amount from the former, and thereby risk coming up short in the end. Since the cashier's check was immediately issued by the cashier, Tago to Mrs. Basubas before the counting of the monies inside the two bags were completed and verified by the former, it just shows the extent of consideration they are giving to the spouses Basubas, who was their long-time and valued client. Thus, given the circumstances, it cannot be said that respondent was solely responsible and moreover, the proximate cause of the incident that happened afterwards.

Petitioner's inaction or silence regarding the premature issuance of the cashier's check to the spouses Basubas speaks volumes of its implied consent to such practice, when it comes to its long-time and valued clients. In fact, nowhere in the records did it even address such infirmity committed by one of its employees, when it was the proximate cause of why the incident had happened. Thus, petitioner cannot put all fault solely to herein respondent, considering her negligence was not the proximate cause of the incident.

Petitioner had failed to prove that respondent's action constituted dishonesty and willful breach of trust resulting to loss of confidence

Petitioner also attributes dishonesty and loss of trust and confidence against respondent by reason that the missing ₱13,000.00 was found within her cubicle.

Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: 1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or 2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money or property. In any of these situations, it is the employee's breach of trust that his or her position holds which results in the employer's loss of confidence.[28]

To justify the employee's dismissal on the ground of willful breach of trust (or loss of confidence as interchangeably referred to in jurisprudence), the employer must show that the employee indeed committed act/s constituting breach of trust, which act/s the courts must gauge within the parameters defined by the law and jurisprudence.[29] To reiterate, it is the breach of the employer's trust, to the specific employee's 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.[30] Thus, it must be shown that the employee concerned is responsible for the misconduct or infraction and that the nature of his/her participation therein rendered him/her absolutely unworthy of the trust and confidence demanded by his/her position.[31]

Significantly, loss of confidence is, by its nature, subjective and prone to abuse by the employer. Thus, the law requires

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[28] *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, *supra* note 19, at 86.

[29] *Id.* at 77.

[30] *Id.* at 87.

[31] See *Galsim v. Philippine National Bank*, 139 Phil. 747 (1969).

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, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.[32]

Verily, respondent held a position of trust and confidence as a bank teller. However, the findings of the LA and NLRC (in its Resolution) that she willfully committed a breach of petitioner's trust is highly doubtful and unfounded at most. It was established that a search on the person of respondent, her personal belongings and cubicle was conducted by Sg. Misal, but it yielded nothing. Moreover, Tago admitted in her incident report dated July 8, 2004, that she saw nothing on the floor and in the nooks below the sliding door cabinets of respondent's work area except for a red ballpen at the time of the search. Now, whether the search done was cursory or thorough would be the responsibility of the officer-in-charge at that time, not that of the respondent, especially wherein the client's money is involved and the suspect was respondent herself. Assuming that respondent was thoroughly searched by Sg. Misal, it was very unlikely that he missed the bundles of money under respondent's desk otherwise, it would call upon the competency of the bank's personnel and the bank itself, having direct control and supervision over the performance of its employees' duties.

During the search, respondent was asked to step out of her cubicle and spouses Fernandez was left with Sg. Misal to witness the same, while Tago accompanied spouses Basubas to her office to take their statements. After spouses Basubas and spouses Fernandez left the bank, Tago immediately went to respondent's cubicle to inform her about the lapses she had committed during the incident. It was during this time that Tago said that she noticed for the first time, the bundles of money beside respondent's feet. Thus, relying on the narration given by both respondent and Tago, the former was being monitored

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[32] *Lima Land, Inc. v. Cuevas*, 635 Phil. 36, 50 (2010); *Dela Cruz v. National Labor Relations Commission*, 335 Phil. 932, 942 (1997).

most of the time, if not all, throughout the search conducted by Sg. Misal and could not have possibly hidden the missing ₱13,000.00 on her person, her personal belongings and her cubicle until the time of its discovery, assuming that Sg. Misal and Tago performed the search meticulously.

Furthermore, respondent submits that she willingly took a polygraph test to clear her name of the charges against her, which she eventually passed.

The Court in *People v. Adoviso*[33] had the opportunity to discuss the weight of the results of a polygraph test as evidence of guilt or innocence of the examinee, to wit:

> A polygraph is an electromechanical instrument that simultaneously measures and records certain physiological changes in the human body that are believed to be involuntarily caused by an examinee's conscious attempt to deceive the questioner. The theory behind a polygraph or lie detector test is that a person who lies deliberately will have a rising blood pressure and a subconscious block in breathing, which will be recorded on the graph. **However, x x x polygraph tests when offered in evidence for the purpose of establishing the guilt or innocence of one accused of a crime, whether the accused or the prosecution seeks its introduction, for the reason that polygraph has not as yet attained scientific acceptance as a reliable and accurate means of ascertaining truth or deception.** The rule is no different in this jurisdiction. Thus, in *People v. Daniel*, stating that much faith and credit should not be vested upon a lie detector test as it is not conclusive. (Emphasis supplied; citation omitted)

While the Court held that the results of a polygraph test cannot be offered in evidence to prove the guilt or innocence of an accused in a crime, it does not mean that it has no weight at all. Unlike in criminal cases where the prosecution is required to establish proof beyond reasonable doubt, the burden of proof needed in labor cases is merely substantial evidence. Section 5, Rule 133 of the Rules of Court defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

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[33] 368 Phil. 297, 310-311 (1999).

Thus, the results of the polygraph test may be used in conjunction with other corroborative evidence to prove an allegation made by a party. In this case, the culmination of the facts from the time when the spouses Basubas left the bags of money to respondent and leading up the discovery of the missing ₱13,000.00 in her cubicle is insufficient to prove that respondent took and hid the money, as discussed earlier. Leaving the guesswork on how Sg. Misal and Tago both did not see the said missing money when they searched respondent's cubicle earlier, aside from mere suspicions or speculations, petitioner had no basis at all to support its claims. It could have presented the videos from its closed-circuit television cameras to present a reasonable explanation on how the missing ₱13,000.00 ended up in respondent's cubicle and show that respondent was responsible for the same, but instead relied on assumptions and statements made by Tago in its investigation. The required quantum of proof to hold that respondent is guilty of dishonesty and willful breach of trust resulting to loss of confidence is substantial evidence, which is more than a mere scintilla of evidence or relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[34]

As for the claim of petitioner that respondent is guilty of qualified theft, the Court finds that it has no basis in fact and in law considering that no charges were filed against respondent and neither was she convicted in court for the same.

While an employer has the inherent right to discipline its employees, we have always held that this right must always be exercised humanely, and the penalty it must impose should be commensurate to the offense involved and to the degree of its infraction.[35] The employer should bear in mind that, in the exercise of such right, what is at stake is not only the employee's position,

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[34] *Agusan Del Norte Electric Cooperative, Inc. v. Cagampang*, 589 Phil. 306, 313 (2008).

[35] See *Dongon v. Rapid Movers and Forwarders Co., Inc.*, 716 Phil. 533, 545-546 (2013).

but her livelihood as well.[36] Thus, when the act complained of is not so grave as to result in a complete loss of trust and confidence, a lower penalty such as censure, warning or even suspension would be more circumspect.[37] This is more true considering that during her nine years of service with petitioner, respondent was not even once reprimanded or suspended from her employment and had maintained a good service record in her work at the said bank.

Given the foregoing, respondent is rightfully entitled to reinstatement and backwages, reckoned from the date she was illegally dismissed until the finality of this decision, in accordance with jurisprudence.[38] However, the Court recognizes the impracticality of reinstatement of respondent as a substantial period of time had already lapsed since she was illegally dismissed from her employment. Coupled with the fact that there is an undeniable strained relations existing among petitioner, respondent and Tago, even before the instant case was filed before the courts, it is best that separation pay *in lieu* of reinstatement should be awarded to herein respondent.

In *Golden Ace Builders v. Talde*,[39] citing *Macasero v. Southern Industrial Gases Philippines*,[40] the Court held that:

> Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

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[36] *Pioneer Texturizing Corp. v. National Labor Relations Commission*, 345 Phil. 1057, 1066 (1997).

[37] *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, *supra* note 20, at 371.

[38] *Javellana, Jr. v. Belen*, 628 Phil. 241, 249 (2010).

[39] 634 Phil. 364, 370 (2010).

[40] 597 Phil. 494, 501 (2009).

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition of payment of backwages.

WHEREFORE, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision and the Resolution of the Court of Appeals dated August 8, 2011 and May 11, 2012, respectively, in CA-G.R. SP No. 03070, are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 212293. June 15, 2020]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **P/C SUPT. LUIS L. SALIGUMBA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY IS DEFINED AS THE CONCEALMENT OR DISTORTION OF TRUTH, WHICH SHOWS LACK OF INTEGRITY OR A DISPOSITION TO DEFRAUD, CHEAT, DECEIVE, OR BETRAY, OR INTENT TO VIOLATE THE TRUTH, WHICH IS CLASSIFIED AS SERIOUS, LESS SERIOUS OR SIMPLE; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE DEALS WITH A DEMEANOR OF A PUBLIC OFFICER WHICH

TARNISHED THE IMAGE AND INTEGRITY OF HIS/HER PUBLIC OFFICE; ACTS CONSTITUTING SERIOUS MISCONDUCT. — Dishonesty has been defined as the **concealment or distortion of truth**, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. CSC Resolution No. 06-0538 classified dishonesty may be as serious, less serious or simple. Serious misconduct, as charged against herein respondents, requires any of the following circumstances: (1) The dishonest act caused serious damage and grave prejudice to the Government; (2) The respondent gravely abused his authority in order to commit the dishonest act; (3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (4) The dishonest act exhibits moral depravity on the part of respondent; (5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (6) The dishonest act was committed several times or in various occasions; (7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; (8) Other analogous circumstances. On the other hand, **conduct prejudicial to the best interest of service** deals with a demeanor of a public officer which tarnished the image and integrity of his/her public office.

2. ID.; ID.; ID.; THE AFFIXING OF SIGNATURES BY THE MEMBERS OF THE INSPECTION AND ACCEPTANCE COMMITTEE (IAC) IN A DOCUMENT ARE NOT MERE CEREMONIAL ACTS BUT PROOFS OF AUTHENTICITY AND MARKS OF REGULARITY; RESPONDENT'S ACT OF AFFIXING HIS SIGNATURE IN RESOLUTION NO. IAC-09-045, WHICH APPROVED THE PURCHASE OF HELICOPTERS WHICH WERE FOUND NON-COMPLIANT WITH THE GUIDELINES OF THE PHILIPPINE NATIONAL POLICE (PNP) CONSTITUTES SERIOUS DISHONESTY. — [T]he determination of petitioner's administrative liability must be examined based on his act of affixing his signature in Resolution No. IAC-09-045, which basically approved the purchase of helicopters which were found non-compliant with the guidelines

of the PNP. It is worth restating that respondent signed the aforementioned resolution in his capacity as the Executive Officer and member of the IAC. His assent thereto served as an "attestation" that the helicopters conformed with the guidelines and specifications set forth by the PNP. x x x. Indeed, the affixing of signatures by the committee members are not mere ceremonial acts but proofs of authenticity and marks of regularity. Respondent's attestation that said helicopters "to be conforming to the approved NAPOLCOM specifications and passed the acceptance criteria," thus, is an act of serious dishonesty, a deviation from what is true, regarding a matter when he is in the exercise of his duties. To stress the ruling of the Court in *Piano*, the act of signing Resolution No. IAC-09-045 stating that the two LPOHs conformed to the NAPOLCOM specifications despite the lack of available data on endurance and were not air-conditioned, is a distortion of truth in a matter connected with the performance of his duties.

3. ID.; ID.; ID.; RESPONDENT FOUND ADMINISTRATIVELY LIABLE AS THE ACT OF ACCEPTING AND PAYING FOR HELICOPTERS WHICH WERE SUBPAR, CAUSED SERIOUS DAMAGE AND GRAVE PREJUDICE TO THE GOVERNMENT, AND TARNISHED THE IMAGE AND INTEGRITY OF THE PNP; THE CONSTITUTIONAL PORTRAIT THAT "ALL GOVERNMENT OFFICIALS AND EMPLOYEES MUST AT ALL TIMES BE ACCOUNTABLE TO THE PEOPLE, SERVE THEM WITH UTMOST RESPONSIBILITY, INTEGRITY, LOYALTY, EFFICIENCY, ACT WITH PATRIOTISM AND JUSTICE, AND LEAD MODEST LIVES" IS NOT AN EMPTY AND MEANINGLESS MANDATE, BUT MUST BE RELENTLESSLY OBSERVED BY PUBLIC OFFICERS WHO ARE TASKED AND EXPECTED TO EMBODY THIS DICTUM IN THE PERFORMANCE OF THEIR DUTIES. — To be sure, only substantial evidence is required, not overwhelming or preponderant is required in determining a finding of administrative liability. Such act of accepting the helicopters, sealed by respondent and his co-respondents' signature, caused serious damage and grave prejudice to the government. Likewise, such act tarnished the image and integrity of the PNP, when it fully paid for helicopters which were subpar. [T]he Court stresses that the constitutional portrait that "all government officials and employees must at all times be accountable to the

people, serve them with utmost responsibility, integrity, loyalty, efficiency; act with patriotism and justice, and lead modest lives" is not an empty and meaningless mandate. It must be relentlessly observed by public officers who are tasked and expected to embody this dictum in the performance of their duties. A declaration of a public officers' administrative liability and the consequent disciplinary measure against them is sought for the improvement of the public service and preservation of the public's faith and confidence in the government.

CAGUIOA, *J., dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MERE MEMBERSHIP IN THE INSPECTION AND ACCEPTANCE COMMITTEE (IAC) THAT HAS THE RESPONSIBILITY OF INSPECTING THE HELICOPTERS TO MAKE SURE THAT THEY CONFORM WITH THE APPROVED NAPOLCOM SPECIFICATIONS SHOULD NOT BE AUTOMATICALLY EQUATED TO ADMINISTRATIVE LIABILITY FOR IRREGULARITIES IN THE PROCUREMENT OF THE HELICOPTERS. — [T]he case arose from the so-called "chopper scam" that involved the procurement of second-hand light police operational helicopters (LPOHs) for use of the Philippine National Police (PNP). During the time material to the case, Saligumba was a member of the Inspection and Acceptance Committee (IAC) and was a signatory to the IAC Resolution No. IAC-09-045. Said IAC Resolution stated that the helicopters conformed with the approved NAPOLCOM specifications and passed the acceptance criteria as indicated in the Weapons and Tactics and Communications Division (WTCD) Report. The IAC Resolution also recommended the PNP's acceptance of the LPOH units. x x x. In support of its ruling, the x x x cites the Court's pronouncement in *FIO v. Piano*, a case involving the same factual backdrop x x x. Indeed, the Court in Piano ruled that it is the IAC that has the responsibility of inspecting the LPOHs to make sure that they conform to the NAPOLCOM, which likewise involves the same factual antecedents. ***However***, the Court's pronouncements in these cases regarding the role of the IAC should not be sweepingly applied to ascribe liability on any and all officials simply because they were part of the IAC. Mere membership in the IAC should not be automatically equated to administrative

liability as regards the procurement of the LPOHs that turned out to be second-hand units. This is especially true in this case where certain undisputed facts contravene Saligumba's liability for serious dishonesty.

2. ID.; ID.; ID.; DISHONESTY, LIKE BAD FAITH, IS NOT SIMPLY BAD JUDGMENT OR NEGLIGENCE, BUT A QUESTION OF INTENTION, WHICH IS CHARACTERIZED AS THE CONCEALMENT OR DISTORTION OF TRUTH, WHICH SHOWS LACK OF INTEGRITY OR A DISPOSITION TO DEFRAUD, CHEAT, DECEIVE, OR BETRAY AND AN INTENT TO VIOLATE THE TRUTH; CHARGE OF SERIOUS DISHONESTY, NOT PROVED.— The x x x maintains that Saligumba cannot feign ignorance on the incongruities surrounding the procurement of the helicopters as the same were apparent, and a mere cursory reading of the WTCD Report shows that the specifications of the LPOHs are non-compliant. Moreover, the x x x found that Saligumba failed to make further inquiry on the condition of the helicopters. These findings, however, are ***belied*** by the records of the case. x x x. [T]here is merit to Saligumba's claim of good faith. Contrary to the x x x ruling, Saligumba's acts of adhering to the 1998 PNP Manual and thereby seeking clarification of the WTCD Report from the composite technical inspection team, and relying on its recommendation, negate any ill intent on his part. It should be emphasized that dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention. It is characterized as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth. Taking these into consideration, it is clear that Saligumba's liability for serious dishonesty has not been proven.

3. ID.; ID.; ID.; IRREGULARITIES IN THE PROCUREMENT OF THE HELICOPTERS DO NOT IN ITSELF AMOUNT TO A CONSPIRACY BETWEEN EACH AND EVERY PERSON INVOLVED IN THE PROCUREMENT PROCESS; FOR CONSPIRACY TO BE APPRECIATED, IT MUST BE CLEARLY SHOWN THAT THERE WAS A CONSCIOUS DESIGN TO COMMIT AN OFFENSE. — [C]ontrary to the Ombudsman's ruling, the existence of conspiracy was not sufficiently shown. While in its entirety, the Ombudsman's factual findings tend to show a sequence of irregularities in the procurement of the

helicopters, this does not in itself amount to a conspiracy between each and every person involved in the procurement process. For conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Benjamin A. Moraleda, Jr. for respondent.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari* are the Decision[1] dated October 23, 2013 and Resolution[2] dated April 23, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 127885, exonerating P/C Supt. Luis Saligumba (respondent) from the administrative charges filed against him.

Relevant Antecedents

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

The subject of the controversy is the procurement of three Light Police Operation Helicopters (LPOH) by the Philippine National Police (PNP) as part of its modernization program included in the Annual Procurement Plan (APP) for calendar year (CY) 2008 with the approved budget for a contract (ABC) of ₱105,000,000.00.[3]

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra Garcia-Fernandez, concurring; *rollo*, pp. 30-64.

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

[3] *Id.* at 37.

After several revisions, Resolution No. 2008-260[4] (Prescribing the Standard Specification for Light Police Operational Helicopters) was issued by the National Police Commission (NAPOLCOM). The following specifications were stated:

Specifications	
Power Plant	Piston
Power Rating	200 HP (minimum)
Speed	100 knots (minimum)
Range	300 miles (minimum)
Endurance	3 hours (minimum)
Service Ceiling (Min. Height Capability)	14,000 feet (maximum)
T/O Gross Weight	2,600 lbs. (maximum)
Seating Capacity	1 pilot + 3 pax (max.)
Ventilating System	Air-conditioned[5]
AIRCRAFT INSTRUMENTS	Standard to include Directional Gyro Above Horizon with Slip Skid Indicator and Vertical Compass

STANDARD POLICE EQUIPMENT
a. Fold Down Monitor Mount;
b. Digital Recorder;
c. Searchlight, 15-29 million candlepower;
d. Dual Audio Controller;
e. Nine (9) Memory Channel, Cyclic Grip Control;
f. GPS (Moving Map, Colored);

[4] *Id.* at 185.

[5] *Id.* at 9-10.

g. Transponder with Remote Mode C Altitude Encoder;
h. PA System and Siren (100 Watts);
i. Two (2) David Clark H10-13 Headsets;
j. FSI Ultra 8000 Infrared (10x continuous zoom, In SB Infrared Sensor and 18x continuous zoom, colored TV camera, Gyrostabilised Monitor 10.4 inch, Sunlight Readable Color, LCD Active Matrix TFT);
k. Expanded Landing Gear;
l. Bubble Windows, Both Forward Doors;
m. Transmit and Intercom Floor Switches, Observer Side;
n. Observer Overheard Light, Foot Activated;
o. HID Landing Lights;
p. 130-Ampere Alternator;
q. Slave System, Searchligh to Nose Gymbal; and
r. Real Time Transmission Downlink (optional).

On the basis of said specifications, the PNP National Headquarters-Bids and Awards Committee (NHQ-BAC) scheduled a public bidding for the procurement of three LPOHs on August 27, 2008. However, the same was deferred because of the information received by the office that the budget of ₱105,000,000.00 or ₱35,000,000.00 for each unit was insufficient as the police equipment and accessories included in the technical specifications were equally expensive.[6]

To address such problem, the following schemes were adopted: (a) to join together two sets of aircraft that the PNP is scheduled to procure, *i.e.*, three units of rotary aircraft under the second Addendum for APP 2007 with an ABC of ₱111,000,000.00 and the other three units of LPOHs under the PNP Modernization Program with an ABC of ₱105,000,000.00 to be bid out as a single lot with a modified ABC of ₱216,000,000.00; and (b) only three out of six helicopters to be procured would be

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

equipped with police operational equipment as required under NAPOLCOM Resolution No. 2008-260, and the other three to be delivered as basic or bare units.[7]

A public bidding then ensued. Two bidders, Manila Aerospace and Aerotech Industries, bought their respective bid documents. However, none of them submitted eligibility requirements. Hence, a failure of bidding was declared.[8]

On March 18, 2009, Hilario de Vera (de Vera) of Manila Aerospace Products Trading (MAPTRA) Sole Proprietorship approached Archibald Po (Po) and Renato M. Sia (Sia) for a possibility of buying Robinsons Helicopters, to which the latter replied that four units, owned by then First Gentleman Atty. Jose Miguel Arroyo (FG Arroyo), were immediately available.[9] After a series of negotiations, the sale of three helicopters, two of which are pre-owned and one brand new, proceeded.[10]

On May 8, 2009, the Negotiations Committee of the PNP held negotiations with MAPTRA which proposed to deliver one fully-equipped and two standard helicopters for ₱105,000,000.00; and Beeline which proposed the delivery of two standard helicopters for ₱119,000,000.00. However, as the proposals were non-compliant with the PNP's minimum requirement of three equipped LPOHs, the negotiations failed.[11]

The persistent failed biddings prompted SAF Director Leocadio Santiago, Jr. to request the procurement of at least one equipped LPOH and two standard LPOHs. PDIR Luizo Ticman (Ticman) indorsed said request to the PNP NHQ-BAC. In turn, the latter issued a BAC Resolution No. 2009-22 dated May 29, 2009 which recommended the procurement of at least one equipped and two units of standard LPOH.[12]

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[7] *Id.* at 40.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 41.

On June 8, 2009, Ticman issued a Request for Quotation (RFQ) stating that the PNP, through its Negotiation Committee, shall procure through negotiated procurement pursuant to Section 53 (b) of the Implementing Rules and Regulations of Republic Act (R.A.) No. 9184 from legally, technically, and financially competent and PhilGEPS-registered suppliers and manufacturers for the supply and delivery of one fully equipped and two standard LPOHs with an ABC of ₱105,000,000.00.[13]

In the meantime, a Certificate of Incorporation was issued by the Securities and Exchange Commission in favor of Manila Aerospace Products Trading Corporation (MAPTRA Corporation).[14]

On June 15, 2009, a scheduled negotiation proceeded, which resulted in the award of the contract to MAPTRA Sole Proprietorship (thereafter referred to as MAPTRA). In Resolution 2009-4, it stated that the proposal of MAPTRA was acceptable because the helicopter that they would deliver were consistent with the approved specifications; the total price quoted was within the ABC; and MAPTRA was a legally, technically and financially capable supplier of helicopters.[15]

Resolution No. 2009-36 dated July 9, 2009 affirmed the recommendation of the Negotiation Committee to endorse to the PNP Chief the award of the supply contract to MAPTRA. The same was approved by then PNP Chief Jesus Versoza.[16]

Thus, a Supply Contract was entered into between the PNP and MAPTRA whereby the latter obligated itself to deliver to the former one fully-equipped and two standard LPOHs, while the former obligated itself to pay ₱104,985,000.00 as consideration therefor. Accordingly, a Certification under Oath, which states

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[13] *Id.* at 42.

[14] *Id.*

[15] *Id.* at 43.

[16] *Id.* at 45.

among others, that the helicopters subject of the contract are brand new, was executed by de Vera.[17]

Purchase Order No. 0(M)220909-017 dated September 22, 2009, ordering MAPTRA to deliver two standard and one fully-equipped helicopters, was issued.[18]

Upon delivery of the two standard helicopters by MAPTRA, the team of inspectors was tasked to examine the same and to determine if they conformed to the specifications of the PNP. On the other hand, the task of accepting procured helicopters belonged to the Inspection and Acceptance Committee (IAC), to which respondent belonged as a member.[19]

Consequently, Weapons and Tactics and Communications Division (WTCD) Report No. T2009-04A[20] was issued. Among those who signed the report was herein respondent. Said Report stated that the method of inspection was through "visual and functional" and the specifications of said helicopters, to wit:

PNP Specifications for Light Police Operational Helicopter	**Specifications of Robinson 44 Raven 1 Helicopter**	**Remark(s)**
Power Plant: Piston	Piston-type	Conforming
Power Rating: 200 hp (minimum)	225	Conforming
Speed: 100 knots (minimum)	113 knots	Conforming
Range: 300 miles (minimum)	400 miles	Conforming
Endurance: 3 hours (minimum)	No available data	Conforming

[17] *Id.*

[18] *Id.*

[19] *Id.* at 129.

[20] *Id.* at 237-238.

Service Ceiling (Height Capability): 14,000 feet (maximum)	14,000 feet	Conforming
T/O Gross Weight: 2,600 lbs (maximum)	2,400 lbs	Conforming
Seating Capacity: 1 Pilot + 3 pax (maximum)	1 pilot + 3 passengers	Conforming
Ventilating System: Air-conditioned	Not airconditioned	Standard helicopter
Aircraft Instruments: Standard to Include Directional Gyro Above Horizon with Slip Skid Indicator and Vertical Compass	Equipped with Directional Gyro Above Horizon with Slip Skid Indicator and Vertical Compass	Conforming
Colors and Markings: White with appropriate markings specified in NAPOLCOM Res. No. 99-002 dated January 5, 1999 (Approving the Standard Color and Markings for PNP Motor Vehicles, Seacraft and Aircraft)	White with appropriate markings as specified in NAPOLCOM Res. No. 99-002	Conforming
Warranty: The supplier warrants any defect in material and workmanship within the most advantageous terms and conditions in favor of the government.	The supplier will warrants (sic) any defect in material and worksmanship within the most advantageous terms and conditions in favor of the government for two (2) years	Indicated in the contract (To include time-change parts as suggested by DRD Test and Evaluation Board)
Requirements:		
Maintenance Manual	Provided	Conforming
Operational Manual	Provided	Conforming

On November 11, 2009, the PNP IAC Committee issued Resolution No. IAC-09-045, stating, among others that it found the items to be in conformity with the approved specifications and passed the acceptance criteria.[21]

After several resolutions approving the sale, MAPTRA Corporation was paid by the PNP in the amount of ₱49,680,401.80 for the sale of two standard helicopters.[22] Thereafter, one fully-equipped helicopter was delivered to the PNP. The same was paid in the amount of ₱42,312,913.10.[23]

The purchase of the helicopters, however, prompted the Field Investigation Office to file a Complaint before the Office of the Ombudsman (Ombudsman) anent several irregularities which surrounded the sale. The Complaint specifically alleged that respondent, *et al.* committed a violation of Section 3, paragraphs (e) and (g) of Republic Act (R.A.) No. 3019 in relation to R.A. No. 9184, Falsification by Public Officers under Article 171, paragraphs 2 and 4 under the Revised Penal Code and administrative offenses, namely: dishonesty, gross neglect of duty and conduct prejudicial to the best interest of service.[24]

In a Resolution[25] dated May 30, 2012, the Ombudsman found the respondent, *et al.* guilty of serious dishonesty and conduct prejudicial to the best interest of the service and dismissed them from the service or if not feasible, it imposed the penalty of fine equivalent to their one year salary, among others. The Ombudsman ratiocinated that respondent, together with his co-respondents, conspired with one another to falsify public documents, skirt procedures, circumvent rules, and defraud the government while in the exercise of their respective public duties.

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

[22] *Id.* at 51.

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

[24] *Id.* at 73.

[25] *Id.* at 70-212.

Respondent filed a Motion for Reconsideration, which was denied in a Resolution dated November 5, 2012.

Seeking relief, respondent elevated the matter to the CA *via* an appeal. He asserted that the findings as to his administrative liability was bereft of basis for he had no reason to doubt the regularity of the documents there being no derogatory information regarding any defect or infirmity regarding the delivered helicopters, among others.[26]

In the assailed Decision[27] dated October 23, 2013, the CA reversed the decision of the Ombudsman and exonerated respondent from liability. Working on the premise that the main thrust of the complaint against respondent was his failure to determine that the helicopters were not in brand new condition, the CA maintained that respondent cannot be blamed for signing Resolution No. IAC-09-045 when those who were more knowledgeable regarding the helicopters recommended its approval. Thus, respondent cannot be made liable when he assumed that the composite technical inspection team regularly performed their official duty and acted in good faith. The *fallo* thereof, reads:

> **WHEREFORE**, the present petition for review under Rule 43, erroneously denominated as an appeal, is hereby **GRANTED**. Petitioner P/C Supt. Luis Saligumba is hereby **EXONERATED** from the administrative charges and ordered **REINSTATED** to the service.
>
> **SO ORDERED**.

The Ombudsman, through the Office of the Solicitor General (OSG), filed a Motion for Reconsideration, which was denied in a Resolution[28] dated April 23, 2014.

Hence, this petition.

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[26] *Id.* at 55.

[27] *Supra* note 2.

[28] *Supra* note 3.

Essentially, the Ombudsman, through the OSG, contends that the respondent's act of affixing his signature in an evident and palpable irregular document, which is Resolution No. IAC-09-045 makes him administratively liable for serious dishonesty.[29]

In his Comment,[30] respondent insists on his innocence by reiterating that he acted in good faith when he relied on the recommendation of the experts in dealing with the helicopters.

The Court's Ruling

While only questions of law may be raised in a Petition for Review on *Certiorari*, a review of the factual issues in this case is proper in view of the conflicting conclusions of the Ombudsman and the CA.

Dishonesty has been defined as the **concealment or distortion of truth**, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.[31]

CSC Resolution No. 06-0538 classified dishonesty may be as serious, less serious or simple. Serious misconduct, as charged against herein respondents, requires any of the following circumstances:

(1) The dishonest act caused serious damage and grave prejudice to the Government;
(2) The respondent gravely abused his authority in order to commit the dishonest act;
(3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;
(4) The dishonest act exhibits moral depravity on the part of respondent;

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[29] *Id.* at 19.

[30] *Id.* at 247.

[31] *Fajardo v. Corral*, G.R. No. 212641, July 5, 2017.

(5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;
(6) The dishonest act was committed several times or in various occasions;
(7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets;
(8) Other analogous circumstances.

On the other hand, **conduct prejudicial to the best interest of service** deals with a demeanor of a public officer which tarnished the image and integrity of his/her public office.[32]

Only substantial evidence is required to sustain a finding of administrative liability.[33]

Contrary to the CA's ruling, the issue in this case does not merely pertain to petitioner's culpability in failing to determine the condition of the purchased helicopters as brand new. It is thus quite perplexing as to how the CA arrived at this conclusion when the May 30, 2012 Joint Resolution was categorical in declaring that respondent's administrative liability hinged on his concurrence that the helicopters passed the standards of the NAPOLCOM after inspection and evaluation when in fact, they did not, to wit:

On the part of respondents Piano, Saligumba, Antonio and Paatan, they stated in their Resolution No. IAC-09-045 that the Inspection Acceptance Committee found the items to be conforming to the specifications approved by NAPOLCOM and that the units passed the acceptance criteria as submitted by the DRD on WTCD Report No. T2009-04A. However, said statement is false because, as already stressed above, there is no showing in the Report that the endurance requirement and ventilation system prescription were conforming to the NAPOLCOM specifications. To stress in the WTCD Report cited, there was no compliance with the air-conditioning requirement

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[32] *Id.*

[33] *Field Investigation Office v. P/Dir. Piano*, G.R. No. 215042, November 20, 2017.

and there was no entry at all with respect to the endurance requirement.[34]

Thus, the determination of petitioner's administrative liability must be examined based on his act of affixing his signature in Resolution No. IAC-09-045, which basically approved the purchase of helicopters which were found non-compliant with the guidelines of the PNP.

It is worth restating that respondent signed the aforementioned resolution in his capacity as the Executive Officer and member of the IAC. His assent thereto served as an "attestation" that the helicopters conformed with the guidelines and specifications set forth by the PNP.

It must be stressed that the IAC plays a vital role in the procurement process of the agency, since it has the responsibility of inspecting the deliveries to make sure that they conform to the quantity and the approved technical specifications in the supply contract and the purchase order and to accept or reject the same.[35] Simply put, the IAC is instrumental in the procurement process, without its approval, no consummated purchase of the helicopters could be made.

As previously identified, Resolution No. IAC-09-045 was issued to signify IAC's recommendation that the purchase of the helicopters, which conformed with the requirements set forth by NAPOLCOM, is consistent with the interest of the government:

WHEREAS, in accordance with paragraph 3-10, Chapter 3 of the NAPOLCOM-approved PNP Procurement Manual entitled Inspection and Acceptance Committee, it is stated that the Committee must properly inspect all deliveries of the PNP and must be consistent with the interest of the government.

x x x x x x x x x

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[34] *Rollo*, p. 164.

[35] *Field Investigation Office v. P/Dir. Piano*, G.R. No. 215042, November 20, 2017.

WHEREAS, after inspection and evaluation was conducted, the Committee found the said items to be conforming to the approved NAPOLCOM specifications and passed the acceptance criteria as submitted by DRD on **WTCD Resolution No. T2008-04A**.

NOW, THEREFORE, BE RESOLVED AS IT IS HEREBY RESOLVED, that the abovementioned items be accepted for use of the PNP. (Emphasis supplied)[36]

To reiterate, the above-mentioned WTCD Report No. T2009-04A has irregular entries on its face such that two items therein, *i.e.*, endurance and ventilating system, were equivocal as to their conformity with the approved technical specifications. Moreover, the requirement of the helicopters being brand new was nowhere indicated. Still, respondent, together with others, signed the same and confirmed the adherence of said helicopters with the criteria of the PNP despite such blatant irregularities in the Report.

Notably, respondent failed to make further inquiry on the condition of the helicopters. Merely seeking clarification on the remark "No available data" on the endurance and "Not airconditioned" on the Ventilating System does not exculpate him from liability. As member of the approving committee, mandated by law to inspect deliveries to the government and determine compliance therefor, respondent's responsibility does not end by mere attempt of inquiring as to any perceived irregularity of the transaction.

On this note, the Court finds that an expert in aircrafts is not necessary to identify that the facial irregularities of the entries in the aforementioned WTCD Report affects their compliance with the approved technical specifications. Nor can the respondents use the flimsy excuse of relying on his subordinates. Respondent cannot simply feign ignorance on the incongruities surrounding the procurement of the helicopters as the same were apparent, clear, and manifest. A mere cursory reading of the Report evinces one to conclude that the specifications

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[36] *Rollo*, p. 213.

of the helicopters are non-compliant. As in *Field Investigation Office v. Piano*,[37] which involves the same factual milieu, the Court found that WTCD Report No. T-2009-04-A already showed that the LPOHs did not fully conform to the NAPOLCOM standard specifications, and [Piano] and the Committee members [including herein respondent] need not be an expert on helicopters to understand the information written in the Report.

Indeed, the affixing of signatures by the committee members are not mere ceremonial acts but proofs of authenticity and marks of regularity.[38] Respondent's attestation that said helicopters "to be conforming to the approved NAPOLCOM specifications and passed the acceptance criteria," thus, is an act of serious dishonesty, a deviation from what is true, regarding a matter when he is in the exercise of his duties. To stress the ruling of the Court in *Piano*,[39] the act of signing Resolution No. IAC-09-045 stating that the two LPOHs conformed to the NAPOLCOM specifications despite the lack of available data on endurance and were not air-conditioned, is a distortion of truth in a matter connected with the performance of his duties.

To be sure, only substantial evidence is required, not overwhelming or preponderant is required in determining a finding of administrative liability.[40]

Such act of accepting the helicopters, sealed by respondent and his co-respondents' signature, caused serious damage and grave prejudice to the government. Likewise, such act tarnished the image and integrity of the PNP, when it fully paid for helicopters which were subpar.

On this note, the Court stresses that the constitutional portrait that "all government officials and employees must at all times

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[37] G.R. No. 215402, November 20, 2017.

[38] *Id.*

[39] *Id.*

[40] *Id.*

be accountable to the people, serve them with utmost responsibility, integrity, loyalty, efficiency; act with patriotism and justice, and lead modest lives"[41] is not an empty and meaningless mandate. It must be relentlessly observed by public officers who are tasked and expected to embody this dictum in the performance of their duties. A declaration of a public officers' administrative liability and the consequent disciplinary measure against them is sought for the improvement of the public service and preservation of the public's faith and confidence in the government.[42]

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Decision dated October 23, 2013 and the Resolution dated April 23, 2014 of the Court of Appeals in CA-G.R. SP No. 127885 are **REVERSED and SET ASIDE**. The May 30, 2012 Joint Resolution of the Office of the Ombudsman in OMB-C-A-11-0758-L is **REINSTATED**.

SO ORDERED.

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

Caguioa, J. (*Working Chairperson*), see dissenting opinion.

DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* reverses the Court of Appeals (CA) Decision in CA-G.R. SP No. 127885 and reinstates the Office of the Ombudsman (OMB) Joint Resolution in OMB-C-A-11-0758-L finding respondent Luis L. Saligumba (Saligumba) guilty of Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

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[41] 1987 CONSTITUTION, Article XI, Section 1.

[42] *Government Service Insurance System v. Manalo*, G.R. No. 208979, September 21, 2016.

To recall, the case arose from the so-called "chopper scam" that involved the procurement of second-hand light police operational helicopters (LPOHs) for use of the Philippine National Police (PNP).[1] During the time material to the case, Saligumba was a member of the Inspection and Acceptance Committee (IAC) and was a signatory to the IAC Resolution No. IAC-09-045.[2] Said IAC Resolution stated that the helicopters conformed with the approved NAPOLCOM specifications and passed the acceptance criteria as indicated in the Weapons and Tactics and Communications Division (WTCD) Report. The IAC Resolution also recommended the PNP's acceptance of the LPOH units.[3]

In finding Saligumba administratively liable, the *ponencia* states:

> As previously identified, Resolution No. IAC-09-045 was issued to signify IAC's recommendation that the helicopters not only conformed with the requirements set forth, but also that the purchase of the same is consistent with the interest of the government, x x x:
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> x x x x x x x x x
>
> To reiterate, the mentioned WTCD Report No. T2009-04A has irregular entries on its face such that two items therein, *i.e.*, endurance and ventilating system, were equivocal as to their conformity with the approved technical specifications. Moreover, the requirement of the helicopters being brand new was nowhere indicated. Yet, respondent, together with others, signed the same and confirmed the adherence of said helicopters with the criteria of the PNP.[4]

In support of its ruling, the *ponencia* cites the Court's pronouncement in *FIO v. Piano*,[5] a case involving the same factual backdrop, to wit:

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[1] *Ponencia*, pp. 1-2.

[2] *Id.* at 7.

[3] *Id.* at 9.

[4] *Id.* at 9-10.

[5] 820 Phil. 1031 (2017).

It must be stressed that the IAC plays a vital role in the procurement process of the agency, since it has the responsibility of inspecting the deliveries to make sure they conform to the quantity and the approved technical specifications in the supply contract and the purchase order and to accept or reject the same. Simply put, the IAC is instrumental in the procurement process, without its approval, no consummated purchase of the helicopters could be made.[6]

Indeed, the Court in *Piano* ruled that it is the IAC that has the responsibility of inspecting the LPOHs to make sure that they conform to the NAPOLCOM specifications. This has been affirmed in *Lukban v. Ombudsman*,[7] which likewise involves the same factual antecedents. ***However***, the Court's pronouncements in these cases regarding the role of the IAC should not be sweepingly applied to ascribe liability on any and all officials simply because they were part of the IAC. Mere membership in the IAC should not be automatically equated to administrative liability as regards the procurement of the LPOHs that turned out to be second-hand units. This is especially true in this case where certain undisputed facts contravene Saligumba's liability for serious dishonesty.

The *ponencia* maintains that Saligumba cannot feign ignorance on the incongruities surrounding the procurement of the helicopters as the same were apparent, and a mere cursory reading of the WTCD Report shows that the specifications of the LPOHs are non-compliant.[8] Moreover, the *ponencia* found that Saligumba failed to make further inquiry on the condition of the helicopters.[9]

These findings, however, are ***belied*** by the records of the case.

In particular, the following pronouncements in the CA Decision are worth considering:

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[6] *Ponencia*, pp. 8-9.

[7] G.R. No. 238563, February 12, 2020.

[8] *Ponencia*, p. 9.

[9] *Id.* at 10.

In his *Reply*, petitioner cited the 1998 PNP Procurement Manual x x x explaining that whenever a member of the IAC is not familiar with the item delivered, the inspection will be referred to a technical committee for inspection and recommendation. He also stated, thus:

> 9. **The Report had some matters to be clarified on** the portion 'endurance' which has a remark of 'no available data' and on the entry on Ventilating System that requires the LPOHs be air-conditioned when the MAPTRA-supplied LPOHs are not air-conditioned, and with the remarks stating that they are 'standard helicopters';
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> 10. Upon perusal of the report, Saligumba [noticed] the columns 'endurance' and 'aircondition.' **Saligumba sought clarification of the report** and he was invited to the clarification made by PSupt. Balmaceda on a memo dated 02 October 2009 stating that 'the subject helicopters were configured for police operations' and that the helicopters ordered were 'standard helicopters.' Standard helicopters ordered by the PNP do not have airconditioning unit. Airconditioning unit is provided in a different model not ordered by the PNP.
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> x x x x x x x x x

Indeed, **petitioner's reliance on the recommendation made by the composite technical inspection team, as well as the Memorandum of Supt. Larry Balmaceda [,who is a pilot] is justified. He acted in good faith when he opted to follow the lead of those who are in a better position to assess the condition of the helicopters, there being no personal or ill motive on his part**. We must point out that good faith is presumed. It is incumbent upon the Ombudsman to prove that the reliance made by petitioner on the recommendation of experts is tainted with bad faith.[10] (Emphasis supplied)

From the foregoing, there is merit to Saligumba's claim of good faith. Contrary to the *ponencia*'s ruling,[11] Saligumba's acts of adhering to the 1998 PNP Manual and thereby seeking clarification of the WTCD Report from the composite technical inspection team, and relying on its recommendation, negate any ill intent on his part.

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[10] *Rollo*, pp. 57-61.

[11] *Ponencia*, p. 10.

It should be emphasized that dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention.[12] It is characterized as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth.[13] Taking these into consideration, it is clear that Saligumba's liability for serious dishonesty has not been proven.

In addition, contrary to the Ombudsman's ruling, the existence of conspiracy was not sufficiently shown. While in its entirety, the Ombudsman's factual findings tend to show a sequence of irregularities in the procurement of the helicopters, this does not in itself amount to a conspiracy between each and every person involved in the procurement process. For conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense.[14]

IN VIEW THEREOF, I vote to **DENY** the petition and **AFFIRM** the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 127885.

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[12] *Sabio v. Field Investigation Office*, 825 Phil. 848, 859 (2018).

[13] *Alfornon v. Delos Santos*, 789 Phil. 462, 473 (2016).

[14] *PNP-CIDG v. Villafuerte*, G.R. Nos. 219771 & 219773, September 18, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64554>.

THIRD DIVISION

[G.R. No. 218593. June 15, 2020]

BAGONG REPORMANG[1] SAMAHAN NG MGA TSUPER AT OPERATOR SA ROTANG PASIG QUIAPO VIA PALENGKE SAN JOAQUIN IKOT, INC., represented by its president, CORNELIO R. SADSAD, JR., *petitioner*, *vs.* **CITY OF MANDALUYONG, HON. BENJAMIN C. ABALOS, JR., LUISITO ESPINOSA, and AMAR SANTDAS,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW CAN BE RAISED; EXCEPTIONS; INVOKING AN EXCEPTION REQUIRES PROOF THEREOF. — This Court is not a trier of facts. Generally, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The limited exceptions to this rule are as follows: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) *When the judgment is based on a misapprehension of facts;* (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding

[1] "Repormang" as indicated in the Certificate of Incorporation is adopted instead of "Reformang."

of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. To successfully invoke these exceptions, the petitioner must prove the need for this Court to examine the lower court's factual findings. Merely invoking an exception without proof will not warrant an examination beyond the limits of Rule 45.

2. ID.; PROVISIONAL REMEDIES; AN INJUNCTION CAN EITHER BE A MAIN ACTION OR A PROVISIONAL REMEDY; DISCUSSED. — As explained in *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, an injunction can either be a main action or a provisional remedy: Injunction is defined as "a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act." It may be filed as a main action before the trial court or as a provisional remedy in the main action. *Bacolod City Water District v. Hon. Labayen* expounded: The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction. For a main action for injunction to succeed, two requisites must be established: "(1) there must be a right to be protected and (2) the acts against which the injunction is to be directed are violative of said right."

3. POLITICAL LAW; ADMINISTRATIVE LAW; CERTIFICATE OF PUBLIC CONVENIENCE; IT IS A MERE PRIVILEGE AND A GRANTEE IS STILL REQUIRED TO COMPLY WITH NATIONAL LAWS AND MUNICIPAL ORDINANCES. — Among the powers of the Land Transportation Franchising and

Regulatory Board is to issue certificates of public convenience: x x x A certificate of public convenience is a permit authorizing operations of land transportation services for public use. x x x It is settled that a certificate of public convenience is a mere license or privilege. It does not vest property rights on the routes covered in it: x x x As early as 1966, *Lagman v. City of Manila* clarified that the authority to issue certificates of public convenience does not remove a local government's power to regulate traffic in its locality. A grantee is still required to comply with national laws and municipal ordinances: x x x Here, it is not disputed that the route in the certificates of public convenience granted to the drivers includes Shaw Boulevard. However, petitioner is mistaken to claim that these certificates give the drivers vested right over the route covered. One of the conditions for public utility jeepneys to operate along such routes is compliance with local government regulations, as clearly stated in the certificates of public convenience[.]

4. ID.; LOCAL GOVERNMENT CODE; DELEGATED LEGISLATIVE POWER OF LOCAL GOVERNMENTS TO REGULATE TRAFFIC; RESTRICTIONS BROUGHT ABOUT BY REGULATIONS OF LOCAL GOVERNMENTS ADDRESSING TRAFFIC CONGESTION ARE VALID EXERCISES OF POLICE POWER; CASE AT BAR. — Local governments possess delegated legislative power to regulate traffic. x x x In *Legaspi v. City of Cebu*, this Court emphasized that local governments are given broad latitude in crafting traffic rules and regulations because they are familiar with the conditions of their localities: x x x Section 458 anchors itself on the delegated police power provided in the general welfare clause of the Local Government Code. x x x It is settled that restrictions brought about by regulations of local governments addressing traffic congestion are valid exercises of police power: x x x Pursuant to the Local Government Code, in 2005, respondent City of Mandaluyong enacted Ordinance No. 358, or the Traffic Management Code of the City of Mandaluyong. Section 113 of the Traffic Management Code clearly states that the Traffic and Parking Management Office is authorized to regulate the turning points of public utility buses and jeepneys: x x x.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Mandaluyong City Legal Department for respondents.

D E C I S I O N

LEONEN, *J.*:

A certificate of public convenience does not vest property rights to its holder to conduct business along the route covered in it. This privilege is subject to compliance with local traffic regulations, because the Land Transportation Franchising and Regulatory Board's authority to issue such certificates is only supplemental to the right of local governments to control and regulate traffic in their localities.

This Court resolves the Petition for Review[2] assailing the Court of Appeals Decision,[3] which affirmed the Regional Trial Court Decision[4] denying the Petition for Injunction filed by Bagong Repormang Samahan ng mga Tsuper at Operator sa Rotang Pasig Quiapo via Palengke San Joaquin Ikot, Inc. (Bagong Repormang Samahan) against the City of Mandaluyong.

In filing the Petition for Injunction with prayer for a temporary restraining order and writ of preliminary injunction, Bagong Repormang Samahan sought to enforce its members' rightful passage through the road under the Shaw Boulevard-EDSA flyover, and to enjoin the City of Mandaluyong from violating

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[2] *Rollo*, pp. 15-34.

[3] *Id.* at 36-51. The Decision was penned by Associate Justice Victoria Isabel A. Paredes, and concurred in by Associate Justice Isaias S. Dicdican and Associate Justice Melchor Quirino C. Sadang of the Special Ninth Division, Court of Appeals, Manila.

[4] *Id.* at 86-112. The Decision was penned by Judge Carlos A. Valenzuela, Presiding Judge of the Regional Trial Court of Mandaluyong City, Branch 213.

that right.[5] It hinged this right based on its members' certificates of public convenience to ply along this route:[6]

Pasig (TP)-Quiapo (Echague) via Sta. Mesa, C. Palanca

Pasig TP terminal, Caruncho Ave., Pasig Blvd., Shaw Blvd., P. Sanchez, V. Mapa, Ramon Magsaysay, Legarda, P. Casal, Palanca to terminal and back via Quezon Blvd., Service Rd., C.M. Recto, Legarda to origin via same route.[7] (Citation omitted)

Allegedly, the group's drivers were prohibited from passing under the Shaw Boulevard-EDSA flyover where they would usually load and unload passengers. It added that the city's traffic enforcers would harass its members by issuing several ordinance violation receipts for "obstruction," "no seat belt," "disobedience," and "out of route."[8] Yet, the group claimed, no ordinance expressly prohibited them from passing under the flyover; thus, the prohibition violated their certificates of public convenience.[9]

For its part, the City of Mandaluyong invoked Ordinance No. 358, Series of 2005, or the City's Traffic Management Code. Under the Ordinance, it noted, the Traffic and Parking Management Office is authorized to adjust the turning points and terminals of public utility buses and jeepneys.[10] Jeepneys

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[5] *Id.* at 88.

[6] *Id.* at 37.

[7] *Id.*

[8] *Id.* at 38.

[9] *Id.*

[10] SECTION 113. ROUTES OF PUBLIC UTILITY BUSES AND JEEPNEYS. — Public utility buses and jeepneys, including mega-taxis and shuttle vans with valid authorizations from the Land Transportation Franchising and Regulatory Board and whose routes terminate or originate within the City shall furnish the Traffic and Parking Management Office a copy of their approved routes. Subject transport groups shall adhere to their approved routes.
Without necessarily modifying their authorized routes, the Traffic and Parking Management Office may adjust the turning points and terminal of public

and buses are prohibited from loading and unloading along the Shaw Boulevard-EDSA crossing area because of traffic congestion.[11]

On August 10, 2009, the Regional Trial Court denied the application for temporary restraining order. On January 4, 2010, it also denied the writ of preliminary injunction.[12]

On December 28, 2012, the Regional Trial Court issued its Decision[13] denying the Petition for Injunction:

> WHEREFORE, premises considered, the prayer for injunction of petitioner, the Bagong Reformang Samahan ng mga Tsuper at Operator sa Rotang Pasig Quiapo via Palengke San Joaquin Ikot, Inc., represented by its President Cornelio R. Sadsad, Jr., is hereby DENIED.
>
> SO ORDERED.[14]

In denying the main action for injunction, the Regional Trial Court found that Bagong Repormang Samahan failed to show its members' clear legal right to ply the road under the flyover.[15] It upheld the Traffic Management Code as a valid exercise of the City of Mandaluyong's power to maintain and promote order in its locality. It noted that injury would redound to the general public if the unauthorized loading and unloading were allowed.[16]

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utility buses and jeepneys, prescribe their loading or unloading points, and/or require them to utilize passenger interchange terminals, if so required by an approved traffic improvement scheme.

Available at <http://mandaluyong.gov.ph/updates/downloads/files/Ordinance%20358%20-%20Traffic%20Management.pdf> (last accessed on June 15, 2020).

[11] *Rollo*, p. 39.

[12] *Id.* at 90.

[13] *Id.* at 86-112.

[14] *Id.* at 112.

[15] *Id.* at 91.

[16] *Id.* at 108-109.

The Court of Appeals, in its May 26, 2015 Decision, [17] denied the group's appeal. It held that the City of Mandaluyong is vested with delegated legislative power to enact traffic rules under Section 458, in relation to Section 16 of the Local Government Code. It found that the prohibition against plying under the Shaw Boulevard-EDSA flyover did not violate the drivers' certificates of public convenience, but was a valid exercise of the City of Mandaluyong's power to address traffic congestion.[18]

Thus, Bagong Repormang Samahan filed this Petition for Review.[19]

On September 2, 2016, respondents filed their Comment.[20] On May 4, 2017, petitioner filed its Reply.[21]

In a February 4, 2018 Letter, petitioner's president Cornelio R. Sadsad, Jr. (Sadsad) notified this Court of the administrative cases he has filed before the Land Transportation Office, the Land Transportation Franchise and Regulatory Board, and the Office of the Ombudsman.[22]

The Land Transportation Franchise and Regulatory Board had earlier found that UV Express vehicles and passenger jeepneys were guilty of having illegal terminals, thus ordering that certain vehicles be impounded.[23] In another case, the Land Transportation Office had directed Ricardo V. Zafra, the chief of the SMVIC of Pasay City, to "exert extra effort and formulate action plans" on the illegal transactions in his area of responsibility.[24] Lastly, the Office of the Ombudsman dismissed

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[17] *Id.* at 36-51.

[18] *Id.* at 36-51.

[19] *Id.* at 42-44.

[20] *Id.* at 140-147.

[21] *Id.* at 161-167.

[22] *Id.* at 199.

[23] *Id.* at 274.

[24] *Id.* at 203.

the case Sadsad filed against Hearing Officer Atty. Lucia V. Oliveros, who had ruled against his complaint for selective apprehension against a traffic enforcer.[25]

Incidentally, petitioner also notified this Court that he has impugned former President Fidel V. Ramos,[26] former President Benigno Simeon Aquino III,[27] and President Rodrigo Duterte,[28] all of whom he essentially claimed are liable for the plight of the jeepney drivers.

In another letter, Sadsad manifested that the illegal operations of UV Express vehicles were killing the jeepney drivers' livelihood.[29] He later requested that a case be filed against government agencies who continue to allow the illegal operations of UV Express.[30]

Petitioner filed its Memorandum[31] on May 15, 2019, while the respondents filed theirs[32] on April 3, 2019.

Petitioner implores this Court to review the factual findings of the Court of Appeals because its judgment was based on a misapprehension of facts.[33] It argues that the injunction should have been issued in its favor because its members, through their certificates of public convenience, have an unmistakable right to pass under the Shaw Boulevard-EDSA flyover.[34] It asserts that respondent violated the members' legal right when they were prevented from passage and were issued

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[25] *Id.* at 266-268.

[26] *Id.* at 330.

[27] *Id.* at 304-325.

[28] *Id.* at 344.

[29] *Id.* at 331-332.

[30] *Id.* at 338-339.

[31] *Id.* at 407-418.

[32] *Id.* at 370-396.

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

[34] *Id.* at 24.

with ordinance violation receipts[35] despite no express prohibition.[36]

Respondents counter that the City of Mandaluyong has power to regulate traffic under the Shaw Boulevard-EDSA flyover.[37] They allege that petitioner failed to consider the City Traffic Management Code, which tasks the Traffic and Parking Management Office with adjusting the turning points of public utility vehicles without modification of their routes.[38] They further note that only public utility vehicles with legal terminals along the Shaw Boulevard-EDSA crossing area are exempted from the prohibition, and since petitioner does not have such terminal, its members have been prohibited from passing under the flyover since 2000.[39]

The main issue here is whether or not the main action for injunction should have been granted. Subsumed under it are two issues:

First, whether or not the member-drivers, through their certificates of public convenience, have a clear legal right to ply through the road under the Shaw Boulevard-EDSA flyover; and

Second, whether or not respondent City of Mandaluyong violated this right, if any.

The Petition lacks merit.

I

This Court is not a trier of facts. Generally, only questions of law can be raised in a petition for review on *certiorari*

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[35] *Id.* at 25.

[36] *Id.* at 25-27.

[37] *Id.* at 143.

[38] *Id.* at 142-143.

[39] *Id.* at 143.

under Rule 45[40] of the Rules of Court. The limited exceptions to this rule are as follows:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) *When the judgment is based on a misapprehension of facts*; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[41] (Emphasis supplied, citation omitted)

To successfully invoke these exceptions, the petitioner must prove the need for this Court to examine the lower court's factual findings.[42] Merely invoking an exception without proof will not warrant an examination beyond the limits of Rule 45.[43]

Here, petitioner alleges that the Court of Appeals Decision was based on a misapprehension of facts,[44] but fails to demonstrate how. On the contrary, as will be discussed, the Court of Appeals' findings are supported by the evidence on record, applicable laws, and jurisprudence.

II

Petitioner seeks the writ of injunction against respondent City of Mandaluyong for allegedly violating their legal right.

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

[41] *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016) [Per J. Leonen, Second Division].

[42] *Id.* at 184 citing *Borlongan v. Madrideo*, 380 Phil. 215, 223 (2000) [Per J. De Leon, Jr., Second Division].

[43] *Id.*

[44] *Rollo*, p. 22.

Rule 58, Section 9 of the Rules of Court states when a final injunction may be issued:

> SECTION 9. When Final Injunction Granted. — If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction. (10a)

As explained in *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*,[45] an injunction can either be a main action or a provisional remedy:

> Injunction is defined as "a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act." It may be filed as a main action before the trial court or as a provisional remedy in the main action. *Bacolod City Water District v. Hon. Labayen* expounded:
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> > The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.[46]

For a main action for injunction to succeed, two requisites must be established: "(1) there must be a right to be protected

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[45] 820 Phil. 123 (2017) [Per *J.* Leonen, Third Division].

[46] *Id.* at 131-132 citing *Bacolod City Water District v. Hon. Labayen*, 487 Phil. 335, 346 (2004) [Per *J.* Puno, Second Division].

and (2) the acts against which the injunction is to be directed are violative of said right."[47]

II (A)

In this case, petitioner derives its legal right from the certificates of public convenience that the Land Transportation Franchise and Regulation Board had issued its members. Supposedly, since Shaw Boulevard was included in the route authorized in the certificates, petitioner's members cannot be prohibited from plying the road under the Shaw Boulevard-EDSA flyover without modifying, amending, or canceling these certificates.[48]

Petitioner's argument has no basis.

Among the powers of the Land Transportation Franchising and Regulatory Board is to issue certificates of public convenience:

> SECTION 5. Powers and Functions of the Land Transportation Franchising and Regulatory Board. — The Board shall have the following powers and functions:
>
> b. To issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefor[.][49]

A certificate of public convenience is a permit authorizing operations of land transportation services for public use.[50] Before the creation of the Land Transportation Franchising and

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[47] *Republic of the Philippines v. Cortez, Sr.*, 768 Phil. 575, 589 (2015) [Per J. Del Castillo, Second Division] citing *Philippine Economic Zone Authority v. Carantes*, 635 Phil. 541, 548 (2010) [Per J. Villarama, Third Division].

[48] *Rollo*, pp. 24-25.

[49] Executive Order No. 202 (1987), Sec. 5 (b).

[50] *Kilusang Mayo Uno Labor Center v. Garcia*, 309 Phil. 358, 380 (1994) [Per J. Kapunan, First Division].

Regulatory Board, these permits were issued by the Public Service Commission under Section 16 (a) of Commonwealth Act No. 146.[51]

It is settled that a certificate of public convenience is a mere license or privilege. It does not vest property rights on the routes covered in it:

> Petitioner's argument pales on the face of the fact that the very nature of a certificate of public convenience is at cross purposes with the concept of vested rights. To this day, the accepted view, at least insofar as the State is concerned, is that "*a certificate of public convenience constitutes neither a franchise nor a contract, confers no property right, and is a mere license or privilege*." *The holder of such certificate does not acquire a property right in the route covered thereby.* Nor does it confer upon the holder any proprietary right or interest or franchise in the public highways. Revocation of this certificate deprives him of no vested right. Little reflection is necessary to show that the certificate of public convenience is granted with so many strings attached. New and additional burdens, alteration of the certificate, and even revocation or annulment thereof is reserved to the State.

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[51] Commonwealth Act No. 146 (1936), Sec. 16 (a) provides:

SECTION 16. Proceedings of the Commission, Upon Notice and Hearing. — The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:

(a) To issue certificates which shall be known as Certificates of Public Convenience, authorizing the operation of public services within the Philippines whenever the Commission finds that the operation of the public service proposed and the authorization to do business will promote the public interests in a proper and suitable manner: Provided, That hereafter, certificates of public convenience and certificates of public convenience and necessity will be granted only to citizens of the Philippines or of the United States or to corporations, copartnerships, associations or joint-stock companies constituted and organized under the laws of the Philippines: Provided, That sixty per centum of the stock or paid-up capital of any such corporation, copartnership, association or joint stock company must belong entirely to citizens of the Philippines or of the United States: Provided, further, That no such certificates shall be issued for a period of more than fifty years.

We need but add that the Public Service Commission, a government agency vested by law with "jurisdiction, supervision, and control over all public services and their franchises, equipment, and other properties" is empowered, upon proper notice and hearing, amongst others: (1) "[t]o amend, modify or revoke at any time a certificate issued under the provisions of this Act [Commonwealth Act 146, as amended], whenever the facts and circumstances on the strength of which said certificate was issued have been misrepresented or materially changed"; and (2) "[t]o suspend or revoke any certificate issued under the provisions of this Act whenever the holder thereof has violated or willfully and contumaciously refused to comply with any order, rule or regulation of the Commission or any provision of this Act: Provided, That the Commission, for good cause, may prior to the hearing suspend for a period not to exceed thirty days any certificate or the exercise of any right or authority issued or granted under this Act by order of the Commission, whenever such step shall in the judgment of the Commission be necessary to avoid serious and irreparable damage or inconvenience to the public or to private interests. Jurisprudence echoes the rule that the Commission is authorized to make reasonable rules and regulations for the operation of public services and to enforce them. In reality, all certificates of public convenience issued are subject to the condition that all public services "shall observe and comply [with] . . . all the rules and regulations of the Commission relative to" the service. To further emphasize the control imposed on public services, before any public service can "adopt, maintain, or apply practices or measures, rules, or regulations to which the public shall be subject in its relation with the public service," the Commission's approval must first be had.

And more. *Public services must also reckon with provincial resolutions and municipal ordinances relating to the operation of public utilities within the province or municipality concerned.* The Commission can require compliance with these provincial resolutions or municipal ordinances.[52] (Emphasis supplied)

As early as 1966, *Lagman v. City of Manila*[53] clarified that the authority to issue certificates of public convenience does

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[52] *Luque v. Villegas*, 141 Phil. 108, 119-121 (1969) [Per *J*. Sanchez, *En Banc*].

[53] 123 Phil. 1439 (1966) [Per *J*. J.B.L. Reyes, *En Banc*].

not remove a local government's power to regulate traffic in its locality. A grantee is still required to comply with national laws and municipal ordinances:

That the powers conferred by law upon the Public Service Commission were not designated to deny or supersede the regulatory power of local governments over motor traffic, in the streets subject to their control, is made evident by Section 17 (j) of the Public Service Act (Commonwealth Act No. 146) that provides as follows:

> SEC. 17. Proceedings of Commission without previous hearing. — The Commission shall have power, without previous hearing, subject to established limitations and exceptions, and saving provisions to the contrary:
>
> . . . .
>
> (j) To require any public service to comply with the laws of the Philippines, and with any provincial resolution or municipal ordinance relating thereto, and to conform to the duties imposed upon it thereby, or by the provisions of its own charter, whether obtained under any general or special law of the Philippines.

The petitioner's contention that, under this section, the respective ordinances of the City can only be enforced by the Commission alone is obviously unsound. Subsection (j) refers not only to ordinances but also to "the laws of the Philippines," and it is plainly absurd to assume that even laws relating to public services are to remain a dead letter without the *placet* of the Commission; and the section makes no distinction whatever between enforcement of laws and that of municipal ordinances.

The very fact, furthermore, that the Commission is empowered, but not required, to demand compliance with apposite laws and ordinances proves that the Commission's powers are merely supplementary to those of state organs, such as the police, upon which the enforcement of laws primarily rests.[54] (Emphasis supplied)

Here, it is not disputed that the route in the certificates of public convenience granted to the drivers includes Shaw Boulevard. However, petitioner is mistaken to claim that these

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[54] *Id.* at 1448-1449.

certificates give the drivers vested right over the route covered. One of the conditions for public utility jeepneys to operate along such routes is compliance with local government regulations, as clearly stated in the certificates of public convenience:

> The operator must also comply with all the terms and conditions prescribed in Commonwealth Act [No.] 146, as amended, Executive Order [No.] 202, and other laws and, all pertinent Orders and Memorandum Circulars of the Board and Resolutions of Local Government Unit/s in so far as they are applicable.[55]

Neither does petitioner's previous practice of using the road under the Shaw Boulevard-EDSA flyover[56] give its members the unfettered right to pass along this road. One of the members admitted that, since the construction of the flyover in 2001, they have been prohibited from using the road under it, and have been directed to use the flyover:

> ATTY. TUTANES [counsel for respondents]:
>
> Q - And when the flyover was constructed, Mr. Witness, were you prevented since the start of the operation of the flyover from using the under Shaw Boulevard flyover?
>
> A - Yes, sir, when it was constructed it was then that we were prohibited from passing under the flyover, sir.
>
> Q - And Mr. Witness when you were prevented from using the [road] under Shaw Boulevard flyover did you raise any objection?
>
> A - Yes, sir, we complained before the MMDA, we were pointed to go to the local government sir and then the local government told us that it is the jurisdiction of the LTFRB, sir.
>
> Q - So since 2004 you were already prevented from using [the road] under Shaw Boulevard flyover?
>
> A - Since 2001, sir, we were no longer allowed to pass under the flyover.[57]

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[55] *Rollo*, p. 243.

[56] *Id.* at 17.

[57] *Id.* at 109-110.

Petitioner, therefore, failed to establish its members' clear legal right to pass under the Shaw Boulevard-EDSA flyover.

II (B)

Local governments possess delegated legislative power to regulate traffic. Section 458 of the Local Government Code states:

> SECTION 458. Powers, Duties, Functions and Compensation. — (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:
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> . . . .
>
> (5) Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities shall:
>
> . . . .
>
> (v) Regulate the use of streets, avenues, alleys, sidewalks, bridges, parks and other public places and approve the construction, improvement, repair and maintenance of the same; establish bus and vehicle stops and terminals or regulate the use of the same by privately-owned vehicles which serve the public; regulate garages and the operation of conveyances for hire; designate stands to be occupied by public vehicles when not in use; regulate the putting up of signs, signposts, awnings and awning posts on the streets; and provide for the lighting, cleaning and sprinkling of streets; and public places;
>
> (vi) Regulate traffic on all streets and bridges; prohibit encroachments or obstacles thereon, and when necessary in the interest of public welfare, authorize the removal or encroachments and illegal constructions in public places(.)

In *Legaspi v. City of Cebu*,[58] this Court emphasized that local governments are given broad latitude in crafting traffic rules and regulations because they are familiar with the conditions of their localities:

> The CA opined, and correctly so, that vesting cities like the City of Cebu with the legislative power to enact traffic rules and regulations was expressly done through Section 458 of the LGC, and also generally by virtue of the General Welfare Clause embodied in Section 16 of the LGC.
>
> . . . . . .
>
> The foregoing delegation reflected the desire of Congress to leave to the cities themselves the task of confronting the problem of traffic congestions associated with development and progress because they were directly familiar with the situations in their respective jurisdictions. *Indeed, the LGUs would be in the best position to craft their traffic codes because of their familiarity with the conditions peculiar to their communities.* With the broad latitude in this regard allowed to the LGUs of the cities, their traffic regulations must be held valid and effective unless they infringed the constitutional limitations and statutory safeguards.[59] (Emphasis supplied, citation omitted)

Section 458 anchors itself on the delegated police power provided in the general welfare clause of the Local Government Code.[60] Section 16 of the Code provides:

> SECTION 16. General Welfare. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and *those which are essential to the promotion of the general welfare.* Within their respective territorial jurisdictions, local government units shall ensure

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[58] 723 Phil. 90 (2013) [Per *J.* Bersamin, *En Banc*].

[59] *Id.* at 105-106.

[60] *Batangas CATV, Inc. v. Court of Appeals*, 482 Phil. 544, 561 (2004) [Per *J.* Sandoval-Gutierrez, *En Banc*] citing *United States v. Salaveria*, 39 Phil. 102 (1918) [Per *J.* Malcolm, *En Banc*].

and support among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants. (Emphasis supplied)

It is settled that restrictions brought about by regulations of local governments addressing traffic congestion are valid exercises of police power:

It is because of all of these that it has become necessary for the police power of the State to step in, not for the benefit of the few, but for the benefit of the many. Reasonable restrictions have to be provided for the use of the thoroughfares. The operation of public services may be subjected to restraints and burdens, in order to secure the general comfort. No franchise or right can be availed of to defeat the proper exercise of police power — the authority "to enact rules and regulations for the promotion of the general welfare." So it is, that by the exercise of the police power, which is a continuing one, "a business lawful today may in the future, because of the changed situation, the growth of population or other causes, become a menace to the public health and welfare, and be required to yield to the public good." Public welfare, we have said, lies at the bottom of any regulatory measure designed "to relieve congestion of traffic, which is, to say the least, a menace to public safety." *As a corollary, measures calculated to promote the safety and convenience of the people using the thoroughfares by the regulation of vehicular traffic, present a proper subject for the exercise of police power.*[61] (Emphasis supplied, citations omitted)

Pursuant to the Local Government Code, in 2005, respondent City of Mandaluyong enacted Ordinance No. 358, or the Traffic Management Code of the City of Mandaluyong.

In this case, petitioner does not assail the validity of the Ordinance. What it contends is its lack of express prohibition

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[61] *Luque v. Villegas*, 141 Phil. 108, 123-124 (1969) [Per J. Sanchez, *En Banc*].

that prevents its member-drivers from passing under the Shaw Boulevard-EDSA flyover.

A simple reading of the provision belies their contention. Section 113 of the Traffic Management Code clearly states that the Traffic and Parking Management Office is authorized to regulate the turning points of public utility buses and jeepneys:

> SECTION 113. ROUTES OF PUBLIC UTILITY BUSES AND JEEPNEYS. — Public utility buses and jeepneys, including mega-taxis and shuttle vans with valid authorizations from the Land Transportation Franchising and Regulatory Board and whose routes terminate or originate within the City shall furnish the Traffic and Parking Management Office a copy of their approved routes. Subject transport groups shall adhere to their approved routes.
>
> Without necessarily modifying their authorized routes, the Traffic and Parking Management Office may adjust the turning points and terminal of public utility buses and jeepneys, prescribe their loading or unloading points, and/or require them to utilize passenger interchange terminals, if so required by an approved traffic improvement scheme.

It is clear, therefore, that the regulation does not violate the certificates of public convenience of petitioner's members. It is a valid exercise of respondent City of Mandaluyong's power under the Local Government Code to address traffic congestion under the Shaw Boulevard-EDSA flyover. Thus, the second requisite for a final injunction — that there had been a violation of a right — is also absent in this case.

III

Appendix V of the City Traffic Management Code does not include the road under the Shaw Boulevard-EDSA flyover in the list of loading and unloading zones. Thus, loading and unloading of passengers in that road is not allowed:

> APPENDIX V
>
> LOADING AND UNLOADING ZONES
>
> a. Between Stanford St. and Princeton St.
> b. East bound ten (10) meters from Samat St.

c. West bound ten (10) meters from Princeton St.
d. Between Governor's Palace Condominium and PNB Building
e. In front of Facilities Center
f. In front of Up-T/own Building before Wack-Wack Road
g. In front of Cherry Foodarama
h. In front of Sunshine Square
i. West bound lane ten (10) meters before Laurel St.
j. In front of Toyota Motors Corporation Building
k. East bound lane ten (10) meters before Rodriguez St.
l. East bound lane twenty (20) meters after Nueve de Pebrero St.
m. Between Balagtas St. and Gomezville St.
n. Between Acacia Lane and Maligaya Creek 3
o. West bound lane ten (10) meter[s] before Guerrero St.
p. Between A. Bonifacio St. and R. Vicencio St.
q. West bound lane ten (10) meters after Araullo St.
r. Between Araullo St. and L. Cruz St.
s. West bound lane ten (10) meters after J. Vargas St.
t. Between Aimologo Industries and Solid Bank
u. East bound lane ten (10) meters from A. Luna Extension
v. In front of Jose Rizal College
w. West bound lane ten (10) meters after the pedestrian lane in front of JRC
x. Across Tiosejo St.[62]

The Ordinance provides an exemption for public utility vehicles that have terminals in the EDSA-Shaw Boulevard crossing area along Star Mall and Parklea.[63] However, petitioner does not claim that its members fall under this exemption.

Petitioner decries that due to the prohibition, its members' incomes are reduced by at least ₱500.00 daily. In doing so, they admit that they load and unload passengers even in the no-loading and unloading zones. As the Court of Appeals observed, instead of owning up to the multiple violations of the Traffic Management Code, petitioner passes the liability to passengers who get on and off their vehicles in unauthorized areas:

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[62] *Rollo*, pp. 45-46, see footnote 23.

[63] *Id.* at 143.

Further, petitioner-appellant admitted that its members cannot load and/or unload passengers under the Shaw Boulevard-EDSA flyover. Based on Appendix V of the Traffic Code, which enumerates the loading and unloading zones in the city, members of petitioner-appellant cannot load and/or unload passengers under the Shaw Boulevard-EDSA flyover since the said area is not included in the loading and unloading zone list. *Nonetheless, on the pretext that it is the riding public, not the jeepney drivers-members of petitioner-appellant, who ride on and alight from the jeepneys, there has been an unbridled violation, albeit it is admitted that members of petitioner-appellant derive income from violating the no loading-unloading zone in the prohibited area under the Shaw Boulevard-EDSA flyover.* When the local government unit, through its Traffic Enforcement Division, strictly implemented the prohibition and the no loading-unloading zone to enforce discipline, it was only then that petitioner-appellant, confronted with the loss of its income, cried foul and filed the petition for injunction. This is evident from the testimony of Sadsad on cross-examination, *viz.*:

> ATTY. FERRER (counsel for respondents-appellees)[:]
>
> Q: What is the source of the damage when you said you incurred Five Hundred Pesos a day for not using . . .
>
> COURT:
> Or for having been prevented from passing through below that flyover EDSA Shaw Boulevard?
>
> A: Dahil nga po kami padaanin sa flyover . . .
>
> Q: Precisely, how, how did you quantify that? Na 500 ang nawala sayo apat na beses mong bumibiyahe dahil hindi kayo pinayagan.
> A: Dahil nga po sa kawalan ng pasahero nakukuha namin . . .
>
> ATTY. FERRER[:]
> Q: You just mentioned that you lost income in the amount of ₱500 at least because you are no longer allowed to get passengers but Mr. Witness, you testified a while ago that there is no jeepney stop and you are not allowed to get passengers so how will that affect your income?
> A: Ang problema po namin nga ay hindi kami padaanin pero itong mga illegal operation na ito ay pinapayagan nila sila nakakapagsakay ng mga pasahero . . .

ATTY. FERRER[:]
The answer of the witness your honor is not responsive.

He further testified, that:

ATTY. TUTANES[:]
Q: Under the Shaw Boulevard Flyover, Mr. Witness, where do you load passengers?
A: Sumasakay lang po ang pasahero pag naka-stop light.

COURT:
Eastbound, Atty. Tutanes?

ATTY. TUTANES[:]
Yes, your Honor.
A: Kapag po nakahinto naka-red yung traffic light saka lang po sila sumasakay.

Q: My question is where do you load passengers?

COURT:
Load and unload

ATTY. TUTANES[:]
Load muna, your honor.

A: Kung (kailan) lang po mag-stop yung traffic light.

Q: So you are admitting to this honorable court that you are loading passenger[s] under Shaw Boulevard Flyover?
A: Dahil ang pasahero na po talaga nag nagdedesisyon na sumakay sa amin.

ATTY. TUTANES:
No, your honor . . .

COURT:
Answer the question. Answer that, yes or no.

A: Sumasakay po ang pasahero.

Q: So you don't? Pinasasakay mo?
A: Opo, sumasakay po.

ATTY. REDULA (counsel for petitioner-appellant)[:]
No, you[r] honor. The answer is sumasakay po. The passenger just . . .

COURT:
That's why I am qualifying it.

ATTY. REDULA:
Yes, your honor.

COURT:
Q: So pinasasakay mo o sumasakay sila?
A: Sumasakay po ang pasahero.

ATTY. TUTANES[:]
Q: How about unloading, where do you unload under Shaw Boulevard Flyover?
A: Basta nalang po nababa ang pasahero pag naka-stop ang traffic light.

ATTY. REDULA:
They just alight from the vehicle.

ATTY. TUTANES:
Q: How about after EDSA, Mr. Witness, after EDSA, eastbound after EDSA, do you load passengers after EDSA?
A: After St. Francis.

. . . . . .

Q: When you are passing over Shaw Boulevard Flyover, will you tell this court what is your income?
A: One thousand including the boundary.

Q: How about if you are passing through under Shaw Boulevard Flyover, Mr. Witness?
A: Nadadagdagan po dahil maraming sumasakay sa amin pag dumadaan kami sa ilalim.[64] (Emphasis supplied, citations omitted)

While we empathize with its members' plight, petitioner does not have the absolute right to conduct its business along the route granted to its members. Its members' decreased income is not sufficient to grant the remedy of injunction, as respondent committed no violation of any right which this Court may enjoin.

Finally, petitioner submitted several letters containing records of administrative cases. In all of these, the issue of the illegal

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[64] *Id.* at 46-50.

operations of UV Express vehicles allegedly killing their livelihood was repeatedly raised. Petitioner manifested that this issue and the resolution of the administrative agencies on the cases will help this Court in resolving the Petition.

This Court cannot grant this manifestation. The Petition here assails the denial of petitioner's Petition for Injunction against respondent City of Mandaluyong. While petitioner has a right to petition the government for redress of its grievances, what is at issue here is whether petitioner's members have a clear legal right that may have been violated.

As the issue of illegal operations of UV Express vehicles was not raised in the Petition, this Court cannot use it to resolve the issues raised in the Petition. After a full-blown trial on the merits, the trial court was not satisfied that the two requisites for injunction exist. The Court of Appeals affirmed this decision. This Court finds no reason to reverse these findings.

WHEREFORE, the Petition is **DENIED** for lack of merit. The May 26, 2015 Decision of the Court of Appeals in CA-G.R. CV No. 100496 is **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 220868. June 15, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner*, *vs.* **SPOUSES REYNALDO DELA CRUZ and LORETTO U. DELA CRUZ,** *respondents*.

SYLLABUS

1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE) GOVERNS THE APPLICATION FOR REGISTRATION OF BOTH PUBLIC AND PRIVATE LANDS, AND THE NATURE OF THE LAND BEING ALIENABLE AND DISPOSABLE MUST BE PROVEN BY A POSITIVE ACT OF THE EXECUTIVE DEPARTMENT CLASSIFYING THE LAND AS SUCH. — Application for registration of both public and private lands is governed by P.D. No. 1529 x x x. Section 14 (1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of public domain since June 12, 1945 or earlier without regard to whether the land was susceptible to private ownership at that time; on the other hand, Section 14(2) of P.D. No. 1529 is registration of a patrimonial property of the public domain acquired through prescription. x x x In both instances, the nature of the land being alienable and disposable land of public domain must be established. This is so because the Regalian Doctrine presumes that all lands which do not clearly appear to be within private ownership belongs to the State. To prove the classification of a land as alienable and disposable, a positive act of the Executive Department classifying the lands as such is necessary. For this purpose, the applicant may submit: (1) Certification from the CENRO or Provincial Environment and Natural Resources Office (PENRO); and (2) Certification from the DENR Secretary certified as a true copy by the legal custodian of the official records.

2. ID.; ID.; REGISTRATION UNDER SECTION 14(1); REQUISITES. — Section 14 (1) of P.D. No. 1529 requires the concurrence of the following: (1) the land or property forms part of the alienable and disposable lands of the public domain; (2) the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and (3) it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

3. ID.; ID.; REGISTRATION UNDER SECTION 14(2); REQUISITES. — [U]nder Section 14(2) of P.D. No. 1529, the following must be established: a) the land is an alienable and disposable, and patrimonial property of the public domain; (b) the applicant and its predecessors-in-interest have been in

possession of the land for at least 10 years, in good faith and with just title, or for at least 30 years, regardless of good faith or just title; and (c) the land had already been converted to or declared as patrimonial property of the State at the beginning of the said 10-year or 30-year period of possession.

4. ID.; ID.; LAND REGISTRATION; THE APPLICANT BEARS THE BURDEN OF PROVING THAT THE LAND IS ALIENABLE AND DISPOSABLE. — An examination of the records reveal that the evidence offered by the respondents to show the disposability and alienability of the subject land comprises of: (1) testimony of the Special Investigator of the CENRO who testified that the subject land is indeed alienable and disposable; (2) CENRO Report dated December 31, 1925; (3) Survey Plan of the subject land; and (4) Technical Description of the subject land. However, such pieces of evidence are not sufficient to uphold the registration of title of the subject land in their names. x x x [I]t is necessary and mandatory for them to submit a Certification from the DENR Secretary, manifesting his approval for the release of the subject land as alienable and disposable. Thus, respondents failed to discharge the burden of proof. x x x [T]he burden of proof is not shifted by the mere fact that petitioner did not present countervailing evidence. The rule is explicit in that the applicant bears the burden of proving that the land is alienable and disposable. Failure of the respondents to establish the first element for land registration warrants the denial of the petition.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eleno O. Peralta for respondents.

R E S O L U T I O N

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

In this Petition for Review on *Certiorari*,[1] the Republic of the Philippines (petitioner), through the Office of the Solicitor

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

General (OSG) assails the Decision[2] dated September 24, 2014 and the Resolution[3] dated October 5, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 96427, which affirmed the ruling of the Municipal Trial Court of Los Baños, Laguna (MTC).

The Relevant Antecedents

The case stemmed from a petition for application for land registration covering Lot 7001, Cad. 450 (subject land) with an area of 404 square meters filed by the spouses Reynaldo and Loretto dela Cruz (respondents). In said petition, they claimed that the subject land formed part of the alienable and disposable land of public domain and that they have been in an open, public, notorious and continuous possession thereof for more than 34 years.[4]

To reinforce their claim, respondents presented the following witnesses:

Reynaldo dela Cruz (Reynaldo) narrated that they bought the subject land from Flordeliza Delos Reyes (Delos Reyes) through a Deed of Absolute Sale in 1981 and that tax declarations were issued, the earliest of which was in 1969 as regards the subject land. After the sale, they began occupying the same and started planting trees; and since then, they have been in possession of the same for more than 34 years.[5]

Delos Reyes corroborated the testimony of Reynaldo as to the sale of the subject land. She testified that she was in occupation of the subject land since the 1960s after she inherited the same from her parents.[6]

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[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Edwin D. Sorongon, concurring; *id.* at 11-18.

[3] *Id.* at 19-21.

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

[5] *Id.* at 68.

[6] *Id.*

Rosenda Visperas, Alexandrina Arguellas, and Salvacion Torririt testified that they knew respondents as buyers of the subject land.[7]

Rodolfo Gonzales, Special Investigator of the Department of Environment and Natural Resources (DENR) Community Environment and Natural Resources Office (CENRO) of Los Baños, Laguna, maintained that the subject land is alienable and disposable portion of the Municipality and can be disposed of.[8]

Petitioner, on the other hand, did not present any evidence to rebut the evidence presented by respondents.[9]

In a Decision[10] dated August 12, 2010, the MTC declared the subject land to be alienable and disposable land in view of the compliance of respondents with the requirements under Section 14 (1) of Presidential Decree (P.D.) No. 1529 such as the testimony of the Special Investigator, CENRO Report, and their possession of the subject land in an open, continuous, exclusive, and notorious manner in the concept of an owner prior to June 12, 1945. The *fallo* thereof reads:

> WHEREFORE, in view of the foregoing, the Court hereby CONFIRMS and ORDERS the registration of title over the subject parcel of land in favor of the applicants.
>
> After this decision shall have been become final and [executory], let the corresponding Decree over Lot [7001,] Cad 450, Los [Baños] Cadastre Ap-04-006799 be issued in the names of Spouses Reynaldo Dela Cruz and Loretto U. Dela Cruz, both of legal age, Filipinos, residing at Valley Drive, Marymount Village, Brgy. Anos, Los [Baños], Laguna subject to the payment of proper fees.
>
> Let copies of this Decision be furnished the following concerned offices: the Office of the Solicitor General (OSG), 134 Amorsolo St.

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

[8] *Id.* at 69.

[9] *Id.*

[10] Penned by Judge Francisco V.L. Collado, Jr.; *id.* at 66-70.

Legaspi Village, Makati City; the Land Registration Authority (LRA), East Avenue, Quezon City; the Lands Management Bureau (LMB), Binondo, Manila; the Community Environment and Natural Resources Office (CENRO), Los [Baños] , Laguna; the Regional Executive Director, DENR Region IV, 1515 Roxas Blvd., Ermita, Manila; the Register of Deeds, Calamba City; the applicants; and the adjoining owners.

SO ORDERED.[11]

Petitioner filed a Motion for Reconsideration,[12] which was denied for lack of merit in an Order[13] dated January 5, 2011.

While the MTC ruling was based on the application of Section 14 (1) of P.D. No. 1529, petitioner took a different stance on its appeal. The petitioner argued that respondents' application falls under Section 14 (2) of P.D. No. 1529. As such, an express government manifestation that the subject land is already patrimonial or no longer retained for public use, public service, or the development of national wealth is necessary for the prescriptive period for acquisition begin to run.[14]

However, respondents filed a Motion to Withdraw Case,[15] averring that they opted to withdraw their application for registration for land titling considering that they have already incurred legal expenses and the long and tedious legal process which they have to go through only to obtain a title for a small area of land.

Nevertheless, in a Decision[16] dated September 24, 2014, the CA denied the appeal and affirmed *in toto* the ruling of the MTC. The CA maintained that respondents were able to establish that the subject land formed part of the disposable and alienable

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[11] *Id.* at 70.

[12] *Id.* at 71-81.

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

[14] *Id.* at 13.

[15] *Id.* at 84-85.

[16] *Supra* note 2.

lands of the public domain; and that they and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession of the same under a *bona fide* claim of ownership since June 12, 1945 or earlier under Section 14 (1) of P.D. No. 1529. Thus:

> WHEREFORE, in view of the foregoing, the instant Appeal is DENIED. The assailed Decision of the Municipal Trial Court (MTC), Fourth Judicial Region, Los Baños, Laguna dated 12 August 2010, in LRC Case No. 08-2003 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[17]

Petitioner filed this instant petition, alleging that the application for land registration filed by respondents falls under Section 14 (2) of the same law in view of their averment as regards their possession of the subject land since 1969 evidenced by a tax declaration, and not since June 12, 1945 or earlier as required by Section 14 (1) of P.D. No. 1529.

The Issue

Whether or not the registration of the subject land is proper.

The Court's Ruling

Application for registration of both public and private lands is governed by P.D. No. 1529, to wit:

> SEC. 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a [*bona fide*] claim of ownership since June 12, 1945, or earlier.

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[17] *Id.* at 18.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

In sum, Section 14 (1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of public domain since June 12, 1945 or earlier without regard to whether the land was susceptible to private ownership at that time;[18] on the other hand, Section 14 (2) of P.D. No. 1529 is registration of a patrimonial property of the public domain acquired through prescription.[19]

To be precise, Section 14 (1) of P.D. No. 1529 requires the concurrence of the following: (1) the land or property forms part of the alienable and disposable lands of the public domain; (2) the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and (3) it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.[20]

Meanwhile, under Section 14 (2) of P.D. No. 1529, the following must be established:

a) the land is an alienable and disposable, and patrimonial property of the public domain; (b) the applicant and its predecessors-in-interest have been in possession of the land for at least 10 years, in good faith and with just title, or for at least 30 years, regardless of good faith or just title; and (c) the land had already been converted to or declared as patrimonial property of the State at the beginning of the said 10-year or 30-year period of possession.[21]

In both instances, the nature of the land being alienable and disposable land of public domain must be established. This is so because the Regalian Doctrine presumes that all lands which

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[18] *Espiritu, Jr. v. Republic*, 811 Phil. 506, 518 (2017).

[19] See *Republic v. Zurbaran Realty and Development Corporation*, 730 Phil. 263, 275 (2014).

[20] *Dumo v. Republic*, G.R. No. 218269, June 6, 2018, 865 SCRA 119, 147.

[21] *Espiritu, Jr. v. Republic*, *supra*, at 523.

do not clearly appear to be within private ownership belongs to the State.[22]

To prove the classification of a land as alienable and disposable, a positive act of the Executive Department classifying the lands as such is necessary. For this purpose, the applicant may submit: (1) Certification from the CENRO or Provincial Environment and Natural Resources Office (PENRO); and (2) Certification from the DENR Secretary certified as a true copy by the legal custodian of the official records.[23]

An examination of the records reveal that the evidence offered by the respondents to show the disposability and alienability of the subject land comprises of: (1) testimony of the Special Investigator of the CENRO who testified that the subject land is indeed alienable and disposable; (2) CENRO Report dated December 31, 1925; (3) Survey Plan of the subject land; and (4) Technical Description of the subject land.

However, such pieces of evidence are not sufficient to uphold the registration of title of the subject land in their names. As discussed, it is necessary and mandatory for them to submit a Certification from the DENR Secretary, manifesting his approval for the release of the subject land as alienable and disposable. Thus, respondents failed to discharge the burden of proof.

In *Republic v. T.A.N. Properties, Inc.*,[24] the Court was categorical in requiring the applicants to completely submit the requirements for land registration, *viz.*:

> It is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or

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[22] *Dumo v. Republic*, *supra*, at .

[23] See *Republic v. Naguit*, 489 Phil. 405, 415 (2005).

[24] 578 Phil. 441 (2008).

CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.[25]

In the succeeding cases of *Espiritu, Jr. v. Republic*[26] and *Republic v. Bautista*,[27] this Court strictly applied the ruling in *T.A.N. Properties* when it held that a CENRO Certification is insufficient to overcome the presumption of State ownership. This Court further required a DENR Certification stating that the subject land was verified to be within the alienable and disposable part of public domain is indispensable.

Moreover, the burden of proof is not shifted by the mere fact that petitioner did not present countervailing evidence. The rule is explicit in that the applicant bears the burden of proving that the land is alienable and disposable.

Failure of the respondents to establish the first element for land registration warrants the denial of the petition.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. Accordingly, the Decision dated September 24, 2014 and the Resolution dated October 5, 2015 of the Court of Appeals in CA-G.R. CV No. 96427 are **REVERSED and SET ASIDE**. The application for registration of land filed by the spouses Reynaldo and Loretto dela Cruz is **DENIED**.

SO ORDERED.

Perlas-Bernabe,[*] *Caguioa* (*Acting Chairperson*)*, Lazaro-Javier,* and *Lopez, JJ.*, concur.

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[25] *Id.* at 452-453.

[26] *Supra* note 18.

[27] G.R. No. 211664, November 12, 2018.

[*] Additional member in lieu of Chief Justice Diosdado M. Peralta per Raffle dated March 2, 2020.

THIRD DIVISION

[G.R. No. 227777. June 15, 2020]

OMAR VILLARBA, *petitioner*, *vs.* **COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT; ACCUSED IS INFORMED OF THE SPECIFIC CHARGES AND THE CORRESPONDING PENALTY. —** Due process in criminal prosecutions requires that an accused be "informed of the nature and cause of the accusation against him," a right enshrined in our very Constitution. This constitutional mandate is reinforced in the procedural rules instated to safeguard the rights of the accused. Arraignment is one of these safeguards. Due process requires that the accusation be in due form and that the accused be given the opportunity to answer the accusation against them. As their liberty is at stake, the accused should not be left in the dark about why they are being charged, and must be apprised of the necessary information as to the charges against them. Arraignment is the accused's first opportunity to know the precise charge pressed against them. During the arraignment, they are "informed of the reason for [their] indictment, the specific charges [they are] bound to face, and the corresponding penalty that could be possibly meted against [them]." Hence, arraignment is not a mere formality, but a legal imperative to satisfy the constitutional requirements of due process.

2. **ID.; ID.; ID.; IN RELATION TO RULE ON THE AMENDMENTS OF THE INFORMATION, FORMAL OR SUBSTANTIAL; DISCUSSED. —** Arraignment is equally important in rules on amendments of the information. [Under] Rule 110, Section 14 of the 2000 Revised Rules of Criminal Procedure x x x [A]ny amendment—be it formal or substantial—may be made without leave of court before the arraignment. Once the arraignment is conducted, however, formal amendments may be made but only if there is leave of court and if such amendment does not prejudice the rights of the accused. A substantial amendment, on the other hand, is no longer allowed unless it "is beneficial

to the accused." Notably, unlike for a substantial amendment, a second arraignment is not required for a formal amendment. This is so because a formal amendment does not charge a new offense, alter the prosecution's theory, or adversely affect the accused's substantial rights. x x x As held in jurisprudence, the following are merely formal amendments: (1) new allegations only affecting the range of the imposable penalty; (2) amendments that do not change the offense originally charged; (3) allegations that will not alter the prosecution's theory as to surprise the accused and affect their form of defense; (4) amendments that do not prejudice an accused's substantial rights; and (5) amendments that only address the vagueness in the information but does not "introduce new and material facts" and those which "merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged." On the other hand, substantial amendments refer to the "recital of facts constituting the offense charged and determinative of the jurisdiction of the court." In *Ricarze v. Court of Appeals*, this Court held that the test of determining whether an amendment is substantial is the effect of the amendment on the defense and evidence. An amendment is deemed substantial if the accused's defense and evidence will no longer be applicable after the amendment is made.

3. ID.; ID.; PROSECUTION OF OFFENSES; INFORMATION; SUFFICIENCY OF INFORMATION. — The constitutional right to be informed of the nature and cause of the accusation against an accused further requires a sufficient complaint or information. It is deeply rooted in one's constitutional rights to due process and the presumption of innocence. Due process dictates that an accused be fully informed of the reason and basis for their indictment. This would allow an accused to properly form a theory and to prepare their defense, because they are "presumed to have no independent knowledge of the facts constituting the offense they have purportedly committed." In *Andaya v. People*, this Court explained that the purpose of a written accusation is to enable the accused to make their defense, to protect themselves against double jeopardy, and for the court to determine whether the facts alleged are sufficient in law to support a conviction. Hence, a complaint or information must set forth a "specific allegation of every fact and circumstances

necessary to constitute the crime charged." Rule 110, Section 6 of the Rules of Court provides the allegations fundamental to an information, namely: (1) the accused's name;(2) the statute's designation of the offense; (3) the acts or omissions complained of that constitute the offense; (4) the offended party's name; (5) the approximate date of the offense's commission; and (6) the place where the offense was committed. It is critical that all of these elements are alleged in the information. Full compliance with this rule is essential to satisfy the constitutional rights of the accused; conversely, any deviation that prejudices the accused's substantial rights is fatal to the case.

4. ID.; ID.; ID.; ID.; ID.; FACTUAL ALLEGATIONS THAT CONSTITUTE THE OFFENSE ARE SUBSTANTIAL MATTERS; THE INFORMATION, HOWEVER, NEED NOT USE THE EXACT LANGUAGE OF THE STATUTE. — Factual allegations that constitute the offense are substantial matters. Moreover, an accused's right to question a conviction based on facts not alleged in the Information cannot be waived. Thus, even if the prosecution satisfies the burden of proof, but if the offense is not charged or necessarily included in the information, conviction cannot ensue: x x x The allegations in the information are vital because they determine "the real nature and cause of the accusation against an accused[.]" They are given more weight than a prosecutor's designation of the offense in the caption. x x x Nevertheless, the wording of the information does not need to be a verbatim reproduction of the law in alleging the acts or omissions that constitute the offense. Rule 110, Section 9 of the Rules of Court is clear that the information does not need to use the exact language of the statute: x x x Hence, to successfully state the acts or omissions that constitute the offense, they must be "'described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged.' Furthermore, '[t]he use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.'"

5. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — It is settled that the factual findings of the trial court, more so when affirmed by the appellate court, are entitled to great weight and respect.

Particularly, the evaluation of witnesses' credibility is "best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial." x x x The trial court's findings on witness credibility are binding upon this Court, unless substantial facts were shown to have been overlooked, misapprehended, or misinterpreted.

6. **ID.; ID.; ID.; A DEEMED CREDIBLE TESTIMONY OF A SINGLE WITNESS MAY SUFFICE TO ATTAIN CONVICTION.** —[T]he testimony of a single witness may suffice to attain conviction if it is deemed credible. The prosecution has no obligation to present a certain number of witnesses; after all, testimonies are weighed, not numbered. It is inconsequential that only the victim testified on the events that transpired during the hazing. If the trial court found the sole testimony of the victim credible, conviction may ensue. This is not unusual in prosecutions of hazing cases, where the reluctance of fraternity members to speak about the initiation rites persists.

7. **ID.; ID.; DENIAL; WEAK DEFENSE THAT HAS NO GREATER EVIDENTIARY WEIGHT AS AGAINST THE POSITIVE DECLARATION OF A CREDIBLE WITNESS.** — Against Dordas's candid testimony, petitioner's defense of denial utterly fails. This Court has settled that "mere denial . . . is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters." Petitioner's denial is no exception.

APPEARANCES OF COUNSEL

Law Firm of Ildebrando D. Viernesto & Partners for petitioner.

Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

A formal amendment does not change the crime charged or affect the accused's theory or defense. It adds nothing crucial for a conviction as to deprive the accused of the opportunity

to meet the new information. When an amendment only rectifies something that was already included in the original information, it is but a formal amendment. A second arraignment, therefore, is no longer necessary.[1]

Moreover, the information need not reproduce the law verbatim in alleging the acts or omissions that constitute the offense. If its language is understood, the constitutional right to be informed of the nature and cause of the accusation against the accused stands unviolated.[2]

This Court resolves a Petition for Review on *Certiorari*[3] assailing the Decision[4] and Resolution[5] of the Court of Appeals, which affirmed Omar Villarba's (Villarba) conviction[6] for the violation of Republic Act No. 8049, otherwise known as the Anti-Hazing Act of 1995.

Villarba was among the members[7] of the Junior Order of Kalantiao, a fraternity based in the Central Philippine University

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[1] *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64644> [Per J. Leonen, Third Division].

[2] *Quimvel v. People*, 808 Phil. 889, 920 (2017) [Per J. Velasco, Jr., *En Banc*].

[3] *Rollo*, pp. 15-29.

[4] *Id.* at 31-45. The Decision dated December 21, 2012 was penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Pedro B. Corales of the Eighteenth Division, Court of Appeals, Cebu City.

[5] *Id.* at 57-60. The Resolution dated August 30, 2016 was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pamela Ann Abella Maximo and Marilyn B. Lagura-Yap of the Special Former Eighteenth Division of the Court of Appeals, Cebu City.

[6] *Id.* at 119-169. The Decision dated November 14, 2006 in Crim. Case No. 02-56194 was penned by Judge Victor E. Gelvezon of the Regional Trial Court of Iloilo City, Branch 36.

[7] *Id.* at 119. The other accused were Vincent Elben Gonzales, Rasty Jones Sumagaysay, Lorly Totica, Emily Garcia, Sergio Cercado, Jr., Edrel Tojoy, Oliver Montejo, Donnaline Locsin, May Andres, Paul Andre

in Iloilo City,[8] who were all charged in 2003 with violating the Anti-Hazing Act for their acts against Wilson Dordas III (Dordas).

The accusatory portion of the original Information reads:

> That on or about the 15th day of September 2001, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, members and officers of the Junior Order of Kalantiao, a fraternity, conspiring and confederating with each other, working together and helping one another, did then and there willfully, unlawfully and criminally subject one ***Wilson Dordas*** to hazing or initiation by placing ***Wilson Dordas***, the recruit, in some embarrassing or humiliating situation such as forcing him to do physical activity or subjecting him to physical or psychological suffering or injury which resulted to his confinement and operation and prevented him from engaging in his habitual work for more than ninety (90) days.
>
> CONTRARY TO LAW.[9] (Emphasis supplied)

All the accused were arraigned under the original Information, and they accordingly pleaded not guilty to the crime charged.[10] Subsequently, the Information was amended[11] by adding the suffix 'III' to the name 'Wilson Dordas' to correct his name. Pre-trial and trial ensued without arraignment on the amended Information.[12]

During trial, the prosecution presented Dordas as witness. He testified that he learned about the Junior Order of Kalantiao through Villarba, his classmate and then fraternity chairperson. In August 2001, Villarba recruited Dordas to join the fraternity,

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Margarico, Marie Hope Talabucon, Nehru Sanico, Joann Malunda, Wesley Corvera, Keith Piamonte, Vincent Scrafin Singian, Hennie Bandojo, Christy Alejaga, Chester Roy Rogan, Roma Aspero, and Rogen Magno.

[8] *Id.* at 121.

[9] *Id.* at 170.

[10] *Id.* at 120.

[11] *Id.* at 119-120.

[12] *Id.* at 120.

assuring him that the membership would help him in his studies, and that no physical harm would be involved in the application process.[13]

Dordas agreed. Yet, after attending meetings and taking a written examination,[14] Dordas and his co-applicants were made to perform various tasks in the campus, many of them humiliating and foolish stunts. They were ordered to act as models, perform yoga and karate, and shout while running around the flagpole. They were also made to jog around the campus with their feet tied and, at times, to sing in front of strangers.[15]

On September 15, 2001, Dordas and his co-applicants were brought to Racrap Beach Resort in Calaparan, Arevalo, Iloilo City for the final rites. Upon arrival that evening, they were told to eat a mix of rice, canned goods, and hot peppers. When they failed to finish the meal, Villarba told them to chew hot peppers as punishment. Dordas ate about five of them.[16]

Afterward, the applicants passed through a series of stations where they were asked, among others, to recite the organization's preamble. Whenever they failed to perform the tasks, they suffered different forms of punishment. Dordas was instructed to jog and crawl around the resort, and cling and lift himself on scaffoldings. He was made to climb a coconut tree and shout that he was a gecko. His right hand was used as an ashtray. Hot peppers were squeezed on his lips and left eye. He was slapped in the face for three to five times.[17]

After a while, Dordas and his co-applicants were brought inside a big cottage, where the members blindfolded them. After being asked to turn and walk for a few meters, two members held his hands while another punched him in his right waist.

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[13] *Id.* at 121.

[14] *Id.* at 122.

[15] *Id.* at 122-123.

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

[17] *Id.* at 125-127.

Startled, Dordas struggled to remove his blindfold and was able to see some members, including Villarba and another member who then each threw a punch in his stomach. Dordas was later made to lie face down on a table and recite the preamble while the members dripped hot wax on his body. Soon after this ordeal, Dordas officially became a member of the fraternity.[18]

When Dordas went home the morning after, he complained of an intense pain in his abdomen. His family then brought him to St. Paul's Hospital, where he underwent surgery due to liver damage.[19]

For its part, the defense presented several witnesses, among them Villarba. Villarba admitted that he was a member of the fraternity and that he recruited Dordas. He confirmed that Dordas took a written test along with psychological and physical examinations, and underwent final rites at the same beach resort that Dordas identified. However, Villarba testified that their recruits only had to do sit-ups, push-ups, or jogging,[20] insisting that "no physical harm was inflicted on the recruits."[21]

In its November 14, 2006 Decision,[22] the Regional Trial Court found all the accused guilty of the crime charged. The relevant part of the dispositive portion reads:

WHEREFORE, judgment is hereby rendered as follows:

1. Finding accused OMAR VILLARBA [and co-accused] Guilty beyond reasonable doubt of violation of Republic Act No. 8049 and sentencing them to suffer an indeterminate penalty of imprisonment ranging from Ten (10) Years and One (1) Day of *Prision Mayor*, as minimum to Twelve (12) Years as maximum.

. . . . . .

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[18] *Id.* at 127-129.

[19] *Id.* at 129-130.

[20] *Id.* at 134.

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

[22] *Id.* at 119-169.

4. Ordering accused OMAR VILLARBA [and co-accused] to jointly and severally pay private complainant Wilson Dordas III the sum of Seventy Seven Thousand Three Hundred Five Pesos and Forty-Four Centavos (₱77,305.44) as compensatory damages;

5. Ordering accused OMAR VILLARBA [and co-accused] to jointly and severally pay private complainant Wilson Dordas III the sum of Two Hundred Thousand Pesos (₱200,000.00), as moral damages for the pain and suffering they inflicted upon said complainant;

. . . . . .

7. Ordering accused OMAR VILLARBA [and the other accused] to jointly and severally pay private complainant Wilson Dordas III the sum of One Hundred Two Thousand Two Hundred Eighty Pesos (₱102,280.00[)] as attorney's fees and expenses for litigation.

SO ORDERED.[23]

The trial court held that the prosecution provided a clear account of the hazing through the credible testimony of Dordas, who identified all the accused and pinpointed their specific acts.[24] It gave little faith to the accused, whose defense of denial was not substantiated by evidence, and whose testimonies were conflicting on significant points.[25] It further observed that none of them fully accounted for the activities prior to the final rites, intentionally evading the topic instead.[26]

The trial court was convinced that the injuries and humiliation suffered by Dordas were caused by Villarba and the other accused as part of the initiation rites.[27] It held that they violated the Anti-Hazing Act when they punched Dordas and inflicted abdominal injury on him.[28]

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[23] *Id.* at 167-169.

[24] *Id.* at 152.

[25] *Id.* at 147.

[26] *Id.* at 150.

[27] *Id.* at 158-160.

[28] *Id.* at 164.

Villarba appealed along with his co-accused, mainly averring that the Information charged against him was invalid. He argued that the phrase "as a prerequisite for admission into membership in a fraternity, sorority or organization"[29] was an essential element of hazing, which should have been alleged in the Information. He also found fault in not being arraigned under the amended Information, which added 'III' to the victim's name.[30]

Additionally, Villarba alleged that Dordas's sworn statement before the university for administrative investigation conflicted with the one he gave before the National Bureau of Investigation.[31]

Nonetheless, the Court of Appeals upheld Villarba's conviction. In its December 21, 2012 Decision,[32] it disposed, thus:

> **WHEREFORE**, in view of the foregoing, the instant appeal is hereby **DENIED**. The Decision dated 16 *(sic)* November 2006 rendered by Branch 36 of the Regional Trial Court of Iloilo finding the accused-appellants Omar Villarba and [co-accused] guilty beyond reasonable doubt of violation of Republic Act No. 8049 and sentencing them to suffer an indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of *prision mayor* as minimum to twelve (12) years as maximum is hereby **SUSTAINED** and **AFFIRMED**.
>
> Upon finality, let the entire records of this case be remanded to the court *a quo* for the execution of the judgment.
>
> Costs against the accused-appellants.
>
> **SO ORDERED**.[33] (Emphasis in the original)

To the Court of Appeals, the element of initiation activities as a prerequisite for admission to the fraternity was not an

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[29] *Id.* at 38.

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

[31] *Id.* at 39.

[32] *Id.* at 31-45.

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

essential part of the Information. Instead, the essential element was the "infliction of physical or psychological suffering or injury which resulted from the hazing or initiation rites of the recruit, neophyte or applicant."[34] Since initiation activities are required for membership in the fraternity, they already formed part of the definition of hazing, the Court of Appeals explained. In any case, the omission did "not make the accused ignorant of the crime they were being charged with, and what defenses they needed to prepare for trial."[35]

As to the amendment in the victim's name, the Court of Appeals held that Villarba did not need to be rearraigned. It explained that the amendment was merely a formal one, which did not change the nature of the charge, affect the essence of the offense, or deprive the accused of the opportunity to meet the averment. It also deemed a re-arraignment unnecessary since Villarba, who recruited Dordas, would have certainly known the victim's identity.[36]

The Court of Appeals also brushed aside the supposed conflicts in Dordas's sworn statements.[37] It noted that although Dordas did not tell in his statement before the university that Villarba punched him, he did so during trial anyway. In any event, the Court of Appeals gave respect to the trial court's finding that Dordas's testimony was credible.[38]

Villarba moved for reconsideration, but the Motion was denied in the Court of Appeals' August 30, 2016 Resolution.[39] Subsequently, Villarba filed this Petition for Review on *Certiorari*[40] before this Court.

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[34] *Id.* at 40.

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

[36] *Id.* at 41.

[37] *Id.* at 42.

[38] *Id.* at 44.

[39] *Id.* at 57-60.

[40] *Id.* at 15-29.

Similar to his arguments before the Court of Appeals, petitioner mainly assigns fault to the Information charged, arguing that his right to due process under Article III, Section 14 of the Constitution was violated.[41] He avers that his right "to be informed of the nature and cause of the accusation against him"[42] was violated when he was not rearraigned after the Information had been amended.[43]

Petitioner insists that the correction of the victim's name is a substantial amendment because it will alter his defense. He zeroes in on Rule 110, Section 6 of the Rules of Court, which states that an Information must contain the offended party's name.[44]

Citing the same provision, petitioner also claims that the Information's failure to state that "the acts or omission complained of were committed as pre-requisites to the victim's membership to the fraternity"[45] was fatal to the case. He reasons that without this element, it is possible to argue that the acts resulting in physical injuries did not violate the Anti-Hazing Act.[46]

In its Comment,[47] the Office of the Solicitor General counters that adding the suffix 'III' in the victim's name was not a substantial change, because it did not involve a "recital of facts constituting the offense charged or the jurisdiction of the court"[48] and nor would it change petitioner's defense. It also echoed the Court of Appeals' ruling that a rearraignment was unnecessary because petitioner is obviously aware of the victim's identity.[49]

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[41] *Id.* at 21-A-22.

[42] *Id.* at 22.

[43] *Id.* at 22-24.

[44] *Id.*

[45] *Id.* at 26.

[46] *Id.* at 24-26.

[47] *Id.* at 82-91.

[48] *Id.* at 84-85.

[49] *Id.* at 85-86.

Moreover, the Office of the Solicitor General asserts that petitioner was "sufficiently informed of the nature and cause of the accusation against him."[50] It claims that the Information clearly describes the acts constituting the crime charged — that the accused were members of the fraternity and that Dordas was a recruit who was subjected to hazing.[51] Thus, it asserts, the phrase "the physical or mental suffering or injury was inflicted as a prerequisite for admission to a fraternity, sorority or organization" is not necessary in the Information.[52]

In his Reply,[53] petitioner adds that the testimony of Dordas is insufficient to convict him of the crime. As such, he argues that the prosecution failed to prove that there was a hazing or an initiation rite that transpired on September 15, 2001.[54]

He asserts that Dordas's testimony was bare and self-serving, which must fail against the defense's straightforward and corroborated narration. He cites the testimony of the resort owner who stated that she did not notice any unusual activity when the fraternity rented the place.[55]

Moreover, petitioner insists that Dordas's statements were conflicting.[56] He points out that while Dordas renounced his first affidavit and offered a new one that identified more accused, the investigating prosecutor observed that the earlier one was more detailed and credible.[57] He likewise attempts to destroy Dordas's narration during trial, finding it unbelievable how Dordas was able to remove his blindfold while his hands were held by

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[50] *Id.* at 86.

[51] *Id.* at 86-87.

[52] *Id.* at 87.

[53] *Id.* at 100-110.

[54] *Id.* at 101-102.

[55] *Id.*

[56] *Id.* at 102.

[57] *Id.* at 103.

two members. Petitioner maintains that this contradiction affects Dordas's credibility and casts doubt on the truth of his other statements.[58]

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

First, whether or not the amendment to the Information in this case is substantial;

Second, whether or not the Information is considered void for being insufficient; and

Finally, whether or not the prosecution sufficiently proved the guilt of petitioner Omar Villarba for the violation of the Anti-Hazing Act.

I

Due process in criminal prosecutions requires that an accused be "informed of the nature and cause of the accusation against him,"[59] a right enshrined in our very Constitution. This constitutional mandate is reinforced in the procedural rules instated to safeguard the rights of the accused.

Arraignment is one of these safeguards. Due process requires that the accusation be in due form and that the accused be given the opportunity to answer the accusation against them. As their liberty is at stake, the accused should not be left in the dark about why they are being charged, and must be

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[58] *Id.* at 104.

[59] CONST., Art. III, Sec. 14 (2) provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

apprised of the necessary information as to the charges against them.[60]

Arraignment is the accused's first opportunity to know the precise charge pressed against them. During the arraignment, they are "informed of the reason for [their] indictment, the specific charges [they are] bound to face, and the corresponding penalty that could be possibly meted against [them]."[61]

Hence, arraignment is not a mere formality, but a legal imperative to satisfy the constitutional requirements of due process. In *Kummer v. People*:[62]

> Arraignment is indispensable in bringing the accused to court and in notifying him of the nature and cause of the accusations against him. The importance of arraignment is based on the constitutional right of the accused to be informed. . . . It is only imperative that he is thus made fully aware of the possible loss of freedom, even of his life, depending on the nature of the imputed crime.[63] (Citations omitted)

Arraignment is equally important in rules on amendments of the information. Rule 110, Section 14 of the 2000 Revised Rules of Criminal Procedure provides:

> SECTION 14. *Amendment or substitution.* — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

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[60] *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64644> [Per J. Leonen, Third Division].

[61] *Kummer v. People*, 717 Phil. 670, 687 (2013) [Per J. Brion, Second Division].

[62] 717 Phil. 670 (2013) [Per J. Brion, Second Division].

[63] *Id.* at 687.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

Under this rule, any amendment — be it formal or substantial — may be made without leave of court before the arraignment. Once the arraignment is conducted, however, formal amendments may be made but only if there is leave of court and if such amendment does not prejudice the rights of the accused. A substantial amendment, on the other hand, is no longer allowed unless it "is beneficial to the accused."[64]

Notably, unlike for a substantial amendment, a second arraignment is not required for a formal amendment. This is so because a formal amendment does not charge a new offense, alter the prosecution's theory, or adversely affect the accused's substantial rights. In *Kummer*, this Court explained:

The need for arraignment is equally imperative in an amended information or complaint. This however, we hastily clarify, pertains only to substantial amendments and not to *formal amendments that, by their very nature, do not charge an offense different from that charged in the original complaint or information; do not alter the theory of the prosecution; do not cause any surprise and affect the line of defense; and do not adversely affect the substantial rights of the accused*, such as an amendment in the date of the commission of the offense.

We further stress that *an amendment done after the plea and during trial, in accordance with the rules, does not call for a second*

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[64] *Ricarze v. Court of Appeals*, 544 Phil. 237, 249 (2007) [Per J. Callejo, Sr., Third Division].

plea since the amendment is only as to form. The purpose of an arraignment, that is, to inform the accused of the nature and cause of the accusation against him, has already been attained when the accused was arraigned the first time. The subsequent amendment could not have conceivably come as a surprise to the accused simply because the amendment did not charge a new offense nor alter the theory of the prosecution.[65] (Emphasis supplied)

As held in jurisprudence, the following are merely formal amendments: (1) new allegations only affecting the range of the imposable penalty; (2) amendments that do not change the offense originally charged; (3) allegations that will not alter the prosecution's theory as to surprise the accused and affect their form of defense; (4) amendments that do not prejudice an accused's substantial rights; and (5) amendments that only address the vagueness in the information but does not "introduce new and material facts" and those which "merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged."[66]

On the other hand, substantial amendments refer to the "recital of facts constituting the offense charged and determinative of the jurisdiction of the court."[67]

In *Ricarze v. Court of Appeals*,[68] this Court held that the test of determining whether an amendment is substantial is the effect of the amendment on the defense and evidence. An amendment is deemed substantial if the accused's defense and evidence will no longer be applicable after the amendment is made. Thus:

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[65] *Kummer v. People*, 717 Phil. 670, 687-688 (2013) [Per J. Brion, Second Division].

[66] *Ricarze v. Court of Appeals*, 544 Phil. 237, 249 (2007) [Per J. Callejo, Sr., Third Division] citing *Matalam v. Sandiganbayan*, 495 Phil. 664 (2005) [Per J. Chico-Nazario, Second Division].

[67] *Id.*

[68] 544 Phil. 237 (2007) [Per J. Callejo, Sr., Third Division].

The test as to whether a defendant is prejudiced by the amendment is whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.[69] (Citation omitted)

Here, petitioner argues that the inclusion of the suffix 'III' to the name of Dordas in the Information was a substantial amendment, which should have warranted a second arraignment. This Court disagrees.

The amendment does not change the crime charged and the theory or defense of petitioner. It added nothing crucial for a conviction of the crime charged. It did not change the essence of the offense or cause surprise as to deprive petitioner of the opportunity to meet the new information. Instead, the amendment only states with precision something that was already included in the original Information. It is, therefore, merely a formal amendment.

Since the amendment was only of form, and not of substance, an arraignment under the amended Information is therefore unnecessary.[70]

II

The constitutional right to be informed of the nature and cause of the accusation against an accused further requires a sufficient complaint or information. It is deeply rooted in one's constitutional rights to due process and the presumption of innocence.[71]

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[69] *Id.* at 249-250.

[70] *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64644> [Per J. Leonen, Third Division].

[71] CONST., Art. III, Sec. 14 provides:

Due process dictates that an accused be fully informed of the reason and basis for their indictment. This would allow an accused to properly form a theory and to prepare their defense, because they are "presumed to have no independent knowledge of the facts constituting the offense they have purportedly committed."[72]

In *Andaya v. People*, [73] this Court explained that the purpose of a written accusation is to enable the accused to make their defense, to protect themselves against double jeopardy, and for the court to determine whether the facts alleged are sufficient in law to support a conviction.[74] Hence, a complaint or information must set forth a "specific allegation of every fact and circumstances necessary to constitute the crime charged."[75]

Rule 110, Section 6 of the Rules of Court provides the allegations fundamental to an information, namely: (1) the accused's name; (2) the statute's designation of the offense; (3) the acts or omissions complained of that constitute the offense; (4) the offended party's name; (5) the approximate date of the offense's commission; and (6) the place where the offense was committed.[76]

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[72] *People v. Bayabos*, 754 Phil. 90, 103-104 (2015) [Per *C.J.* Sereno, First Division].

[73] 526 Phil. 480 (2006) [Per *J.* Ynares-Santiago, First Division].

[74] *Id.* at 496-497.

[75] *Id.* at 496 citing *U.S. v. Karelsen*, 3 Phil. 226 (1904) [Per *J.* Johnson, *En Banc*].

[76] RULES OF COURT, Rule 110, Sec. 6 provides:

It is critical that all of these elements are alleged in the information. Full compliance with this rule is essential to satisfy the constitutional rights of the accused; conversely, any deviation that prejudices the accused's substantial rights is fatal to the case. In *Enrile v. People*:[77]

> A concomitant component of this stage of the proceedings is that the Information should provide the accused with fair notice of the accusations made against him, so that he will be able to make an intelligent plea and prepare a defense. Moreover, the Information must provide some means of ensuring that the crime for which the accused is brought to trial is in fact one for which he was charged, rather than some alternative crime seized upon by the prosecution in light of subsequently discovered evidence. Likewise, it must indicate just what crime or crimes an accused is being tried for, in order to avoid subsequent attempts to retry him for the same crime or crimes. In other words, the Information must permit the accused to prepare his defense, ensure that he is prosecuted only on the basis of facts presented, enable him to plead jeopardy against a later prosecution, and inform the court of the facts alleged so that it can determine the sufficiency of the charge.
>
> Oftentimes, this is achieved when the Information alleges the material elements of the crime charged. If the Information fails to comply with this basic standard, it would be quashed on the ground that it fails to charge an offense. . . .[78] (Citations omitted)

Factual allegations that constitute the offense are substantial matters. Moreover, an accused's right to question a conviction based on facts not alleged in the Information cannot be

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SECTION 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.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

[77] 766 Phil. 75 (2015) [Per *J.* Brion, *En Banc*].

[78] *Id.* at 104-105.

waived.[79] Thus, even if the prosecution satisfies the burden of proof, but if the offense is not charged or necessarily included in the information, conviction cannot ensue:

> The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.[80] (Citations omitted)

The allegations in the information are vital because they determine "the real nature and cause of the accusation against an accused[.]"[81] They are given more weight than a prosecutor's designation of the offense in the caption. In *Quimvel v. People*:[82]

> Indeed, the Court has consistently put more premium on the facts embodied in the Information as constituting the offense rather than on the designation of the offense in the caption. In fact, an investigating prosecutor is not required to be absolutely accurate in designating the offense by its formal name in the law. What determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the Information or Complaint, not the caption or preamble thereof nor the specification of the provision of law alleged to have been violated, being

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[79] *David v. People*, 767 Phil. 519, 532 (2015) [Per *J.* Carpio, Second Division].

[80] *Andaya v. People*, 526 Phil. 480, 497 (2006) [Per *J.* Ynares-Santiago, First Division].

[81] *Quimvel v. People*, 808 Phil. 889, 913 (2017) [Per *J.* Velasco, Jr., *En Banc*].

[82] 808 Phil. 889 (2017) [Per *J.* Velasco, Jr., *En Banc*].

conclusions of law. It then behooves this Court to place the text of the Information under scrutiny.[83] (Citation omitted)

Nevertheless, the wording of the information does not need to be a verbatim reproduction of the law in alleging the acts or omissions that constitute the offense. Rule 110, Section 9 of the Rules of Court is clear that the information does not need to use the exact language of the statute:

> SECTION 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Hence, to successfully state the acts or omissions that constitute the offense, they must be "'described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged.' Furthermore, '[t]he use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.'"[84]

Here, petitioner claims that the Information is insufficient for failing to state that the acts or omissions complained of were committed as a prerequisite to the victim's membership to the fraternity.[85] He reasons that the definition of hazing under the Anti-Hazing Act requires that the "initiation rite or practice was used as a prerequisite for admission into membership in a fraternity, sorority or organization."[86] Absent this requisite, he asserts that the acts done cannot be penalized under the law.[87]

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[83] *Id.* at 913.

[84] *Id.* at 920 citing *Lazarte v. Sandiganbayan*, 600 Phil. 475 (2009) [Per J. Tinga, *En Banc*] and *Serapio v. Sandiganbayan*, 444 Phil. 499, 522 (2003) [Per J. Callejo, Sr., *En Banc*].

[85] *Rollo*, p. 26.

[86] *Id.* at 102.

[87] *Id.*

The question, therefore, is whether the phrase in the Information, "did then and there willfully, unlawfully and criminally subject one Wilson Dordas III to hazing or initiation by placing Wilson Dordas III, the recruit, in some embarrassing or humiliating situation such as forcing him to do physical activity or subjecting him to physical or psychological suffering or injury," sufficiently apprised petitioner of the elements of the offense charged.

This Court affirms the Court of Appeals' ruling.

Petitioner's constitutional right to be informed of the nature and cause of the accusation against him was not violated. A plain reading of the Information shows that the allegations stated there sufficiently apprised petitioner that the crime charged against him was hazing.

The pertinent portion of the assailed Information states:

> That on or about the 15th day of September 2001, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, members and officers of the Junior Order of Kalantiao, ***a fraternity***, conspiring and confederating with each other, working together and helping one another, did then and there willfully, unlawfully and criminally subject one Wilson Dordas III ***to hazing or initiation*** by placing Wilson Dordas III, the ***recruit***, in some embarrassing or humiliating situation such as forcing him to do physical activity or subjecting him to physical or psychological suffering or injury which resulted to his confinement and operation and prevented him from engaging in his habitual work for more than ninety (90) days.[88] (Emphasis supplied)

The lack of the phrase "prerequisite to admission" does not make the Information invalid. Even with its absence, the alleged facts, which include the controlling words 'fraternity,' 'initiation,' 'hazing,' and 'recruit,' would have reasonably informed petitioner of the nature and cause of the accusation against him.

Petitioner's constitutional right to be informed of the nature and cause of the accusation against him is upheld as long as

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[88] *Id.* at 119-120.

the crime, as described, is reasonably adequate to apprise him of the offense charged. This mandate does not require a verbatim reiteration of the law. The use of derivatives, synonyms, and allegations of basic facts constituting the crime will suffice.[89]

Moreover, this Court agrees with the Court of Appeals that petitioner was able to prepare his defense and evidence based on the Information. There is no showing that petitioner was caught by surprise during trial or that he was oblivious to the crime charged.[90] In *People v. Wilson Lab-eo*:[91]

> The test of sufficiency of Information is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly. . . . The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial. Significantly, the appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him because of the style or form adopted in the Information.[92] (Citations omitted)

The assailed Information here sufficiently enables a layperson to understand the crime charged. There is no ambiguity in the allegations that prevented petitioner to prepare his defense. As long as this purpose is attained, the constitutional right to be informed of the nature and cause of accusation is satisfied.

In any case, if the Information was indeed insufficient and did not conform to the substantially prescribed form, petitioner should have moved to quash it.[93] Yet, he did no such thing. This means that he had already acquiesced to the validity and sufficiency of the Information.

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[89] *Quimvel v. People*, 808 Phil. 889, 920 (2017) [Per *J.* Velasco, Jr., *En Banc*].

[90] *Rollo*, p. 41.

[91] 424 Phil. 482 (2002) [Per *J.* Carpio, Third Division].

[92] *Id.* at 497.

[93] *Miranda v. Sandiganbayan*, 502 Phil. 423, 444-445 (2005) [Per *J.* Puno, *En Banc*].

III

Finally, petitioner questions how the lower courts found Dordas's testimony credible, when it is supposedly bare and self-serving, and therefore unconvincing. Petitioner's argument, however, is untenable.

It is settled that the factual findings of the trial court, more so when affirmed by the appellate court, are entitled to great weight and respect. Particularly, the evaluation of witnesses' credibility is "best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial."[94] In *People v. Quijada*:[95]

> For, the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. The appellant has miserably failed to convince us that we must depart from this rule.[96] (Citations omitted)

The trial court's findings on witness credibility are binding upon this Court, unless substantial facts were shown to have been overlooked, misapprehended, or misinterpreted. In *People v. Daramay, Jr.*:[97]

> Time and time again, this Court has said that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by a trial court because of its unique opportunity to

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[94] *People v. Corpuz*, 812 Phil. 62, 88 (2017) [Per J. Leonen, Second Division] citing *People v. Badilla*, 749 Phil. 809, 820 (2014) [Per J. Leonen, Second Division].

[95] 328 Phil. 505 (1996) [Per J. Davide, Jr., *En Banc*].

[96] *Id.* at 530-531.

[97] 431 Phil. 715 (2002) [Per J. Panganiban, Third Division].

observe the witnesses firsthand; and to note their demeanor, conduct and attitude under examination. Its findings on such matters are binding and conclusive on appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted. . . .[98] (Citation omitted)

The rule will hold sway in this case as well. Without a showing that the Regional Trial Court and the Court of Appeals have overlooked or misinterpreted the victim's testimony, this Court sees no reason to overturn their factual findings.

To recall, petitioner contends that the lower courts erred in appreciating the victim's testimony, claiming that it was self-serving and uncorroborated by any other witness. He further faults the victim's testimony for being inconsistent and unbelievable.[99]

Petitioner's assertion lacks basis. As held by both the trial court and the Court of Appeals, the victim was able to provide a detailed and categorical narration of his ordeal during the initiation.[100] Dordas identified petitioner as one of the members who punched him in the abdomen. Thus:

ATTY[.] MARANON:
Mr. Dordas, last December 8, 2003, you testified before the Honorable Court that you are blindfolded and guided to the elevated portion of the big cottage and thereafter, they held your both two hands [sic] and you were boxed and hit on the right portion of your body. My question now is: After you were hit, can you please tell us what happened next?
x x x x x x x x x
After you have struggled and said you tried to free yourself from the hold of three persons holding your hands, can you please tell us what happened next?

WITNESS:
I was able to remove my blindfold.

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[98] *Id.* at 727.

[99] *Id.* at 102-104.

[100] *Rollo*, p. 44.

ATTY. MARANON:
Because you were able to remove . . . your blindfold, can you please tell us whether you were able to identify those persons who were holding your hands?

x x x x x x x x x

WITNESS:
When I faced front again somebody suddenly boxed me.

ATTY[.] MARANON:
And were [you] able to identify who was that person who boxed you?

WITNESS:
Yes sir.

ATTY. MARANON:
Who was he?

WITNESS:
Omar Villarba.

ATTY. MARANON:
Were you hit?

WITNESS:
Yes sir.

ATTY. MARANON:
Where?

WITNESS:
Here at my stomach.[101]

The lower courts deemed Dordas's testimony as direct and straightforward. He identified petitioner during trial and clearly narrated the acts that petitioner and the other accused had done to him.

Contrary to petitioner's claim, the testimony of a single witness may suffice to attain conviction if it is deemed credible. The prosecution has no obligation to present a certain number of

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

witnesses; after all, testimonies are weighed, not numbered.[102] It is inconsequential that only the victim testified on the events that transpired during the hazing. If the trial court found the sole testimony of the victim credible, conviction may ensue.

This is not unusual in prosecutions of hazing cases, where the reluctance of fraternity members to speak about the initiation rites persists. In *Dungo v. People*:[103]

> Needless to state, the crime of hazing is shrouded in secrecy. Fraternities and sororities, especially the Greek organizations, are secretive in nature and their members are reluctant to give any information regarding initiation rites. The silence is only broken after someone has been injured so severely that medical attention is required. It is only at this point that the secret is revealed and the activities become public. . . .[104] (Citations omitted)

Against Dordas's candid testimony, petitioner's defense of denial utterly fails. This Court has settled that "mere denial . . . is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters."[105] Petitioner's denial is no exception.

Indeed, not one of petitioner's assertions has withstood the strength of the prosecution's evidence. The lower courts have given full faith to the testimony of Dordas, and this Court finds no reason to differ. Thus, petitioner's conviction is sustained. He is, beyond reasonable doubt, guilty of the crime of hazing.

Hazing is a form of deplorable violence that has no place in any civil society, more so in an association that calls itself a

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[102] *People v. Ponsaran*, 426 Phil. 836, 847 (2002) [Per *J*. Puno, First Division].

[103] 762 Phil. 630 (2015) [Per *J*. Mendoza, Second Division].

[104] *Id.* at 679.

[105] *People v. Buclao*, 736 Phil. 325, 339 (2014) [Per *J*. Leonen, Third Division] citing *People v. Alvero*, 386 Phil. 181, 200 (2000) [*Per Curiam*, *En Banc*].

brotherhood. It is unthinkable that admissions to such organizations are marred by ceremonies of psychological and physical trauma, all shrouded in the name of fraternity. This practice of violence, regardless of its gravity and context, can never be justified. This culture of impunity must come to an end.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The December 21, 2012 Decision and August 30, 2016 Resolution of the Court of Appeals in CA-G.R. CEB-CR No. 00557 are **AFFIRMED**. Petitioner Omar Villarba is found **GUILTY** beyond reasonable doubt of violation of Republic Act No. 8049. He is sentenced to suffer the indeterminate penalty of imprisonment ranging from 10 years and one (1) day of *prision mayor*, as minimum, to 12 years, as maximum. Petitioner shall also pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 228620. June 15, 2020]

SPOUSES CATALINO C. POBLETE and ANITA O. POBLETE, *petitioners*, *vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK, BF CITILAND CORPORATION and REGISTER OF DEEDS OF LAS PIÑAS CITY,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; A DECISION BECOMES FINAL UPON EXPIRATION OF THE REGLEMENTARY PERIOD TO APPEAL AND NO APPEAL

IS PERFECTED WITHIN SUCH PERIOD; EXCEPTIONS. — Notably, a judgment becomes final by operation of law. The finality of a decision becomes a fact when the reglementary period to appeal expires and no appeal is perfected within such period. x x x All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final. No other action can be taken on the decision except to order its execution. The courts cannot modify the judgment to correct perceived errors of law or fact. Public policy and sound practice dictate that every litigation must come to an end at the risk of occasional errors. This is the doctrine of immutability of a final judgment. The rule, however, is subject to well-known exceptions, namely, the correction of clerical errors, *nunc pro tunc* entries, void judgments, and supervening events. A clerical error is exemplified by typographical mistake or arithmetic miscalculation. It also includes instances when words are interchanged or when inadvertent omissions create ambiguity. Similarly, a *nunc pro tunc* judgment or order is issued to make the record speak of a judicial action which has been actually taken but had been omitted either through inadvertence or mistake. It may be rendered only in the presence of data regarding the judicial act sought to be recorded and if none of the parties will be prejudiced. On the other hand, a void judgment produces no legal or binding effect. It never acquires the status of a final and executory judgment and is subject to both direct and collateral attack. Lastly, the happening of a supervening event is a ground to set aside or amend a final judgment. It must transpire after the judgment becomes final and executory. It must likewise change or affect the substance of the decision and render its execution inequitable.

2. **ID.; ID.; ID.; ID.; ID.; IN CASE AT BAR, THE DISPOSITIVE PORTION OF THE CA'S FINAL JUDGMENT IN CA-GR CV NO. 94420 AND 95152 MUST BE CLARIFIED TO CARRY OUT THE DECISION INTO EFFECT. —** [C]ompelling reason exists to exclude this case from the application of the doctrine of immutability of a final judgment. This Court has recognized that the dispositive portion of a final and executory judgment may be amended to rectify an inadvertent omission of what it should have logically decreed based on the discussion in the body of the Decision. The Court is vested with inherent authority to effect the necessary consequence of the judgment. However, it should be limited to explaining a vague or equivocal

part of the judgment which hampers its proper and full execution. The Court cannot modify or overturn its Decision in the guise of clarifying ambiguous points. x x x There is no question that a court may clarify a final and executory judgment to carry out its necessary consequences. x x x Here, the Order to surrender and transfer the certificates of title is deemed implied from the Decision declaring Spouses Poblete as owners of the lots and ordering Banco Filipino to refrain from committing acts of dispossession. The fact that it was not mentioned in the dispositive portion is of no moment. A judgment is not confined to what appears on its face but extends as well to those necessary to carry out the Decision into effect.

APPEARANCES OF COUNSEL

Carag Zaballero Llamado & Abiera Law Offices for petitioners.

Mendoza Legaspi & Associates for respondent BF Citiland Corp.

D E C I S I O N

LOPEZ, *J.*:

The application of the doctrine of immutability of a final judgment is the core issue in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[1] dated June 21, 2016 in CA-G.R. SP No. 135476, which affirmed the Regional Trial Court's (RTC) Order dated February 14, 2014 denying the motion for issuance of an *alias* writ of execution.

ANTECEDENTS

BF Homes Corporation and Spouses Nestor and Purisima Villaroman (Spouses Villaroman) entered into a joint venture

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[1] *Rollo*, pp. 30-45; penned by Associate Justice Carmelita Salandanan Manahan, with the concurrence of Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

agreement to develop their land into a subdivision. In 1974, the Spouses Villaroman agreed to sell in favor of Spouses Oscar and Lourdes Balagot (Spouses Balagot) three lots identified as Lot Nos. 33, 35, and 37 registered under Transfer Certificate of Title (TCT) Nos. S-22263, S-22264 and S-22265, respectively. In 1980, the Spouses Balagot transferred their rights over the properties to Spouses Catalino and Anita Poblete (Spouses Poblete). Upon full payment of the purchase price, Spouses Villaroman and Spouses Poblete executed the corresponding deeds of absolute sale.[2]

However, Spouses Villaroman did not deliver the certificates of title. Thus, Spouses Poblete filed an action against Spouses Villaroman to surrender the titles before the RTC Branch 138 of Makati City docketed as Civil Case No. 6599. In 1984, the RTC Branch 138 ordered Spouses Villaroman to surrender the titles to Spouses Poblete. Yet, Spouses Villaroman failed to comply with the Decision.[3]

Unknown to Spouses Poblete, the Spouses Villaroman mortgaged the lots to Banco Filipino Savings and Mortgage Bank (Banco Filipino). When Spouses Villaroman failed to pay their indebtedness, Banco Filipino foreclosed the mortgage and emerged as the highest bidder at the public auction sale. The one-year redemption period expired without Spouses Villaroman redeeming the mortgage. Later, Banco Filipino sold the properties to BF Citiland Corporation (BF Citiland).[4]

In 1998, Banco Filipino petitioned for the issuance of a writ of possession over the lots docketed as Land Registration Case (LRC) Case No. LP-98-0304. The Spouses Poblete received a notice of hearing and was surprised to discover the mortgage and its foreclosure. Thus, Spouses Poblete filed an action against Spouses Villaroman, Banco Filipino, BF Citiland and the Register of Deeds (RD) of Las Piñas City to annul the mortgage and

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[2] *Id*. at 7, 32, 54-55, 71-72 and 88-96.

[3] *Id*. at 8 and 33.

[4] *Id*. at 97-100.

the foreclosure sale docketed as Civil Case No. LP-98-173. Spouses Poblete alleged that they purchased the lots from Spouses Villaroman prior to the mortgage transaction with Banco Filipino. The cases were both raffled to the RTC Branch 255 of Las Piñas City.[5]

Subsequently, the RTC Branch 255 dismissed the case against BF Citiland after it sold the properties back to Banco Filipino. Meantime, Banco Filipino registered the lots in its name and was issued TCT Nos. T-62700, T-78887 and T-78888 over Lot Nos. 33, 35 and 37, respectively.[6] On February 24, 2009, the RTC Branch 255 rendered a joint Decision denying the complaint in Civil Case No. LP-98-173 and dismissing the petition in LRC Case No. LP-98-0304 for lack of merit,[7] to wit:

> WHEREFORE, premises considered, the Court hereby renders judgment as follows:
>
> 1. With respect to Civil Case No. LP-98-173, the "Complaint" dated 02 July 1998 filed by plaintiffs-intervenors Sps. Catalino and Anita Poblete is DISMISSED for lack of merit. As to the counterclaims of defendant-petitioner Banco Filipino Savings and Mortgage Bank, the same is DENIED for being bereft of any basis; and
>
> 2. With respect to LRC Case No. LP-98-0304, the "Petition" dated 03 July 1998 initiated by the defendant-petitioner Banco Filipino is DISMISSED as well for being unmeritorious.
>
> No pronouncement as to costs.
>
> SO ORDERED.[8]

Spouses Poblete and Banco Filipino separately appealed to the CA which were consolidated and docketed as CA-G.R. CV Nos. 94420 and 95152. In its Decision dated October 7, 2011, the CA reversed the RTC's ruling in Civil Case No. LP-

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[5] *Id*. at 73-74.

[6] *Id*. at 9 and 34.

[7] *Id*. at 88-121.

[8] *Id*. at 121.

98-173 and ruled that Spouses Poblete are entitled to the lots. It declared the mortgage between Spouses Villaroman and Banco Filipino void because it was not approved by the Housing and Land Use Regulatory Board. It likewise held that Banco Filipino is not a mortgagee in good faith. On the other hand, the CA affirmed the dismissal of Banco Filipino's petition for the issuance of a writ of possession in LRC Case No. LP-98-0304,[9] *viz.*:

> WHEREFORE, in view of the foregoing, the assailed joint decision dated February 24, 2009 in Civil Case No. LP-98-173 of the Regional Trial Court, Branch 255, Las Piñas City is hereby REVERSED AND SET ASIDE.
>
> **Plaintiffs-appellants Sps. Catalino C. Poblete and Anita O. Poblete are hereby declared the owners of the subject properties. Defendant-appellee Banco Filipino and all persons acting for and in its behalf are hereby ordered to refrain from committing acts of dispossession against plaintiffs-appellants Sps. Catalino C. Poblete and Anita O. Poblete.**
>
> The rest of the assailed judgment as regards LRC Case No. LP-98-0304 STAYS.
>
> SO ORDERED.[10] (Emphasis supplied.)

The CA's Decision lapsed into finality.[11] Thus, Spouses Poblete moved for the issuance of a writ of execution.[12] On July 26, 2013, the RTC Branch 255 granted the motion[13] and issued the writ directing the sheriff to enforce the judgment in CA-G.R. CV Nos. 94420 and 95152,[14] thus:

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[9] *Id*. at 156-193; penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Michael P. Elbinias and Elihu A. Ybañez.

[10] *Id*. at 192.

[11] *Id*. at 194.

[12] *Id*. at 196-200.

[13] *Id*. at 201.

[14] *Id*. at 202-203.

NOW, THEREFORE, you are hereby commanded to demand from Banco Filipino, the judgment of (sic) obligor, and all persons acting for and its behalf, **"to refrain from committing acts of dispossession against plaintiffs-appellants Sps. Catalino C. Poblete and Anita O. Poblete,"** relative to the subject property located at Lots 33, 35 and 37 of Block 6, Phase 4, BF Homes, Parañaque, Villaroman Portion and covered by Transfer Certificate of Title Nos. S-22263, S-22264 and S-22265.[15] (Emphasis supplied.)

Thereafter, Spouses Poblete moved for the issuance of an *alias* writ of execution alleging that the original writ is incomplete since it did not order Banco Filipino to surrender and transfer the certificates of title in their names. Spouses Poblete averred that the appellate court declared them as owners of the properties but it is absurd that the titles still remains with Banco Filipino.[16]

On February 14, 2014, the RTC Branch 255 denied the motion explaining that an order of execution cannot vary the terms of the judgment. Moreover, a party declared as an owner is not automatically granted the title over the property.[17] Unsuccessful at a reconsideration,[18] Spouses Poblete filed a petition for *certiorari* with the CA docketed as CA-G.R. SP No. 135476 ascribing grave abuse of discretion to the RTC Branch 255 in not ordering the surrender and transfer of certificates of title in their names.[19]

On June 21, 2016, the CA dismissed the petition and ruled that the execution must substantially conform to the dispositive portion of the judgment. It noted that the Decision in CA-G.R. CV Nos. 94420 and 95152 did not direct Banco Filipino to surrender and transfer the certificates of title to Spouses Poblete. Any modification violates the doctrine of immutability of final

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[15] *Id*. at 203.

[16] *Id*. at 204-209.

[17] *Id*. at 210-211.

[18] *Id*. at 212-217; and 218-219.

[19] *Id*. at 220-241.

judgment.[20] Spouses Poblete sought reconsideration but was denied.[21] Hence, this petition.

Spouses Poblete argued that the execution of judgment must include all its logical effects although not expressed in the dispositive portion. Yet, the RTC and the CA interpreted the Decision in a restrictive manner and disregarded its true meaning. Also, the Banco Filipino's continued refusal to surrender the certificates of title constitutes an act of dispossession that must be stopped consistent with the tenor of the judgment in CA-G.R. CV Nos. 94420 and 95152.[22]

In contrast, Banco Filipino maintained that the RTC is correct in issuing a writ of execution which is limited only to the dispositive portion. The motion for issuance of an *alias* writ of execution is a clear attempt of Spouses Poblete to modify a final judgment. The Spouses Poblete should avail the remedy under Section 107 of the Property Registration Decree for the surrender of withheld duplicate certificates.[23] Similarly, the RD claimed that the decision is silent as to the surrender and transfer of certificates of title from Banco Filipino to Spouses Poblete.[24] For its part, BF Citiland invoked *res judicata* and lack of cause of action given that the RTC Branch 255 had dismissed the case against it with finality.[25]

RULING

The petition is meritorious.

Prefatorily, BF Citiland should no longer be impleaded as a party in this proceedings. The RTC Branch 255 had dismissed the complaint in Civil Case No. LP-98-173 against BF Citiland

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[20] *Id*. at 30-45.

[21] *Id*. at 46-49.

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

[23] *Id*. at 282-298.

[24] *Id*. at 265-266.

[25] *Id*. at 322-328.

after it sold the properties back to Banco Filipino. BF Citiland has no more interest over the lots and cannot be considered as an entity acting for or in behalf of Banco Filipino. As such, we limit this decision as to the rights and obligations between Spouses Poblete and Banco Filipino based on the final and executory judgment in CA-G.R. CV Nos. 94420 and 95152.

Notably, a judgment becomes final by operation of law. The finality of a decision becomes a fact when the reglementary period to appeal expires and no appeal is perfected within such period.[26] Here, it is undisputed that the CA Decision in CA-G.R. CV Nos. 94420 and 95152 declaring Spouses Poblete the owners of the lots and ordering Banco Filipino to refrain from committing acts of dispossession already lapsed into finality. The records attest to this circumstance and the parties do not contest this fact. Thus, we find it necessary to discuss first the effects of a final judgment.

A decision that acquired finality is executory, immutable and unalterable subject to certain exceptions.

All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final.[27] No other action can be taken on the decision[28] except to order its execution.[29] The courts cannot modify the judgment to correct perceived errors of law or fact.[30] Public policy and sound practice dictate that every litigation must come to an end at the risk of occasional

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[26] *Social Security System v. Isip*, 549 Phil. 112, 116 (2007); and *Vlason Enterprises Corporation v. Court of Appeals*, 369 Phil. 269, 296 (1999).

[27] *Ang v. Dr. Grageda*, 523 Phil. 830, 847 (2006).

[28] *Natalia Realty, Inc. v. Judge Rivera*, 509 Phil. 178, 186 (2005).

[29] *Times Transit Credit Coop., Inc. v. NLRC*, 363 Phil. 386, 392 (1999), citing *Yu v. NLRC*, 315 Phil. 107, 120 (1995).

[30] *Alba Patio de Makati v. NLRC*, 278 Phil. 370, 376 (1991).

errors.[31] This is the doctrine of immutability of a final judgment. The rule, however, is subject to well-known exceptions, namely, the correction of clerical errors, *nunc pro tunc* entries, void judgments, and supervening events.[32]

A clerical error is exemplified by typographical mistake or arithmetic miscalculation. It also includes instances when words are interchanged or when inadvertent omissions create ambiguity.[33] Similarly, a *nunc pro tunc* judgment or order is issued to make the record speak of a judicial action which has been actually taken but had been omitted either through inadvertence or mistake. It may be rendered only in the presence of data regarding the judicial act sought to be recorded and if none of the parties will be prejudiced.[34]

On the other hand, a void judgment produces no legal or binding effect. It never acquires the status of a final and executory judgment and is subject to both direct and collateral attack.[35] Lastly, the happening of a supervening event is a ground to set aside or amend a final judgment. It must transpire after the judgment becomes final and executory. It must likewise change

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[31] *Paramount Insurance Corp. v. Judge Japzon*, 286 Phil. 1048, 1056 (1992).

[32] *FGU Insurance Corp. v. RTC of Makati City, Branch 66*, 659 Phil. 117, 123 (2011). See also *Heirs of Maura So v. Obliosca*, 566 Phil. 397, 408 (2008), citing *Sacdalan v. CA*, 472 Phil. 652, 670-671 (2004).

[33] *Spouses Mahusay v. B.E. San Diego, Inc.*, 666 Phil. 528, 536 (2011); *Baguio v. Hon. Bandal, Jr.*, 360 Phil. 865, 870 (1998); and *Filipino Legion Corp. v. CA*, 155 Phil. 616, 633 (1974).

[34] *Go v. Echavez*, 765 Phil. 410, 423-424 (2015); *Briones-Vasquez v. CA*, 491 Phil. 81, 92 (2005); *Maramba v. Lozano*, 126 Phil. 833, 837 (1967); and *Lichauco v. Tan Pho*, 51 Phil. 862 (1923).

[35] *Imperial v. Judge Armes*, 804 Phil. 439, 460 (2017); *Gonzales v. Solid Cement Corporation*, 697 Phil. 619, 630 (2012); *Nazareno v. CA*, 428 Phil. 32 (2002); *Estoesta, Sr. v. Court of Appeals*, 258-A Phil. 779 (1989); and *Gomez v. Concepcion*, 47 Phil. 717 (1925).

or affect the substance of the decision and render its execution inequitable.[36]

Not one of these exceptions is present in this case. Yet, compelling reason exists to exclude this case from the application of the doctrine of immutability of a final judgment. This Court has recognized that the dispositive portion of a final and executory judgment may be amended to rectify an inadvertent omission of what it should have logically decreed based on the discussion in the body of the Decision. The Court is vested with inherent authority to effect the necessary consequence of the judgment. However, it should be limited to explaining a vague or equivocal part of the judgment which hampers its proper and full execution. The Court cannot modify or overturn its Decision in the guise of clarifying ambiguous points.[37]

The dispositive portion of the CA's final judgment in CA-G.R. CV Nos. 94420 and 95152 must be clarified to carry out the Decision into effect.

There is no question that a court may clarify a final and executory judgment to carry out its necessary consequences. In *Republic Surety and Insurance Co., Inc. v. Intermediate Appellate Court*,[38] we clarified a final judgment of an ambiguity arising from inadvertent omission of what might be described as a logical follow-through of something set forth in its body and dispositive portion. In that case, the Court affirmed the

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[36] *NPC Drivers and Mechanics Association v. National Power Corp.*, 737 Phil. 210 (2014); *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84 (2013); *Roman Catholic Archbishop of Caceres v. Heirs of Abella*, 512 Phil. 408 (2005); *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1 (2002); and *Javier v. Court of Appeals*, 296 Phil. 580 (1993).

[37] *Teh v. Tan*, 650 Phil. 130 (2010) citing *Heirs of Bayot v. Baterbonia*, 480 Phil. 126 (2004).

[38] 236 Phil. 332 (1987).

trial court's Decision declaring the contract between the parties void and ordering the petitioners to vacate the property and surrender its possession to the private respondents. The judgment became final and executory. However, the RD refused to cancel the existing transfer certificate of title and to revive the old title because these were not mentioned in the dispositive portion of the trial court's Decision. Aggrieved, the private respondents moved for clarificatory inquiry. The petitioners opposed arguing that only the dispositive portion is subject to execution and that the private respondents must seek their relief in a separate suit. We held that the missing "order to cancel and revive" should be deemed implied in the trial court's Decision nullifying the contract,[39] thus:

> What is involved here is not what is ordinarily regarded as a clerical error in the dispositive part of the decision of the Court of First Instance, which type of error is perhaps best typified by an error in arithmetical computation. At the same time, what is involved here is not a correction of an erroneous judgment or dispositive portion of a judgment. **What we believe is involved here is in the nature of an**

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[39] *Id.* at 341. The Court clarified the dispositive portion to read as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendants-plaintiffs Domingo Fernandez and Felicisima T. Fernandez, declaring the:

a) Deed of Sale with Assumption of Mortgage executed on September 5, 1968 or Exhibit "A" NULL AND VOID, ***ab initio; ordering the Register of Deeds of Quezon City to recall and cancel Transfer Certificate of Title No. 133153 issued by that Office to defendant Republic Mines and Investment Co., Inc., and thereafter to re-issue Transfer Certificate of Title No. 30154 or to issue a new certificate of title in the name of the Spouses Domingo Fernandez and Felicisima Fernandez***; and ordering the plaintiffs-defendants Republic Surety and Insurance Co., Inc., Republic Mines and Investment Co., Inc., Francisco Koh, German Songco and Antonio Koh and all persons claiming rights under them to vacate the subject premises at 14 Col. Salgado, Kamias District, Quezon City and to turn over possession of the premises to the Spouses Domingo Fernandez and Felicisima Fernandez.

x x x x x x x x x" (Emphasis supplied.)

inadvertent omission on the part of the Court of First Instance (which should have been noticed by private respondents' counsel who had prepared the complaint), of what might be described as a logical follow-through of something set forth both in the body of the decision and in the dispositive portion thereof: the inevitable follow-through, or translation into, operational or behavioral terms, of the annulment of the Deed of Sale with Assumption of Mortgage, from which petitioners' title or claim of title embodied in TCT 133153 flows. The dispositive portion of the decision itself declares the nullity *ab initio* of the simulated Deed of Sale with Assumption of Mortgage and instructed the petitioners and all persons claiming under them to vacate the subject premises and to turn over possession thereof to the respondent-spouses. Paragraph B of the same dispositive portion, confirming the real estate mortgage executed by the respondent-spouses also necessarily assumes that Title No. 133153 in the name of petitioner Republic Mines is null and void and therefore to be cancelled, since it is indispensable that the mortgagors have title to the real property given under mortgage to the creditor (Article 2085 [2], Civil Code).

x x x x x x x x x

There are powerful considerations of an equitable nature which impel us to the conclusions we reach here. **Substantial justice cannot be served if the petitioner Republic Mines, having absolutely no right, legal or equitable, to the property involved, its claim thereto being based upon a transaction which was not only simulated but also immoral and unconscionable, should be allowed to retain the Transfer Certificate of Title in its name. The petitioner would thereby be in a position to inflict infinite mischief upon the respondent-spouses whom they deprived for 15 years of the possession of the property of which they were and are lawful owners**, and whom they compelled to litigate for 15 years to recover their own property. The judicial process as we know it and as administered by this Court cannot permit such a situation to subsist. It cannot be an adequate remedy for the respondent-spouses to have to start once more in the Court of First Instance, to ask that court to clarify its own judgment, a process which could be prolonged by the filing of petitions for review in the Court of Appeals and eventually in this Court once more. Public policy of the most fundamental and insistent kind requires that litigation must at last come to an end if it is not to become more pernicious and unbearable than the very injustice or wrong sought to be

corrected thereby. That public policy demands that we cut this knot here and now.[40] (Emphases supplied.)

The ruling was cited and applied in the cases of *State Investment House, Inc. v. Court of Appeals*,[41] *Bacolod City Water District v. Bayona*,[42] and *Dela Merced v. Government Service Insurance System*.[43]

In *State Investment House, Inc.*, this Court observed that the dispositive portion of the trial court's final judgment was ambiguous and cryptic. Nevertheless, it assumed that the judge was meant to decide in accordance with the law. Thus, we clarified the trial court's Decision to include the payment of regular or monetary interest lest it would constitute unjust enrichment.[44] In *Bacolod City Water District*, this Court held that there is an inadvertent omission on the part of the Civil Service Commission (CSC) to provide a translation of its final and executory rulings into operational terms. Hence, the CSC correctly clarified the dispositive portion of its Decisions to include the payment of back salaries and other benefits to the respondent as a necessary consequence of his reinstatement.

In *Dela Merced*, we clarified the final judgment to include the cancellation of derivative titles and to supply necessary documents and information for the proper enforcement of the

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[40] *Id*. at 338-341.

[41] 275 Phil. 433 (1991).

[42] 563 Phil. 825 (2007).

[43] 677 Phil. 88 (2011).

[44] The Court clarified the dispositive portion to read as follows:

"(1) Ordering defendants to immediately release the pledge and to deliver to the plaintiff spouses Rafael and Refugio Aquino the shares of stock enumerated and described in paragraph 4 of said spouses' complaint dated 17 July 1984, upon full payment of the amount of ₱110,000.00 **plus seventeen percent (17%) *per annum* regular interest computed from the time of maturity of the plaintiffs' loan** (Account No. IF-82-0904-AA) and until full payment of such principal and interest to defendants;

x x x x x x x x x" (Emphasis supplied.)

Decision. In that case, the Court reinstated the trial court's Decision and declared void the foreclosure sale of lots. It also ordered the RD to cancel the Government Service Insurance System's (GSIS) certificates of title and to register new titles in the petitioners' name. A writ of execution was issued. However, the RD could not implement the order because the GSIS already conveyed the lots to transferees *pendente lite*, who were subsequently given derivative titles. Aggrieved, the petitioners moved for a supplemental writ of execution before the trial court but was denied. On appeal, the Court set aside the trial court's Order and held that a final judgment may be enforced against transferees who took the properties with notice of *lis pendens* because the action is binding on the litigants' privies and successors-in-interest. Their inclusion in the writ of execution does not vary or exceed the terms of the judgment. In the same way, the inclusion of the derivative titles in the writ of execution will not alter the Decision,[45] *viz.*:

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[45] The Court clarified the dispositive portion to read as follows:

"WHEREFORE, in view of the foregoing, the petition is GRANTED. The decision of the Court of Appeals is REVERSED AND SET ASIDE.

The decision of the Regional Trial Court of Pasig City, Branch 160, in Civil Case Nos. 51410 and 51470, is REINSTATED. The foreclosure sale of Lot Nos. 6, 7, 8 and 10 of Block 2 and Lot 8 of Block 8 of the property originally covered by TCT No. 26105, and the subsequent certificates of titles issued to GSIS as well as TCT No. PT-94007 in the name of Elizabeth Manlongat, **and their respective derivative titles** are declared NULL AND VOID.

The Register of Deeds of Pasig City is ordered to CANCEL all present certificates of title covering the above-mentioned properties, **whether contained in individual titles or in a mother title**, in the name of GSIS and Elizabeth Manlongat, **or in the name of their privies, successors-in-interest or transferees *pendente lite***, and to ISSUE new certificates of title over the same in the name of petitioners as co-owners thereof.

GSIS and the Bureau of Lands are ordered to supply the necessary documents and information for the proper enforcement of the above orders.

Respondents GSIS and Spouses Victor and Milagros Manlongat are ORDERED to pay, jointly and severally, attorney's fees in the increased amount of ₱50,000.00, and to pay the costs.

SO ORDERED." (Emphases supplied.)

When a judgment calls for the issuance of a new title in favor of the winning party (as in the instant case), it logically follows that the judgment also requires the losing party to surrender its title for cancellation. It is the only sensible way by which the decision may be enforced. To this end, petitioners can obtain a court order requiring the registered owner to surrender the same and directing the entry of a new certificate of title in petitioners' favor. **The trial court should have granted petitioners' motion for supplemental writ of execution as it had authority to issue the necessary orders to aid the execution of the final judgment.**

GSIS's objection that these orders cannot be enforced because they do not literally appear in the Decision in G.R. No. 140398 is unreasonable. GSIS would have the Court spell out the wheres, whys, and hows of the execution. GSIS wants a dispositive portion that is a step-by-step detailed description of what needs to be done for purposes of execution. This expectation is unreasonable and absurd.[46] (Emphasis supplied.)

A similar question was settled in the recent case of *His Pin Liu v. Republic*,[47] pursuant to Section 6, Rule 135 of the Rules of Court[48] or the inherent residual authority of the trial court to carry its jurisdiction into effect, thus:

While the RTC Decision does not expressly include the cancellation of certificates of title subsequently derived and issued from the original certificates of title in the names of spouses Gaspar, the reversion of the subject lots to the government or the public domain cannot be fully effected without the cancellation of such derivative titles.

x x x x x x x x x

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[46] *Supra* note 43, at 108.

[47] G.R. No. 231100, January 15, 2020.

[48] Section 6. *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

The CA was correct in invoking the residual authority of the RTC. As authorized by Section 6, Rule 135 of the Rules, the RTC may issue all auxiliary writs, processes and other means necessary to carry its jurisdiction into effect, and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by the Rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of the said law or Rule. It cannot be denied that the Challenged Order was issued by the RTC to execute its Decision of April 20, 1999, specifically ordering the reversion of the subject lots to the government. (Emphasis supplied.)

A cogent reference to the above doctrines established the authority of the courts to clarify and effect the necessary consequences of their judgments. Here, the Order to surrender and transfer the certificates of title is deemed implied from the Decision declaring Spouses Poblete as owners of the lots and ordering Banco Filipino to refrain from committing acts of dispossession. The fact that it was not mentioned in the dispositive portion is of no moment. A judgment is not confined to what appears on its face but extends as well to those necessary to carry out the Decision into effect.[49] Moreover, the reliefs that Banco Filipino surrender and reconvey the titles were included in Spouses Poblete's memorandum[50] in LRC Case No. LP-98-0304 and in their appellants' brief [51] in CA-G.R. CV No. 94420. Lastly, Banco Filipino has no right over the properties. It should not be permitted to retain the titles over the lots on the basis of a void transaction. Otherwise, it would unjustly deprive Spouses

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[49] This Court held that when interpreting the dispositive portion of the judgment, the findings of the court as found in the whole decision must be considered; a decision must be considered in its entirety, not just its specific portions, to grasp its true intent and meaning. Moreover, a judgment is not confined to what appears upon the face of the decision, but extends to those necessarily included therein or necessary thereto. See *Vargas v. Cajucom*, 761 Phil. 43 (2015), citing *San Miguel Corporation v. Teodosio*, 617 Phil. 399 (2009); and *De Leon v. Public Estates Authority*, 640 Phil. 594 (2010).

[50] *Rollo*, p. 64.

[51] *Id*. at 84.

Poblete of their right as owners to register the lots in their names and subject them to threats of dispossession. These consequences are manifestly contrary to the final judgment in CA-G.R. CV Nos. 94420 and 95152 and would subvert the very purpose of bringing this case for a complete resolution.

FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision dated June 21, 2016 in CA-G.R. SP No. 135476 and the Regional Trial Court's Order dated February 14, 2014 denying the motion for issuance of *alias* writ of execution are **REVERSED** and **SET ASIDE**. The Court of Appeals' Decision dated October 7, 2011 in CA-G.R. CV Nos. 94420 and 95152 is clarified to read as follows:

> WHEREFORE, in view of the foregoing, the assailed joint decision dated February 24, 2009 in Civil Case No. LP-98-173 of the Regional Trial Court, Branch 255, Las Piñas City is hereby REVERSED AND SET ASIDE.
>
> Plaintiffs-appellants Sps. Catalino C. Poblete and Anita O. Poblete are hereby declared the owners of the subject properties. Defendant-appellee Banco Filipino and all persons acting for and in its behalf are hereby ordered to refrain from committing acts of dispossession against plaintiffs-appellants Sps. Catalino C. Poblete and Anita O. Poblete.
>
> **Moreover, Banco Filipino is required to surrender TCT Nos. T-62700, T-78887 and T-78888 for cancellation. Thereafter, the Register of Deeds is ordered to revive TCT Nos. S-22263, S-22264 and S-22265 and to issue new certificates of title in the name of Spouses Poblete.**
>
> The rest of the assailed judgment as regards LRC Case No. LP-98-0304 STAYS.
>
> SO ORDERED.

The Regional Trial Court is ordered to **ISSUE** the writ of execution in accordance with the above clarified dispositive portion with dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 229413. June 15, 2020]

AGATA MINING VENTURES, INC., *petitioner*, *vs.* **HEIRS OF TERESITA ALAAN, represented by DR. LORENZO ALAAN,** *respondents*.

SYLLABUS

1. **POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER OF EMINENT DOMAIN; POWER OF THE DELEGATED ENTITIES ONLY AS CONFERRED BY THE LAW. —** Eminent domain is the inherent power of the State to take, or to authorize the taking of private property for a public use without the owner's consent, conditioned upon payment of just compensation. In most cases, eminent domain "is acknowledged as an inherent political right, founded upon the common necessity of appropriating the private property of individual members of the community for the great necessities of the whole community." Eminent domain, which is the power of a sovereign state to appropriate private property to particular uses to promote public welfare, is essentially lodged in the legislature. While such power may be validly delegated to local government units (LGUs), other public entities and public utilities, the exercise of such power by the delegated entities is not absolute. In fact, the scope of delegated legislative power is narrower than that of the delegating authority and such entities may exercise the power to expropriate private property only when authorized by Congress and subject to its control and restraints imposed through the law conferring the power or in other legislations.

2. **ID.; ID.; ID.; ID.; QUALIFIED MINING OPERATORS HAVE THE AUTHORITY TO EXERCISE THE POWER OF EMINENT DOMAIN. —** In *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*, the Court has already settled that qualified mining operators have the authority to exercise the power of eminent domain, x x x [T]he Legislature, through Commonwealth Act No. 137, Presidential Decree (P.D.) No. 463, P.D. No. 512 and R.A. No. 7942, granted qualified mining operators the authority to exercise the power of eminent domain.

3. ID.; ID.; ID.; ID.; ID.; A TRANSFEREE OF MINING RIGHTS CAN FILE A COMPLAINT FOR EXPROPRIATION; CASE AT BAR. — [T]he question as to whether petitioner, as transferee of mining rights, can file a complaint for expropriation. R.A. No. 7942 (Philippine Mining Act of 1995) provides that a grantee of an exploration permit may transfer or assign its rights to another operator subject to the approval of the Government. x x x In this case, Minimax entered into a Mineral Production Sharing Agreement (MPSA) with the Government, represented by the Secretary of the Department of Environment and Natural Resources (DENR) on May 26, 1999. Pursuant to this agreement, Minimax was given the right to conduct mining operations within the confines of the Contract Area, x x x Minimax was also granted the right to "[possess] the contract area, with full right of ingress and egress and the right to occupy the same, subject to surface and easement rights." Finally, Minimax was empowered to "sell, assign, transfer, convey, or otherwise dispose of all its rights, interests and obligations under the Agreement subject to the approval of the Government." Consequently, on June 20, 2014, Minimax granted petitioner the exclusive right to explore, develop and operate the mining property, through an Operating Agreement that was approved by the Government. As a result thereof, Minimax's rights to explore the mining property as well as possess and occupy the same were transferred to petitioner. **Hence, petitioner may file for a complaint to expropriate the subject property.** Under Section 23, "An exploration permit shall grant to the permittee, his heirs or successors-in-interest, the right to enter, occupy and explore the area." Clearly, the transferee of a permittee enjoys the same privileges as the latter. Had the Legislature intended that the transferee should seek a separate grant of authority to exercise the power of eminent domain, it would have made an express pronouncement therefor. All told, petitioner, as transferee of Minimax, may file a complaint to expropriate the subject property. The ruling in this case, however, is not a final determination of petitioner's authority to exercise the power of eminent domain because *the same is still dependent upon the trial court's determination of the validity of the Operating Agreement between petitioner and Minimax*.

APPEARANCES OF COUNSEL

Lovelyn C. Loresca for petitioner.
Tequillo Suson Manuales Lerios & Dumaliang Law Offices for respondents.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari* are the September 16, 2016 Decision[1] and the January 9, 2017 Resolution[2] of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. SP No. 07230. The assailed Decision and Resolution nullified the Writ of Possession[3] issued by the Regional Trial Court, Cabadbaran City, Branch 34 (RTC) in Civil Case No. SC-14-06, an expropriation case.

The Antecedents

The respondents are the registered owners of a parcel of land with an area of 14.22 hectares located at Payong Payong, Tiningbasan, Tubay, Agusan del Norte (subject property).

On May 26, 1999, Minimax Mineral Exploration Corporation (Minimax) entered into a Mineral Production Sharing Agreement (MPSA) No. 134-99-XIII with the Republic of the Philippines represented by the Secretary of the Department of Environment and Natural Resources (DENR). On June 20, 2014, Minimax entered into an Operating Agreement with Agata Mining Ventures, Inc. (petitioner) to explore, develop and operate the mining area located within the municipalities of Tubay, Jabonga, and Santiago in the province of Agusan del Norte which included

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[1] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo Roxas, concurring; *rollo*, pp. 54-62.

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

[3] Penned by Presiding Judge Gael P. Paderanga; *id.* at 134-150.

the subject property. On July 10, 2014, the Operating Agreement was registered before the DENR Mines and Geosciences Bureau (MGB), Regional Office No. XIII, Surigao City and was approved by the MGB, Quezon City on September 18, 2014.[4] Such agreement was further approved by Leo L. Jasareno, Director of the MGB, by Authority of the DENR Secretary on June 21, 2016.[5]

Petitioner alleged that the subject property is the most conducive location for the establishment of a sedimentation pond or settling pond needed for the mining operation. Various negotiations took place between petitioner and the respondents wherein the former offered to buy the subject property at the rate of ₱175,000.00 per hectare. The respondents, however, refused such offer.

On December 4, 2014, petitioner filed a complaint for expropriation with prayer for issuance of writ of possession against the respondents before the RTC.

In their Answer, the respondents moved for the dismissal of the case on the ground that petitioner has no authority to exercise the power of eminent domain.

On June 26, 2015, the RTC issued an Omnibus Resolution granting a writ of possession to petitioner:

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[4] *Id.* at 294-296.

Also, in the "Omnibus Resolution" dated June 26, 2015, Judge Gael P. Paderanga of the RTC, held that:

> As shown in the Operating Agreement (OA) relied upon [by] the plaintiff, it is authorized by . . . MINIMAX to conduct mining operation in its mining area defined in the MPSA No. 134-99-XIII, Annex "A" of the Petition. The said OA is shown as duly approved by the Bureau of Mines and Geosciences (BMG) on September 18, 2014 which fact is openly admitted by the defendants. MINIMAX was granted by the BMG the MPSA No. 134-99-XIII, to conduct mining operation inside its mining area, which fact is also admitted by the defendant. *Id.* at 148.

[5] *Id.* at 306-307.

IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, the Motion to Hear Affirmative Defenses of the defendants is denied; while the prayer for the issuance of the Writ of Possession (WOP) is granted. Issuance of the WOP is hereby ordered.

The Sheriff or other proper officer of the Court is directed to forthwith place the plaintiff in possession of the property involved and promptly submit a report to the Court with service of copies to the parties in accordance with the applicable rule.

SO ORDERED.[6]

The respondents moved for reconsideration but the same was denied by the RTC in a Resolution dated October 30, 2015.

Aggrieved, the respondents filed a petition for *certiorari* before the CA.

The CA Ruling

In a Decision dated September 16, 2016, the CA, citing *Olympic Mines and Development Corp. v. Platinum Group Metals Corp.*,[7] held that an operating agreement is a purely civil contract between two private entities — one of whom happens to be a party to a mineral agreement with the government. Considering that petitioner is a mere private entity, petitioner does not have the authority to expropriate the subject property. The appellate court opined that granting petitioner the power to expropriate the subject property would degrade the constitutional principle of non-delegation of inherent powers of the State. Thus, it nullified the writ of possession issued to petitioner. The *fallo* reads:

WHEREFORE, the Petition for *Certiorari* is hereby GRANTED. Omnibus Resolution dated June 26, 2015 of the Regional Trial Court, 10th Judicial Region, Branch 34, Cabadbaran City, in Civil Case No. SC-14-06 for Expropriation with Prayer for Issuance of Writ of Possession is REVERSED and SET ASIDE. The expropriation proceedings and the Writ of Possession dated July 30, 2015 is declared NULL and VOID.

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[6] *Id.* at 149-150.

[7] 605 Phil. 699 (2009).

SO ORDERED.[8]

Petitioner moved for reconsideration but the same was denied by the CA in a Resolution dated January 9, 2017. Hence, this Petition for Review on *Certiorari*.

The Issue

Whether petitioner may file a complaint to expropriate the subject property.

Petitioner argues that in determining whether a writ of possession should be issued, the trial court is limited only in determining whether the complaint is sufficient in form and substance and that the provisional deposit was made in compliance with Section 2, Rule 67 of the Rules of Court; that under Section 76 of Republic Act (R.A.) No. 7942 or the Philippine Mining Act of 1995, qualified mining operators have the authority to exercise the power of eminent domain; and that under the Mineral Production and Sharing Agreement, Minimax has the right to transfer and assign its mining rights to petitioner subject to approval of the Government.

The Court's Ruling

The petition is meritorious.

I.

Eminent domain is the inherent power of the State to take, or to authorize the taking of private property for a public use without the owner's consent, conditioned upon payment of just compensation. In most cases, eminent domain "is acknowledged as an inherent political right, founded upon the common necessity of appropriating the private property of individual members of the community for the great necessities of the whole community."[9]

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[8] *Rollo*, p. 62.

[9] *Spouses Belo v. Municipal Government of San Rafael, Bulacan*, First Division Resolution, G.R. No. 212131, July 4, 2018.

Eminent domain, which is the power of a sovereign state to appropriate private property to particular uses to promote public welfare, is essentially lodged in the legislature.[10] While such power may be validly delegated to local government units (LGUs), other public entities and public utilities, the exercise of such power by the delegated entities is not absolute.[11] In fact, the scope of delegated legislative power is narrower than that of the delegating authority and such entities may exercise the power to expropriate private property only when authorized by Congress and subject to its control and restraints imposed through the law conferring the power or in other legislations.[12]

In *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*,[13] the Court has already settled that qualified mining operators have the authority to exercise the power of eminent domain, *viz.*:

> As shown by the foregoing jurisprudence, a regulation which substantially deprives the owner of his proprietary rights and restricts the beneficial use and enjoyment for public use amounts to compensable taking. In the case under consideration, **the entry referred to in Section 76 and the easement rights under Section 75 of Rep. Act No. 7942 as well as the various rights to CAMC under its FTAA are no different from the deprivation of proprietary rights in the cases discussed which this Court considered as taking**. Section 75 of the law in question reads:
>
> > Easement Rights. — When mining areas are so situated that for purposes of more convenient mining operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructure as roads, railroads, mills, waste dump sites, tailing ponds,

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[10] *Municipality of Parañaque v. V.M. Realty Corporation*, 354 Phil. 684, 691 (1998).

[11] *Id.*

[12] *Heirs of Alberto Suguitan v. City of Mandaluyong*, 384 Phil. 676, 689 (2000).

[13] 520 Phil. 457 (2006).

> warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for water wells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels, or mills, the contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.
>
> Section 76 provides:
>
> Entry into private lands and concession areas. — Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein.

The CAMC FTAA grants in favor of CAMC the right of possession of the Exploration Contract Area, the full right of ingress and egress and the right to occupy the same. It also bestows CAMC the right not to be prevented from entry into private lands by surface owners or occupants thereof when prospecting, exploring and exploiting minerals therein.

The entry referred to in Section 76 is not just a simple right-of-way which is ordinarily allowed under the provisions of the Civil Code. Here, the holders of mining rights enter private lands for purposes of conducting mining activities such as exploration, extraction and processing of minerals. Mining right holders build mine infrastructure, dig mine shafts and connecting tunnels, prepare tailing ponds, storage areas and vehicle depots, install their machinery, equipment and sewer systems. On top of this, under Section 75, easement rights are accorded to them where they may build warehouses, port facilities, electric transmission, railroads and other infrastructures necessary for mining operations. All these will definitely oust the owners or occupants of the affected areas the beneficial ownership of their lands. **Without a doubt, taking occurs once mining operations commence**.

Section 76 of Rep. Act No. 7942 is a Taking Provision.

Moreover, it would not be amiss to revisit the history of mining laws of this country which would help us understand Section 76 of Rep. Act No. 7942.

This provision is first found in Section 27 of Commonwealth Act No. 137 which took effect on 7 November 1936, *viz.*:

Before entering private lands the prospector shall first apply in writing for written permission of the private owner, claimant, or holder thereof, and in case of refusal by such private owner, claimant, or holder to grant such permission, or in case of disagreement as to the amount of compensation to be paid for such privilege of prospecting therein, the amount of such compensation shall be fixed by agreement among the prospector, the Director of the Bureau of Mines and the surface owner, and in case of their failure to unanimously agree as to the amount of compensation, all questions at issue shall be determined by the Court of First Instance.

Similarly, the pertinent provision of Presidential Decree No. 463, otherwise known as "The Mineral Resources Development Decree of 1974," provides:

SEC. 12. Entry to Public and Private Lands. — A person who desires to conduct prospecting or other mining operations within public lands covered by concessions or rights other than mining shall first obtain the written permission of the government official concerned before entering such lands. In the case of private lands, the written permission of the owner or possessor of the land must be obtained before entering such lands. In either case, if said permission is denied, the Director, at the request of the interested person may intercede with the owner or possessor of the land. If the intercession fails, the interested person may bring suit in the Court of First Instance of the province where the land is situated. If the court finds the request justified, it shall issue an order granting the permission after fixing the amount of compensation and/or rental due the owner or possessor: Provided, That pending final adjudication of such amount, the court shall upon recommendation of the Director permit the interested person to enter, prospect and/or undertake other mining operations on the disputed land upon posting by such interested person of a bond with the court which the latter shall consider adequate to answer for any damage to the owner or possessor of the land resulting from such entry, prospecting or any other mining operations.

Hampered by the difficulties and delays in securing, surface rights for the entry into private lands for purposes of mining operations, Presidential Decree No. 512 dated 19 July 1974 was passed into law in order to achieve full and accelerated mineral resources

development. Thus, Presidential Decree No. 512 provides for a new system of surface rights acquisition by mining prospectors and claimants. Whereas in Commonwealth Act No. 137 and Presidential Decree No. 463 eminent domain may only be **exercised** in order that the mining claimants can build, construct or install roads, railroads, mills, warehouses and other facilities, this time, the power of eminent domain may now be **invoked** by mining operators for the entry, acquisition and use of private lands, *viz.*:

SECTION 1. Mineral prospecting, location, exploration, development and exploitation is hereby declared of public use and benefit, and for which *the power of eminent domain may be invoked and exercised for the entry, acquisition and use of private lands*. x x x

The evolution of mining laws gives positive indication that mining operators who are qualified to own lands were granted the authority to exercise eminent domain for the entry, acquisition, and use of private lands in areas open for mining operations. This grant of authority extant in Section 1 of Presidential Decree No. 512 is not expressly repealed by Section 76 of Rep. Act No. 7942; and neither are the former statutes impliedly repealed by the former. These two provisions can stand together even if Section 76 of Rep. Act No. 7942 does not spell out the grant of the privilege to exercise eminent domain which was present in the old law.

It is an established rule in statutory construction that in order that one law may operate to repeal another law, the two laws must be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act. Simply because a latter enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one. As has been the rule, repeals by implication are not favored, and will not be decreed unless it is manifest that the legislature so intended. As laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is not only irreconcilable, but also clear and convincing, and flowing necessarily from the language used, unless the later act fully embraces the subject matter of the earlier, or unless the reason for the earlier act is beyond peradventure

removed. Hence, every effort must be used to make all acts stand and if, by any reasonable construction, they can be reconciled, the latter act will not operate as a repeal of the earlier.

Considering that Section 1 of Presidential Decree No. 512 granted the qualified mining operators the authority to exercise eminent domain and since this grant of authority is deemed incorporated in Section 76 of Rep. Act No. 7942, the inescapable conclusion is that the latter provision is a taking provision.[14] (Emphases supplied and citations omitted)

From these pronouncements, it can be gleaned that the Legislature, through Commonwealth Act No. 137, Presidential Decree (P.D.) No. 463, P.D. No. 512 and R.A. No. 7942, granted qualified mining operators the authority to exercise the power of eminent domain.

II.

Thus, the question remains as to whether petitioner, as transferee of mining rights, can file a complaint for expropriation. R.A. No. 7942 provides that a grantee of an exploration permit may transfer or assign its rights to another operator subject to the approval of the Government. The following are the relevant provisions of the law as regards transfer of rights:

Section 20
Exploration Permit

An exploration permit grants the right to conduct exploration for all minerals in specified areas. The Bureau shall have the authority to grant an exploration permit to a qualified person.

Section 23
Rights and Obligations of the Permittee

An exploration permit shall grant to the permittee, his heirs or successors-in-interest, the right to enter, occupy and explore the area: Provided, That if private or other parties are affected, the permittee shall first discuss with the said parties the extent, necessity,

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[14] *Id.* at 481-485.

and manner of his entry, occupation and exploration and in case of disagreement, a panel of arbitrators shall resolve the conflict or disagreement.

Section 25
Transfer or Assignment

An exploration permit may be transferred or assigned to a qualified person subject to the approval of the Secretary upon the recommendation of the Director.

Section 76
Entry into Private Lands and Concession Areas

Subject to prior notification, **holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein**: Provided, That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations: Provided, further, That to guarantee such compensation, the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director. (Emphases supplied)

In this case, Minimax entered into a MPSA with the Government, represented by the Secretary of the DENR on May 26, 1999. Pursuant to this agreement, Minimax was given the right to conduct mining operations within the confines of the Contract Area, *i.e.*, 7,679 hectares of land situated in the municipalities of Jabonga, Santiago and Tubay in the province of Agusan del Norte (mining property).[15] Minimax was also granted the right to "[possess] the contract area, with full right of ingress and egress and the right to occupy the same, subject to surface and easement rights."[16] Finally, Minimax was

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[15] *Rollo*, pp. 71-93.

[16] *Id.* at 87.

empowered to "sell, assign, transfer, convey, or otherwise dispose of all its rights, interests and obligations under the Agreement subject to the approval of the Government."[17] Consequently, on June 20, 2014, Minimax granted petitioner the exclusive right to explore, develop and operate the mining property, through an Operating Agreement that was approved by the Government.[18] As a result thereof, Minimax's rights to explore the mining property as well as possess and occupy the same were transferred to petitioner. **Hence, petitioner may file for a complaint to expropriate the subject property**. Under Section 23, "An exploration permit shall grant to the permittee, his heirs or successors-in-interest, the right to enter, occupy and explore the area." Clearly, the transferee of a permittee enjoys the same privileges as the latter. Had the Legislature intended that the transferee should seek a separate grant of authority to exercise the power of eminent domain, it would have made an express pronouncement therefor.

All told, petitioner, as transferee of Minimax, may file a complaint to expropriate the subject property. The ruling in this case, however, is not a final determination of petitioner's authority to exercise the power of eminent domain because *the same is still dependent upon the trial court's determination of the validity of the Operating Agreement between petitioner and Minimax*. It must be emphasized that the instant petition originated from a complaint for expropriation filed by petitioner against the respondents. In said case, the trial court issued a writ of possession in favor of petitioner, which issuance became the subject of a petition for *certiorari* before the CA and eventually, the subject of a petition for review before the Court. Consequently, any adjudication made by the Court as regards the validity of the Operating Agreement between petitioner and Minimax would be premature considering that the trial court merely issued a writ of possession, not an order of condemnation which would have settled petitioner's right to expropriate. The

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[17] *Id.*

[18] *Id.* at 293-296, 306-307.

issuance of a writ of possession merely authorizes the petitioner to enter the property subject of the complaint for expropriation. At this stage, the trial court does not yet make any final determination as to petitioner's authority to exercise the power of eminent domain. It must be borne in mind that *"[t]here are two (2) stages in every action for expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint."*[19]

In this case, any question as to the validity of the Operating Agreement between petitioner and Minimax would be better resolved during trial on the merits with regard to the first stage of the expropriation proceedings which concerns petitioner's authority to exercise the power of eminent domain. Indeed, the question of whether the Orders issued by the MGB, which were attached by petitioner in its Comment/Opposition (On the Motion for Reconsideration dated 12 February 2016) filed before the CA, already evince the required approval of the DENR Secretary, is essentially a factual matter that should be resolved before the trial court after reception of evidence.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated September 16, 2016 and Resolution dated January 9, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 07230 are **REVERSED** and **SET ASIDE**. Consequently, the Writ of Possession issued by the Regional Trial Court, Branch 34, Cabadbaran City, in Civil Case No. SC-14-06 is **UPHELD**. The trial court is hereby **ORDERED** to proceed with dispatch in resolving the complaint for expropriation with particular attention to the determination of

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[19] *National Power Corporation v. Posada*, 755 Phil. 613, 624 (2015).

whether the Operating Agreement between petitioner and Minimax was duly approved by the DENR Secretary.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 238014. June 15, 2020]

FELIPE P. SABALDAN, JR., *petitioner, vs.* **OFFICE OF THE OMBUDSMAN FOR MINDANAO and CHRISTOPHER E. LOZADA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN IS GIVEN A WIDE LATITUDE AND DISCRETION TO ACT ON CRIMINAL COMPLAINTS AGAINST PUBLIC OFFICIALS AND GOVERNMENT EMPLOYEES; THUS, THE COURT REFRAINS FROM INTERFERING WITH THE OMBUDSMAN'S DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE, EXCEPT WHEN THE FINDING OF PROBABLE CAUSE, OR THE LACK OF IT, IS TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— It is clear from [Sections 12 and 13, Article XI of the 1987 Constitution and Section 15 of the Ombudsman Act of 1989] that the Ombudsman is given a wide latitude and discretion to act on criminal complaints against public officials and government employees. It has the constitutional and statutory mandate to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and to decide whether or not to file the corresponding information with the appropriate court. Thus, the Court has consistently

refrained from interfering with the Ombudsman's determination of the existence of a probable cause. We have repeatedly explained: [T]his Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on respect for the investigators and prosecutors powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. It is only when the finding of probable cause, or the lack of it, is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction can the Court step in and substitute our judgment for that of the Ombudsman. Conversely, absent a clear showing of grave abuse of discretion, the court cannot review and set aside the finding of the presence or absence of probable cause which is a task that properly belongs to the Ombudsman alone.

2. CRIMINAL LAW; THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); SECTION 3 (e) THEREOF; ELEMENTS. — Petitioner stands charged for violation of Section 3(e) of R.A. No. 3019. x x x. The elements of the offense are: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference. The offense under Section 3(e) may be committed in three ways. There is **"manifest partiality"** when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are

wished for rather than as they are." **Evident bad faith**, on the other hand, pertains to bad judgment as well as palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse or ill will. **Gross inexcusable negligence** is that negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. The March 20, 2017 Resolution of the Ombudsman failed to sufficiently show that, more likely than not, petitioner in his capacity as BAC member acted with manifest partiality, evident bad faith or gross inexcusable negligence in recommending the award of the procurement contract to RDAK.

3. ID.; ID.; ID.; ID.; FOR THERE TO BE A VIOLATION UNDER SECTION 3(e) OF R.A. NO. 3019 BASED ON A BREACH OF APPLICABLE PROCUREMENT LAWS, ONE CANNOT SOLELY RELY ON THE MERE FACT THAT A VIOLATION OF PROCUREMENT LAWS HAS BEEN COMMITTED; IT MUST BE SHOWN THAT THE VIOLATION OF PROCUREMENT LAWS CAUSED UNDUE INJURY TO ANY PARTY OR GAVE ANY PRIVATE PARTY UNWARRANTED BENEFITS, ADVANTAGE OR PREFERENCE, AND THE ACCUSED ACTED WITH EVIDENT BAD FAITH, MANIFEST PARTIALITY, OR GROSS INEXCUSABLE NEGLIGENCE; A VIOLATION OF R.A. NO. 9184 DOES NOT *IPSO FACTO* RESULT IN A VIOLATION OF R.A. NO. 3019. — [I]t must be emphasized that the instant case involves a finding of probable cause for a criminal case for violation of Section 3(e) of R.A. No. 3019, and not for violation of R.A. No. 9184. Hence, even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable

> negligence. We therefore apply the case of *Sistoza v. Desierto*: x x x. **To establish a *prima facie* case against petitioner for violation of Sec. 3, par. (e), RA 3019, the prosecution must show not only the defects in the bidding procedure, a circumstance which we need not presently determine, but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality** of petitioner in affixing his signature on the purchase order and repeatedly endorsing the award earlier made by his subordinates despite his knowledge that the winning bidder did not offer the lowest price. x x x. The case of *Caunan v. People* is likewise *apropos* x x x. **However, the lack of public bidding alone does not automatically equate to a manifest and gross disadvantage to the government.** x x x. Verily, since the elements of Section 3(e) of R.A. No. 3019 must still be established to warrant conviction under the said law despite findings of violations of applicable procurement laws, the instant case must be carefully examined through the lens of these elements. This is true despite the fact that the case only deals with a finding of a probable cause. [R].A. No. 9184 and R.A. No. 3019 are distinct laws with distinct requisites for violation. A violation of one does not *ipso facto* result in a violation of the other.

APPEARANCES OF COUNSEL

Lopez-Evangelio Law Office for petitioner.

D E C I S I O N

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

This is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court which seeks to set aside the Resolution[2] dated March 20, 2017 and the Joint Order[3] dated October 13, 2017 of the Office of the Ombudsman (Ombudsman) in OMB-M-C-15-0392-D, which, respectively, found probable cause against Felipe

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[1] *Rollo*, pp. 6-14.

[2] *Id.* at 17-31.

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

P. Sabaldan, Jr. (petitioner) for violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as The Anti-Graft and Corrupt Practices Act, and denied the motion for partial reconsideration thereon.

The Facts

On November 9, 2015, Christopher E. Lozada (Lozada) filed before the Office of the Deputy Ombudsman for Mindanao a Complaint-Affidavit[4] accusing Mayor Librado C. Navarro (Mayor Navarro) of Bislig City, Surigao del Sur of the following: (1) failing to implement the Sikahoy-Pamaypayan Road rehabilitation project; (2) leasing a commercial building without the approval of the Sangguniang Panlungsod; (3) maintaining ghost employees in the City Government of Bislig; (4) failing to account for the ₱2,200,000.00 allotted for the construction of Poblacion Boulevard in Poblacion, Bislig City; (5) hosting radio and television programs that advance his personal interests; (6) distributing rice with substandard quality in the implementation of the City Social Welfare Development's feeding program; (7) allocating the amount of ₱400,000.00 for a poultry house livelihood project that did not materialize; (8) occupying two residential units under the housing project of the provincial government for his personal use; and (9) failing to observe the procurement rules in purchasing a hydraulic excavator.

Lozada alleged that the City Government of Bislig purchased from RDAK Transport Equipment, Inc. (RDAK) a Komatsu PC200-8 crawler-type hydraulic excavator worth ₱14,750,000.00. He maintained that the purchase was disadvantageous to the government since the bid price of the Kobelco SK200-8 model offered by JVF Commercial International Heavy Equipment Corp. (JVF) was substantially lower by ₱4,214,000.00. This notwithstanding, Mayor Navarro approved the recommendation of the Bids and Awards Committee (BAC) to award the contract to RDAK.

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[4] *Id.* at 67-83.

The Ombudsman included as respondents herein petitioner in his capacity as General Services Officer/BAC Member, City Administrator/BAC Chairman Charlito R. Lerog, City Treasurer/ BAC Member Roberto V. Viduya, City Planning Development Coordinator/BAC Member Aprodecio A. Alba, Jr., Officer-in-Charge City Budget Office/BAC Member Belma K. Lomantas, Officer-in-Charge, City Engineer's Office/BAC Member Lorna S. Salgado, City Legal Officer/BAC Member Daisy A. Ronquillo, City Accountant/Technical Working Group (TWG) Chairperson Raquel L. Bautista, TWG Members Gilbert P. Abugan, Laila P. Manlucob and Estefa R. Mata, and Cesar B. Ner, authorized representative of RDAK Transport Equipment Inc. (RDAK), (collectively referred to as respondents *a quo*). In an Order dated November 23, 2015, petitioner and his co-respondents *a quo* were directed to submit their respective counter-affidavits, to which they complied.

Petitioner and his co-respondents *a quo* argued that the City Government of Bislig requested for an inspection of RDAK's hydraulic excavator from COA State Auditor III Cipriano C. Sumabat. In the Inspection Report for Equipment and Facilities dated March 7, 2012, State Auditors Santiago O. Burdeos and Celso U. Reyes and Chief Technical Audit Specialist Junrey E. Labatos stated that RDAK's hydraulic excavator conformed to the specifications provided in the approved purchase order. Thus, petitioner and his co-respondents were surprised that the COA made a conflicting report which was the basis for its issuance of the Notice of Disallowance. They then filed a Petition for Review with the COA to challenge said conflicting audit reports.[5]

In a Resolution dated March 20, 2017, the Ombudsman found probable cause for violation of Section 3(e) of R.A. No. 3019 in relation to the procurement of RDAK's hydraulic excavator against petitioner and his co-respondents *a quo*. The Ombudsman, however, dismissed the charges for violation of Section 3(g) of R.A. No. 3019 and for malversation of public

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[5] *Id.* at 21.

funds. The Ombudsman held that RDAK did not comply with Section 25 of the Revised Implementing Rules and Regulations (IRRs) of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act which requires bidders to submit, among others, the technical specifications of the product they are offering. But despite this non-compliance, the BAC passed RDAK's bid and included it in the post-qualification.

Petitioner and his co-respondents filed their Joint Motion for Partial Reconsideration[6] but the same was denied in a Joint Order dated October 13, 2017.

Hence, the instant petition for *certiorari* filed by petitioner ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman in finding probable cause for violation of Section 3(e) of R.A. No. 3019.

Our Ruling

The petition is meritorious.

Sections 12 and 13, Article XI of the 1987 Constitution provide:

> SEC. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and results thereof.
>
> SEC. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:
>
> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
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> x x x x x x x x x

Meanwhile, Section 15 of the Ombudsman Act of 1989 states:

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[6] *Id.* at 32-59.

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

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

x x x x x x x x x

It is clear from the foregoing legal provisions that the Ombudsman is given a wide latitude and discretion to act on criminal complaints against public officials and government employees.[7] It has the constitutional and statutory mandate to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and to decide whether or not to file the corresponding information with the appropriate court.[8] Thus, the Court has consistently refrained from interfering with the Ombudsman's determination of the existence of a probable cause. We have repeatedly explained:

[T]his Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on respect for the investigators and prosecutors powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals

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[7] *Estrada v. Office of the Ombudsman,* G.R. Nos. 212761-62, 213473-74 & 213538-39, July 31, 2018.

[8] *Esquivel v. Hon. Ombudsman* (Resolution), 437 Phil. 702, 711 (2002).

or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[9] (Underscoring and citation omitted)

It is only when the finding of probable cause, or the lack of it, is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction can the Court step in and substitute our judgment for that of the Ombudsman. Conversely, absent a clear showing of grave abuse of discretion, the court cannot review and set aside the finding of the presence or absence of probable cause which is a task that properly belongs to the Ombudsman alone.

Petitioner stands charged for violation of Section 3(e) of R.A. No. 3019. The law 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
>
> (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.

The elements of the offense are: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[10]

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[9] *Reyes v. Hon. Ombudsman*, 783 Phil. 304, 333 (2016) citing *Ciron v. Gutierrez,* G.R. Nos. 194339-41, April 20, 2015.

[10] *Villarosa v. Hon. Ombudsman*, G.R. No. 221418, January 23, 2019.

The offense under Section 3(e) may be committed in three ways. There is **"manifest partiality"** when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are."[11] **Evident bad faith**, on the other hand, pertains to bad judgment as well as palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse or ill will.[12] **Gross inexcusable negligence** is that negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[13]

The March 20, 2017 Resolution of the Ombudsman failed to sufficiently show that, more likely than not, petitioner in his capacity as BAC member acted with manifest partiality, evident bad faith or gross inexcusable negligence in recommending the award of the procurement contract to RDAK.

The Ombudsman declared:

> It is worthy to note that respondent Ner of RDAK did not indicate in his bid the specifications unique to the Komatsu unit he was offering. He merely copied the procuring entity's product specifications as reflected in its Purchase Request (PR) and Request for Quotation (RFQ). For example, instead of stating the unit's exact operating weight of 19,500 kgs., RDAK merely stated "with an operating weight of no less than 19,000 kg." RDAK thus did not comply with Section 25 of the Revised Implementing Rules and Regulations of R.A. No. 9184 which clearly requires bidders to submit, among others, the technical specifications of the product they are offering. Despite this non-compliance, however, the BAC passed RDAK's bid and included it in the post qualification.

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[11] *Id.*

[12] *Albert v. Sandiganbayan*, 599 Phil. 439, 450-451 (2009).

[13] *Plameras v. People*, 717 Phil. 303, 321 (2013).

The Office also notes the observation of COA Supervising TAS Dante M. Jabutay (Jabutay) and State Auditor Joey Z. Atazan (Atazan) as contained in their 28 June 2012 Evaluation Report and confirmed in their December 2015 Joint Affidavit, that had a thorough evaluation during post-qualification been made, the proposals of both RDAK and JVF would have been declared non-responsive. It was found that the unit of RDAK did not meet the City government's specification with respect to bucket capacity. It was also inferior to that of JVF in terms of engine power, bucket capacity and operating weight. JVF's unit, on the other hand, failed to meet the City government's required number of cylinders and bucket digging force, per the TWG's Post-Qualification and Evaluation Report (Report).

There was also an apparent manipulation of the Report to make it appear that RDAK had a responsive bid. The Report indicates that the unit of RDAK had a bucket capacity of 1.0 cubic meter, but based on the Specifications (brochure) of the delivered unit, it had only a capacity of 0.8 cubic meter. In fact, this was lower than the City Government's requirement of 1.0 to 1.5 cubic meter. The BAC, instead of declaring the bidding a failure, went ahead with the procurement and awarded the contract to RDAK.

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The TWG's manipulation of data in its Report; the award of the supply contract to RDAK despite that its representative, respondent Ner, did not truthfully present in his bid the Komatsu PC200-8's specifications, and despite that the bidding was a failure as neither RDAK's nor JVF's proposal was responsive; coupled with respondents going for RDAK's less superior unit notwithstanding its glaringly higher price, all show respondents' bad faith and manifest partiality toward the said supplier. By respondents' concerted acts clearly favoring RDAK, they accorded it the benefit, advantage and preference it did not deserve.[14]

The Ombudsman solely relied on the numerous irregularities that attended the procurement of the hydraulic excavator without carefully examining the sufficiency of the allegations and evidence presented *vis-á-vis* the elements of violation of Section 3(e) of R.A. No. 3019. Lozada anchored his charge against petitioner

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[14] *Rollo*, pp. 26-28.

on the fact that he was a BAC member during the procurement process. But there was no clear showing how petitioner and the other BAC members exhibited manifest partiality, evident bad faith, or inexcusable negligence when the contract was awarded to RDAK. It may even be well to point out that petitioner's only participation in the procurement was to sign the abstract of bids which generally contains a summary of information on the procurement at hand, to wit: (1) the name of the contract and its location; (2) the time, date and place of bid opening; and (3) the names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.[15] As aptly posited by petitioner, when he signed the abstract of bids, he merely attested to the truthfulness of the names of the bidders and their bid prices.[16] Petitioner did not even affix his signature on the resolution declaring the lowest calculated bidder. Indubitably, the essential ingredients of manifest partiality, evident bad faith, or inexcusable negligence are wanting in this case.

More importantly, it must be emphasized that the instant case involves a finding of probable cause for a criminal case for violation of Section 3(e) of R.A. No. 3019, and not for violation of R.A. No. 9184. Hence, even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest

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[15] Section 32.5 of the Implementing Rules and Regulations of Republic Act No. 9184.

[16] *Rollo*, p. 10.

partiality, or gross inexcusable negligence. We therefore apply the case of *Sistoza v. Desierto*:[17]

> Clearly, the issue of **petitioner Sistoza's criminal liability does not depend solely upon the allegedly scandalous irregularity of the bidding procedure for which prosecution may perhaps be proper. For even if it were true and proved beyond reasonable doubt that the bidding had been rigged, an issue that we do not confront and decide in the instant case, this pronouncement alone does not automatically result in finding the act of petitioner similarly culpable.** It is presumed that he acted in good faith in relying upon the documents he signed and thereafter endorsed. **To establish a *prima facie* case against petitioner for violation of Sec. 3, par. (e), RA 3019, the prosecution must show not only the defects in the bidding procedure, a circumstance which we need not presently determine, but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality** of petitioner in affixing his signature on the purchase order and repeatedly endorsing the award earlier made by his subordinates despite his knowledge that the winning bidder did not offer the lowest price. Absent a well-grounded and reasonable belief that petitioner perpetrated these acts in the criminal manner he is accused of, there is no basis for declaring the existence of probable cause.[18] (Emphasis and underscoring supplied)

The case of *Caunan v. People*[19] is likewise *apropos*:

> We are not unmindful of the fact that petitioners failed to conduct the requisite public bidding for the questioned procurements. **However, the lack of public bidding alone does not automatically equate to a manifest and gross disadvantage to the government.** As we had occasion to declare in *Nava v. Sandiganbayan*, the absence of a public bidding may mean that the government was not able to secure the lowest bargain in its favor and may open the door to graft and corruption. **However, this does not satisfy the third element of the offense charged, because the law requires that the disadvantage must be manifest and gross.** After all, penal laws are strictly construed

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[17] 437 Phil. 117 (2002).

[18] *Id.* at 133.

[19] 614 Phil. 179 (2009).

against the government.[20] (Emphasis and underscoring supplied; citation omitted)

Verily, since the elements of Section 3(e) of R.A. No. 3019 must still be established to warrant conviction under the said law despite findings of violations of applicable procurement laws, the instant case must be carefully examined through the lens of these elements. This is true despite the fact that the case only deals with a finding of a probable cause.

A final note. R.A. No. 9184 and R.A. No. 3019 are distinct laws with distinct requisites for violation. A violation of one does not *ipso facto* result in a violation of the other.

WHEREFORE, the petition is **GRANTED**. The Resolution dated March 20, 2017 and the Joint Order dated October 13, 2017 of the Office of the Ombudsman are hereby **REVERSED** and **SET ASIDE**. The complaint against Felipe B. Sabaldan, Jr. for violation of Section 3(e) of Republic Act No. 3019 is hereby **DISMISSED** for lack of probable cause.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 238325. June 15, 2020]

ROWENA PATENIA-KINATAC-AN, ZOSIMA ROWELA PATENIA-DANGO, FE RUCHIT PATENIA-ALVAREZ, FATIMA ROBERTA PATENIA-TRUPA, REY ANTHONY G. PATENIA and RICARTE ABSALON G. PATENIA, *petitioners,*

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[20] *Id.* at 196.

vs. **ENRIQUETA PATENIA-DECENA, EVA PATENIA-MAGHUYOP, MA. YVETTE PATENIA-LAPINED ABO-ABO, GIL A. PATENIA, ELSA PATENIA IOANNOU and EDITHA PATENIA BARANOWSKI,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A QUESTION OF FACT IS BEYOND THE AMBIT OF THE COURT'S JURISDICTION IN A PETITION FOR REVIEW ON *CERTIORARI*. —** [T]he petitioners raised a question regarding the RTC and CA's appreciation of the evidence on whether the donation impaired their legitimes, which is one of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not the Court's task to go over the proofs presented below to ascertain if they were appreciated and weighed correctly, most especially when the RTC and the CA speak as one in their findings and conclusions. To be sure, the instant petition merely reiterates the factual issues and arguments raised in the appeal as to the inofficiousness of the donation. While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists in the instant case.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; WHEN THE LAW REQUIRES THAT A CONTRACT BE IN SOME FORM TO BE VALID, THE REQUIREMENT IS ABSOLUTE AND INDISPENSABLE, AND ITS NON-OBSERVANCE RENDERS THE CONTRACT VOID AND OF NO EFFECT. —** As a rule, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. When, however, the law requires that a contract be in some form to be valid, that requirement is absolute and indispensable. Its non-observance renders the contract void and of no effect. Here, what transpired between Spouses Patenia and the respondents was a donation of an immovable property that requires strict compliance with Article 749 of the Civil Code x x x. Unlike ordinary contracts, which are perfected by the concurrence of the requisites of consent, object and cause, solemn contracts like donations of immovable property are valid only when they comply with legal formalities. Absent the solemnity requirements for validity, the mere intention of the

parties and concurrence to the agreement will not give rise to a contract.

3. REMEDIAL LAW; PROCEDURAL LAWS; NEW RULES CANNOT BE GIVEN RETROACTIVE EFFECT IF THEY WOULD WORK INJUSTICE OR IMPAIR VESTED RIGHTS. — [W]e note that the prevailing law at the time of notarization was the Revised Administrative Code which mandate a notary public to record in his notarial register the necessary information regarding the instrument acknowledged before him x x x. There is nothing in the law that obligates the parties to a notarized document to sign the notarial register. This requirement was subsequently included only in Section 3, Rule VI of the 2004 Rules on Notarial Practice x x x. The present deed of donation, however, was executed and acknowledged before the notary public on January 18, 2002, when there is no rule yet that requires the parties to sign the notarial register. x x x Indeed, the new rules cannot be given retroactive effect if they would work injustice or impair vested rights. In *Tan, Jr. v. Court of Appeals*, we discussed the exceptions to the rule that procedural laws are applicable to pending actions or proceedings x x x.

APPEARANCES OF COUNSEL

L & J Tan Law Firm Associates for petitioners.
Rivero Law & Accounting Office for respondents.

D E C I S I O N

LOPEZ, *J.*:

The validity of a donation of an immovable property is the core issue in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[1] dated June 30, 2017, in CA-G.R. CV No. 04126, which affirmed the findings of the Regional Trial Court (RTC).

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[1] *Rollo*, pp. 27-38; penned by Associate Justice Perpetua T. Atal-Paño, with the concurrence of Associate Justices Romulo V. Borja and Oscar V. Badelles.

ANTECEDENTS

Spouses Ramiro and Amada Patenia (Spouses Patenia) owned a 9,600-square meter (sq m) lot situated in Magugpo, Tagum City, Davao del Norte and registered under Transfer Certificate of Title (TCT) No. T-168688.[2] After Spouses Patenia's death, their children consisting of the petitioners discovered that TCT No. T-168688 has been cancelled by virtue of a Deed of Donation dated January 18, 2002 that their parents supposedly executed in favor of the respondents.[3] Aggrieved, the petitioners filed an action against the respondents to annul the donation before the Regional Trial Court, docketed as Civil Case No. 4241.[4] The petitioners alleged that Spouses Patenia's signatures on the deed were forged and that the donation impaired their legitimes.[5] On the other hand, the respondents claimed their parents owned a 30,644-sq m parcel of land which includes the donated property. Ramiro, being the eldest child, was entrusted by their parents to divide and distribute the land to his siblings. Accordingly, the deed of donation was just part of the distribution of their share on the property.[6]

On August 11, 2015, the RTC dismissed the complaint for lack of merit. It held that the petitioners failed to present preponderant evidence to establish forgery and inofficiousness of the donation,[7] thus:

> On the issue of whether or not the January 18, 2002 Deed of Donation is falsified or forged, plaintiffs failed to present evidence of forgery, save for their claim of different handwriting in the Deed of Donation and the Social Security Identification Documents.
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[2] *Id.* at 28.

[3] *Id.*

[4] *Id.*

[5] *Rollo*, pp. 28-29.

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

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

On the issue that the Deed of Donation is violative of Articles 750, 752, 906 and 907 of the Civil Code, for being onerous and inofficious, as claimed by defendants. *(sic)* Again, plaintiffs failed to present evidence that at the time of the death of their father, he had no other properties except this 9,600 square meters *(sic)* parcel of lot registered in his name.

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WHEREFORE, plaintiffs having failed to substantiate their present action with evidence, this case is hereby **DISMISSED**. [8] (Emphasis in the original.)

Dissatisfied, the petitioners appealed to the CA docketed as CA-G.R. CV No. 04126. They argued that the donation is void because the notary public failed to require the parties to sign the notarial register.[9] On June 30, 2017, the CA affirmed the findings of the RTC and explained that the irregularity in the notarization did not invalidate the donation,[10] *viz.*:

As to the admission of the *(sic)* Atty. Dagooc of the non-affixing of the signatures of the parties in his Notarial Register, the same does not invalidate the Deed of Donation.

Generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity which may only be rebutted by clear and convincing evidence. However, the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective notarization will strip the document of its public character and reduce it to a private document. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

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[8] *Id.* at 46-49.

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

[10] *Id.* at 34-36.

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In the instant case, the private document Deed of Donation is binding between the parties (Ramiro and Amada, and defendants) and the plaintiffs herein, the alleged heirs of Ramiro and Amada. This private document was duly authenticated when notary public Atty. Dagooc and respondent Eva Patenia Maghuyop testified that they were present at the time the Deed of Donation was executed. Thus, it serves as competent proof of the said document's authenticity and due execution.

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WHEREFORE, the appeal is DENIED. The August 11, 2015 Decision of the Regional Trial Court, 11th Judicial Region, Branch 31, Tagum City, in Civil Case No. 4241, is AFFIRMED.[11]

The petitioners sought reconsideration; but was denied.[12] Hence, this recourse. The petitioners maintained that the donation impaired their legitimes and that the defective notarization renders the donation void.[13]

RULING

The petition is unmeritorious.

At the outset, we stress that the petitioners raised a question regarding the RTC and CA's appreciation of the evidence on whether the donation impaired their legitimes, which is one of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not the Court's task to go over the proofs presented below to ascertain if they were appreciated and weighed correctly, most especially when the RTC and the CA speak as one in their findings and conclusions.[14] To be sure, the instant petition merely reiterates the factual

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[11] *Id.* at 34-38.

[12] *Id.* at 40-42.

[13] *Id.* at 13.

[14] *Gatan, et al. v. Vinarao, et al.*, 820 Phil. 257 (2017); *Heirs of Teresita Villanueva v. Heirs of Petronila Suquia Mendoza, et al.*, 810 Phil. 172 (2017); and *Bacsasar v. Civil Service Commission*, 596 Phil. 858 (2009).

issues and arguments raised in the appeal as to the inofficiousness of the donation. While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists in the instant case.[15] Thus, the sole issue left is whether the defective notarization would render the donation void.

As a rule, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. When, however, the law requires that a contract be in some form to be valid, that requirement is absolute and indispensable. Its non-observance renders the contract void and of no effect.[16] Here, what transpired between Spouses Patenia and the respondents was a donation of an immovable property that requires strict compliance with Article 749 of the Civil Code, to wit:

> Art. 749. **In order that the donation of the immovable may be valid, it must be made in a public document**, specifying therein the property donated and the value of the charges which the donee must satisfy.
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> The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

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[15] The recognized exceptions are: (a) When the findings are grounded entirely on speculation, surmises, or conjectures; (b) When the inference made is manifestly mistaken, absurd, or impossible; (c) When there is grave abuse of discretion; (d) When the judgment is based on a misapprehension of facts; (e) When the findings of facts are conflicting; (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) When the CA's findings are contrary to those by the trial court; (h) When the findings are conclusions without citation of specific evidence on which they are based; (i) When the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. See *Navaja v. Hon. de Castro, et al.*, 761 Phil. 142, 155 (2015).

[16] *Dauden-Hernaez v. De los Angeles, etc., et al.*, 137 Phil. 900, 906-907 (1969).

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments. (Emphasis supplied.)

Unlike ordinary contracts, which are perfected by the concurrence of the requisites of consent, object and cause,[17] solemn contracts like donations of immovable property are valid only when they comply with legal formalities. Absent the solemnity requirements for validity, the mere intention of the parties and concurrence to the agreement will not give rise to a contract. In *Abellana v. Sps. Ponce*,[18] we ruled that an oral donation of a real property is void and an action to declare its inexistence does not prescribe. Also, in *Sumipat v. Banga*,[19] the donation was patently void because the donees' acceptance is not manifested either in the deed itself or in a separate document.

In *Dept. of Education, Culture & Sports v. Del Rosario*,[20] we stated that a deed of donation acknowledged before a notary public is a public document. The notary public shall certify that he knows the person acknowledging the instrument and that such person is the same person who executed the instrument, acknowledging that the instrument is his free act and deed. On the other hand, it is settled that a defective notarization will strip the document of its public character and reduce it to a private instrument.[21] Thus, a defective notarization renders the donation of an immovable property invalid since the requirement that such contract must appear in a public instrument is absent. In this case, the petitioners argued that the donation is void because the notary public failed to require the parties therein

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[17] THE CIVIL CODE, Art. 1318.

[18] 481 Phil. 125 (2004).

[19] 480 Phil. 187 (2004).

[20] 490 Phil. 193 (2005).

[21] *Meneses v. Venturozo*, 675 Phil. 641 (2011); *Diampoc v. Buenaventura, et al.*, 828 Phil. 479, 489 (2018); *Heirs of Salud v. Rural Bank of Salinas, Inc.*, 784 Phil. 21 (2016); and *Philippine National Bank v. Pasimio*, 768 Phil. 391 (2015).

to sign the notarial register. However, we note that the prevailing law at the time of notarization was the Revised Administrative Code[22] which mandate a notary public to record in his notarial register the necessary information regarding the instrument acknowledged before him, thus:

> SECTION 245. *Notarial register*. — Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of all his official acts as notary; and he shall supply a certified copy of such record, or any part thereof, to any person applying for it and paying the legal fees therefor.
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> x x x x x x x x x
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> SECTION 246. *Matters to be entered therein*. — The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the signature, the date of the execution, oath, or acknowledgment of the instrument, the fees collected by him for his services as notary in connection therewith, and; when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof, and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.
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> x x x x x x x x x[23]

There is nothing in the law that obligates the parties to a notarized document to sign the notarial register. This requirement was subsequently included only in Section 3, Rule VI of the 2004 Rules on Notarial Practice,[24] thus:

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[22] Chapter 11, Sections 231-259.

[23] Act No. 2711, An Act Amending the Administrative Code.

[24] A.M. No. 02-8-13-SC promulgated on July 6, 2004.

SECTION 3. *Signatures and Thumbmarks.* — At the time of notarization, the notary's notarial register shall be signed or a thumb or other mark affixed by each:

(a) principal;
(b) credible witness swearing or affirming to the identity of a principal; and
(c) witness to a signature by thumb or other mark, or to a signing by the notary public on behalf of a person physically unable to sign.

As explained in *Miranda, Jr. v. Alvarez, Sr.*[25] and *Gaddi v. Atty. Velasco*,[26] the 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, "*the signatory shall sign or affix with a thumb or mark the notary public's notarial register*."[27] The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act.

The present deed of donation, however, was executed and acknowledged before the notary public on January 18, 2002, when there is no rule yet that requires the parties to sign the notarial register. In *Heirs of Pedro Alilano v. Atty. Examen*,[28] the Court discussed in brief the history of notarial rules in the Philippines, *viz.*:

Prior to 1917, governing law for notaries public in the Philippines was the Spanish Notarial Law of 1889. However, the law governing

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[25] A.C. No. 12196, September 3, 2018, 878 SCRA 489.

[26] 742 Phil. 810 (2014).

[27] *Id.* at 815-816.

[28] 756 Phil. 608 (2015).

Notarial Practice is changed with the passage of the January 3, 1916 Revised Administrative Code, which took effect in 1917. In 2004, the Revised Rules on Notarial Practice was passed by the Supreme Court.[29] (Citation omitted.)

In that case, the heirs of Alilano stated that Atty. Examen was prohibited to notarize the absolute deeds of sale since he was related by consanguinity within the fourth civil degree with the vendee. We explained that the prohibition might have still applied had the applicable rule been the Spanish Notarial Law. Yet, the law in force at the time of signing was the Revised Administrative Code where such prohibition was removed.[30] Thus, Atty. Examen was not incompetent to notarize the document even if one of the parties to the deed was his brother. Also, we noted that it is under the 2004 Rules on Notarial Practice that a notary public is again disqualified among others to perform a notarial act if he is related by affinity or consanguinity to a principal within the fourth civil degree.[31]

Indeed, the new rules cannot be given retroactive effect if they would work injustice or impair vested rights. In *Tan, Jr. v. Court of Appeals*,[32] we discussed the exceptions to the rule that procedural laws are applicable to pending actions or proceedings, to wit:

x x x The rule does not apply where the statute itself expressly or by necessary implication provides that pending actions are excepted from its operation, **or where to apply it to pending proceedings would impair vested rights. Under appropriate circumstances, courts may**

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[29] *Id.* at 616.

[30] *Id.*, citing *Kapunan, et al. v. Casilan and Court of Appeals*, 109 Phil. 889 (1960).

[31] Rule IV, Section 3 (c) provides that [a] notary public is disqualified from performing a notarial act if he:

x x x x x x x x x

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

[32] 424 Phil. 556 (2002).

deny the retroactive application of procedural laws in the event that to do so would not be feasible or would work injustice. Nor may procedural laws be applied retroactively to pending actions if to do so would involve intricate problems of due process or impair the independence of the courts.[33] (Emphasis ours.)

In sum, the deed of donation between Spouses Ramiro and Amada Patenia and the respondents is valid and compliant with the solemnities in Article 749 of the Civil Code.

FOR THESE REASONS, the petition is **DENIED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 241778. June 15, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **DENNIS MEJIA *y* CORTEZ *alias* "DORMIE"**, *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; REQUISITES; IT IS ABSOLUTELY NECESSARY THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY.— The requisites of illegal possession of dangerous drugs, to wit: 1) that the accused was in possession of the object identified as a prohibited or regulated drug; (2) that such possession is

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[33] *Id.* at 570.

not authorized by law; and (3) that the accused freely and consciously possessed the said drug. In cases for Illegal Possession of Dangerous Drugs under R.A. No. 9165, it is absolutely necessary that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failure to prove the integrity of the *corpus delicti* leaves the evidence for the State inadequate for a conviction and hence, warrants an acquittal.

2. ID.; ID.; CHAIN OF CUSTODY PROCEDURE; WITNESSES REQUIRED TO BE PRESENT. — To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. To comply with the chain of custody procedure, the law mandates that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses namely: (a) if **prior** to the amendment of R.A. No. 9165 by R.A. No. 10640, "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official"; or (b) if **after** the amendment of R.A. No. 9165 by R.A. No. 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." x x x [I]t is important to highlight the significance of compliance with the chain of custody rule. It is not a mere technical rule of procedure that courts may, in their discretion, opt to relax.

3. ID.; ID.; ID.; SAVING CLAUSE IN CASE OF DEVIATION FROM THE PROCEDURE. — [T]he Court has recognized that due to the varying field conditions, strict compliance with the chain of custody procedure may not always be possible. Accordingly, deviations from the procedure may be allowed, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. This is known

as the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which was later adopted into the text of R.A. No. 10640.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This resolves the appeal filed by accused-appellant Dennis Mejia *y* Cortez, *alias* "Dormie" (accused-appellant) from the Decision[1] dated May 31, 2018 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 09305 affirming the Decision[2] of the Regional Trial Court (RTC), Branch 31, City of Manila, in Criminal Case No. 15-319616 finding accused-appellant guilty beyond reasonable doubt of the charge of illegal possession of dangerous drugs, defined and penalized under Section 11 (2), Article II of Republic Act (R.A.) No. 9165,[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

On September 5, 2015, an Information was filed before the RTC, Branch 31, City of Manila, in Criminal Case No. 15-319616 against accused-appellant. The Information reads:

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[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Maria Luisa Quijano-Padilla and Rafael Antonio M. Santos, *rollo*, pp. 2-29.

[2] Penned by Maria Sophia T. Solidum-Taylor; CA *rollo*, pp. 82-91.

[3] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

That on or about August 28, 2015, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control three (3) heat-sealed transparent plastic sachets with markings and recorded net weights, as follows:

DMC 2-a 8-25-15 containing TWO POINT SEVEN SIX EIGHT (2.768) grams

DMC 2-b 8-28-15 containing TWO POINT FIVE TWO SIX (2.526) grams

DMC 2-c 8-28-15 containing TWO POINT FOUR SEVEN NINE (2.479) grams

or with a total net weight of SEVEN POINT SEVEN SEVEN THREE (7.773) grams of white crystalline substance containing Methamphetamine hydrochloride, commonly known as "*shabu*," a dangerous drug.

Contrary to law.[4]

When arraigned, accused-appellant pleaded not guilty to the charge and after the pre-trial conference, trial on the merits ensued.

Version of the Prosecution

According to the prosecution, at around 11:00 a.m. of August 28, 2015, some police officers conducted an anti-criminality campaign in the area of Kaunlaran Street, Tondo, Manila. About 11:50 a.m., while on board their vehicle, they saw Arnel Cariño *y* Escala, a resident of Masinop Street, Moriones, Tondo being robbed at gunpoint and knife point. They rushed to the scene announcing themselves as police officers and a chase ensued. Senior Police Officer 2 Ronald Mesina (SPO2 Mesina) was able to catch one of the three robbers who was later identified as the accused-appellant.[5]

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[4] CA *rollo*, p. 82.

[5] *Rollo*, p. 12.

Accused-appellant was frisked after being asked to lie prone to the ground and one .38 caliber firearm without a serial number was seized from him. Upon further body search, SPO2 Mesina was able to recover a belt bag from the accused-appellant containing a Marlboro cigarette case with three plastic sachets containing white crystalline substance suspected to be *shabu*.

The two other suspects aside from the accused-appellant were also caught by the other police officers.

Accused-appellant was then charged with the crimes of Robbery/Hold-up, Violation of R.A. No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act and also Violation of Section 11 of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act.[6] As for the robbery case, as well as the case for violation of R.A. No. 10591 against the appellant and his co-accused, it was disclosed during trial that they pleaded guilty to both cases. As proof, the prosecution submitted a certified copy of the Consolidated Decision where the accused-appellant and his co-accused were all found guilty as charged.[7]

As for the drugs case, the prosecution alleged that SPO2 Mesina marked the three sachets of drug specimen taken from the accused-appellant at the place of arrest as "DMC 2-a 8-28-15," "DMC 2-b 8-28-15" and "DMC 2-c 8-28-15," while the Marlboro case was marked as "DMC 2-d."

The accused-appellant with his cohorts were then brought to the nearest *barangay* office wherein *Barangay Kagawad* Arnulfo dela Cruz (*Kagawad* Dela Cruz) was present. A certification was prepared and signed by *Barangay Kagawad* Dela Cruz. This was also signed by *Barangay Tanod* Niko Boy Nencio and *Barangay* Executive Officer Ariel Bengua. The said Certification stated the circumstances surrounding the arrest of the accused-appellant where three pieces of transparent, plastic sachets containing white crystalline substance

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[6] *Id.* at 13.

[7] CA *rollo*, pp. 143-144.

believed to be *shabu*, placed inside a Marlboro cigarette pack, were recovered from his belt bag. It further stated that the drug specimens were marked by SPO2 Mesina at the place of arrest while the Certification was made at the *barangay* office.

After the issuance of the Certification, which served as the inventory of the seized drug specimen, the police officers together with the suspects proceeded to the police station. SPO2 Mesina was in possession of the drug specimen from the place of arrest to the *barangay* office and from the *barangay* office to the police station.[8]

Upon arrival at the police station with the accused-appellant and the seized items, the Request for Laboratory Examination and the Chain of Custody Form were prepared by the investigator. SPO2 Mesina and the other police officers also prepared the Joint Affidavit of Apprehension.

SPO2 Mesina personally delivered the letter-request for laboratory examination, as well as the drug specimens to the Manila Police District (MPD) Crime Laboratory which was received by Forensic Chemist Police Inspector Jeffrey Reyes. Photographs of the accused-appellant, as well as the recovered drug specimen were also taken at the police station.

Chemistry Report No. D-828-15 showed that the three plastic sachets with white crystalline substance that were recovered from the accused-appellant all tested positive for methamphetamine hydrochloride or *shabu*.[9]

Version of the Defense

Accused-appellant denied the allegations against him and offered another account of what happened.

According to the accused-appellant, on August 28, 2015, he was at Balut, Tondo, Manila when a police officer approached him out of the blue and asked him his reason for being in the

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[8] *Id.* at 13-14.

[9] *Id.* at 15.

area. He was then brought to MPD Headquarters where he learned that he had been charged for possession of *shabu*. He claimed that he only saw the plastics containing *shabu* at the police station for the first time and said that such was not recovered from him.[10]

Ruling of the Trial Court

On March 27, 2017, the RTC of Manila, Branch 31, convicted accused-appellant for Possession of Dangerous Drugs under Section 11 (2), Article II of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. According to the RTC, the prosecution was able to establish the guilt of the accused-appellant beyond reasonable doubt by establishing all the elements of the offense. More importantly, the RTC declared that the prosecution was able to prove the identity and integrity of the *corpus delicti* of the case and was able to establish the unbroken chain of custody thereof. It gave credence to the evidence presented by the prosecution that the specimen taken from the accused-appellant was the very same specimen that was presented in court. Furthermore, the RTC held that the prosecution substantially complied with the provisions of Section 21 of R.A. No. 9165 that even though it was admitted and established that the police operatives failed to prepare an inventory of the recovered evidence, its absence is not a fatal defect to warrant the acquittal of the accused-appellant as the prosecution was able to show the unbroken chain of custody of the *corpus delicti* of the case and was able to prove the integrity thereof. The *fallo* of the RTC Decision reads as follows:

> WHEREFORE, premises considered, accused DENNIS MEJIA *y* CORTEZ @ "DORMIE" is hereby found GUILTY beyond reasonable doubt for violation of Section 11 (2), Art. II of Republic Act 9165. Consequently, said accused is hereby sentenced to suffer the penalty of imprisonment of twenty (20) years and one (1) day to life imprisonment and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00). No costs.

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[10] *Id.* at 16.

The dangerous drugs subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

Let a copy of this Decision be sent to the Office of the Court Administrator of the Supreme Court; the Philippine Drug Enforcement Agency (PDEA); the Head of Criminal Investigation and Detection Group WMMCIDT-NCRCIDU as well as the NAPOLCOM.

SO ORDERED.[11]

Aggrieved, the accused-appellant appealed to the CA.

Ruling of the CA

On May 31, 2018, the CA rendered its Decision, affirming accused-appellant's conviction. Echoing the trial court's findings, the CA affirmed the Decision of the RTC that all the elements of illegal possession of dangerous drugs were duly proven and that the chain of custody of dangerous drugs was substantially complied with. The witnesses for the prosecution were able to testify on every link in the chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court. Thus, it disposed the case in this wise:

WHEREFORE, the appeal is DENIED. Consequently, the assailed Decision is AFFIRMED.

IT IS SO ORDERED.[12]

Hence, this appeal. Accused-appellant and the People manifested that they would no longer file their respective Supplemental Briefs, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Accused-appellant reiterated that the buy-bust team failed to follow the procedure mandated in

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[11] CA *rollo*, pp. 93-94.

[12] *Rollo*, p. 29.

Section 21 (1), Article II of R.A. No. 9165. Moreover, the accused-appellant pointed out inconsistencies regarding the testimony of SPO2 Mesina as to where the certification was made.

The Issue

The pivotal issue for this Court's resolution is whether or not accused-appellant's conviction for illegal possession of dangerous drugs defined and penalized under Section 11, Article II of R.A. No. 9165, should be upheld.

The Court's Ruling

The petition is meritorious.

The requisites of illegal possession of dangerous drugs, to wit: 1) that the accused was in possession of the object identified as a prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[13]

In cases for Illegal Possession of Dangerous Drugs under R.A. No. 9165, it is absolutely necessary that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[14] Failure to prove the integrity of the *corpus delicti* leaves the evidence for the State inadequate for a conviction and hence, warrants an acquittal.[15]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[16]

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[13] *People v. Atchivar*, G.R. No. 207769, March 14, 2016 (Minute Resolution).

[14] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

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

[16] *People v. Año*, G.R. No. 230070, March 14, 2018.

To comply with the chain of custody procedure, the law mandates that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses namely: (a) if **prior** to the amendment of R.A. No. 9165 by R.A. No. 10640, "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official";[17] or (b) if **after** the amendment of R.A. No. 9165 by R.A. No. 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media."[18] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[19]

Notwithstanding, the Court has recognized that due to the varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[20] Accordingly, deviations from the procedure may be allowed, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[21] This is known as the saving clause found in Section 21 (a),[22] Article II of the

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[17] Section 21 (1) and (2), Article II of R.A. No. 9165 and its IRR.

[18] Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.

[19] *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[20] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[21] *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[22] Section 21 (a), Article II of the IRR of R.A. No. 9165 pertinently states: "*Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."

Implementing Rules and Regulations (IRR) of R.A. No. 9165, which was later adopted into the text of R.A. No. 10640.[23]

At this point, it is important to highlight the significance of compliance with the chain of custody rule. It is not a mere technical rule of procedure that courts may, in their discretion, opt to relax. Thus, in *Mallillin v. People*,[24] the Court declared:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

Since the alleged offense was committed on August 28, 2015, or after the amendment of R.A. No. 9165 by R.A. No. 10640 on July 15, 2014, the Court is constrained to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165 as it was amended. Thus, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) an elected public official and a representative of the National Prosecution Service <u>*OR*</u> the

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[23] Section 1 of R.A. No. 10640 pertinently states: "*Provided, finally*, That non-compliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

[24] 576 Phil. 576, 587 (2008).

media (e) who shall be required to sign the inventory and be given copies thereof.[25]

In this case, petitioner is charged with Illegal Possession of Dangerous Drugs. However, records disclose glaring and unjustifiable deviations from the chain of custody procedure, as follows:

First of all, there is doubt as to where the physical inventory was made or whether there was an inventory at all. It must be noted that in lieu of an inventory form, the police officers only provided a Certification from the *barangay* office which was made by *Kagawad* Dela Cruz. On this point, we agree with the finding of the RTC that the Certification cannot be considered as an equivalent of an inventory form for purposes of complying with the rules, to wit:

> One last point. It is an established and admitted fact that the police operatives in this case failed to prepare an inventory for the recovered evidence subject of this case. What was submitted was a certification marked in evidence for the prosecution as Exh. ["E"] which was issued by the [*barangay*]. Nevertheless, the said certification cannot be considered as an inventory in the strict sense of the word.[26]

Furthermore, SPO2 Mesina gave contradictory statements regarding where the Certification was made. A portion of his direct examination is reproduced below:

> Q: Why what [sic] the reason why you brought him to the barangay and in the presence of the Barangay Chairman?
>
> A: As compliance of the drugs law R.A. 9165 and we requested for a certification from the barangay because we marked the evidence recovered there, sir.
>
> Q: What were the evidence recovered that you marked at the barangay in the presence of the Barangay Kgd., the Barangay Ex-O and the Barangay Tanod?

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[25] *Supra* note 17.

[26] CA *rollo*, p. 93.

A: The three (3) plastic sachets contained in his beltbag containing white crystalline substance, sir.[27]

However, contrary to his prior statement in his direct examination, he said in his cross-examination that the Certification was made at the place of arrest and not in the *barangay* hall as previously stated, to wit:

Q: You made [sic] a while ago that you made document at the barangay?

A: No sir at the place of arrest.

Q: One document made was the Certification, where was that certification made?

A: At the area, sir.[28]

The foregoing irregularities, when taken together, raises reasonable doubt as to whether the proper procedure was undertaken by the police officers.

Additionally, there was no representative from the media or the National Prosecution Service. The certification, while also being an irregularity in itself, showed only the signatures of certain *barangay* officials and nothing more. There was no representative from the media or the National Prosecution Service which the law requires. Worse, there was no justification offered by the prosecution as to the non-compliance.

The presence of the third-party witnesses during the marking and inventory of the seized items is necessary to ensure that the police operations were valid and legitimate in their inception. Subsequent precaution and safeguards observed would be rendered inutile if in the first place there is doubt as to whether the drugs presented in court were in fact recovered from the accused. Accordingly, such uncertainty would negatively affect the integrity and identity of the *corpus delicti* itself. As such,

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[27] *Id.* at 67.

[28] *Id.*

when there is persistent doubt, the courts are left with no other recourse, but to acquit the accused of the charges against him.[29]

WHEREFORE, the petition is **GRANTED**. The Decision dated May 31, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 09305 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Dennis Mejia *y* Cortez *alias* "Dormie" is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 244287. June 15, 2020]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEMUEL PADUA *y* CEQUEÑA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); IN ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS, THE CONTRABAND ITSELF CONSTITUTES THE VERY *CORPUS DELICTI* OF THE OFFENSES; CHAIN OF CUSTODY. — In Illegal Sale and Possession of Dangerous Drugs, the contraband

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[29] *People v. Jagdon*, G.R. No. 234648, March 27, 2019.

itself constitutes the very *corpus delicti* of the offenses and the fact of its existence is vital to a judgment of conviction. Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court. Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court. Here, the records reveal a broken chain of custody.

2. ID.; ID.; ID.; ID.; PRESENCE OF THE INSULATING WITNESSES IS REQUIRED; FAILURE THEREOF, THE PROSECUTION MUST ALLEGE AND PROVE NOT ONLY THE REASONS FOR THEIR ABSENCE BUT ALSO THE FACT THAT EARNEST EFFORTS WERE MADE TO SECURE THEIR ATTENDANCE. — In *People v. Lim*, this Court explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, x x x Later, this Court emphasized the importance of the presence of the insulating witnesses during the physical inventory and the photograph of the seized items. Indeed, the presence of these witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs. In *People v. Caray*, we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule. Similarly, in *Matabilas v. People*, sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; CANNOT PREVAIL OVER THE RIGHT TO BE PRESUMED INNOCENT. — [I]t must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself

constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth. Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

LOPEZ, *J.*:

The conviction of Jemuel Padua for Illegal Sale and Possession of Dangerous Drugs is the subject of review in this appeal assailing the Court of Appeals' (CA) Decision[1] dated September 19, 2018 in CA-G.R. CR-HC No. 09362, which affirmed the findings of the Regional Trial Court (RTC).

ANTECEDENTS

On December 17, 2014, the Binangonan Police Station planned a buy-bust operation against Jemuel *alias* "*Maton*" based on the information and surveillance report that he is selling illegal drugs at Barangay Libis, Binangonan, Rizal.[2] After the briefing, Police Officer (PO1) Zaldy Manigbas was designated as the *poseur-buyer* and other members as back-up. Immediately, the entrapment team and the confidential informant went to the target area. Thereat, the informant introduced PO1 Manigbas to Jemuel as his co-worker. Also, the informant told Jemuel

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[1] *Rollo*, pp. 3-13. Penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz.

[2] *Id.* at 4-5. The authorities recorded the report in the police blotter and informed Police Chief Inspector Bartolome Marigondon who instructed them to conduct a case surveillance in Barangay Libis. The policemen and the informant proceeded to the area where they saw Jemuel selling illegal drugs.

that they would buy *shabu*. Thus, PO1 Manigbas gave Jemuel the boodle money.[3] Upon receipt of the payment, Jemuel handed to PO1 Manigbas a plastic sachet containing white crystalline substance.[4]

At that moment, PO1 Manigbas executed the pre-arranged signal that the transaction had been consummated. Also, PO1 Manigbas introduced himself as a police officer but Jemuel struggled and resisted the arrest. The other members of the entrapment team rushed in and helped frisk Jemuel. They arrested Jemuel and recovered from him two plastic sachets and two strips of aluminum foil. Immediately, PO1 Manigbas marked the sachet subject of the sale with "JEM-1;" the other two sachets with "JEM-2" and "JEM-3;" and the two strips of aluminum foil with "JEM-4" and "JEM-5." The police officers also conducted an inventory of the seized items in the presence of a barangay official.[5]

The authorities then brought Jemuel to the police station where they took photographs of the confiscated items. Afterwards, PO1 Manigbas delivered the items to forensic chemist P/Sr. Insp. Maria Pia Moskito.[6] After examination, the contents of the three sachets tested positive for methamphetamine hydrochloride.[7] Thus, Jemuel was charged with violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165 before the RTC docketed as Criminal Case Nos. 14-668 and 14-669, to wit:

Criminal Case No. 14-668

"That on or about the 17th day of December 2014 in the Municipality of Binangonan, Province of Rizal, Philippines and within

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[3] The boodle money is two ₱100.00 bills with initials "ZBM-1" and "ZBM-2."

[4] *Rollo*, p. 5.

[5] *Id.* at 5 and 74.

[6] *Id.* at 5-6, 40 and 74.

[7] *Id.* at 6. Chemistry Report No. D-909-14.

the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur buyer, (*sic*) PO1 Zaldy B. Manigbas, one (1) heat-sealed transparent plastic sachet containing 0.05 gram of white crystalline substance marked 'JEM-1', in consideration of PHP 200.00, which substance after examination conducted by the PNP Rizal Provincial Crime Laboratory Office, was found positive to the test for Methamphetamine Hydrochloride, also known as '*shabu*,' a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW."

Criminal Case No. 14-669

"That on or about the 17th day of December 2014 in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and knowingly possess and have in his custody and control 0.04 gram marked 'JEM-2' and 0.01 gram marked 'JEM-3', or with total weight of 0.05 gram of white crystalline substance contained in two (2) heat-sealed transparent plastic sachets, which substance, after examination conducted by the PNP Rizal Provincial Crime Laboratory Office, was found positive to the test for Methamphetamine Hydrochloride, also known as '*shabu*', a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW."[8]

Jemuel denied the accusations and claimed that he was on his way home on board a motorcycle when four men blocked him. They pointed their guns at him and forcibly brought him to a house. He was made to sit beside a table with items unknown to him. They also took pictures of him together with the items. He resisted but the men beat him. Later, they boarded him on a vehicle until they reached the police station.[9]

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

[9] *Id.* at 6.

On February 26, 2017, the RTC convicted Jemuel of Illegal Sale and Illegal Possession of Dangerous Drugs.[10] On September 19, 2018, the CA affirmed the RTC's findings and ruled that the prosecution established all the elements of the offenses as well as an unbroken chain of custody of dangerous drugs.[11]

RULING

We acquit.

In Illegal Sale and Possession of Dangerous Drugs, the contraband itself constitutes the very *corpus delicti* of the offenses and the fact of its existence is vital to a judgment of conviction.[12] Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.[13] Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.[14] Here, the records reveal a broken chain of custody.

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[10] *Id.* at 57-58.

[11] *Id.* at 8-10.

[12] *People v. Partoza y Evora*, 605 Phil. 883 (2009); see also *People v. Cariño y Agustin*, G.R. No. 233336, January 14, 2019; *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94; *People v. Masagno*, G.R. No. 231050, February 28, 2018, 857 SCRA 142; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303.

[13] *People v. Ismael*, 806 Phil. 21 (2017).

[14] *People v. Bugtong*, G.R. No. 220451, February 26, 2018, 856 SCRA 419.

In *People v. Lim*,[15] this Court explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umpiang,* the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Emphasis in the original)

Later, this Court emphasized the importance of the presence of the insulating witnesses during the physical inventory and the photograph of the seized items.[16] Indeed, the presence of these witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.[17] In

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[15] G.R. No. 231989, September 4, 2018.

[16] *People v. Rodriguez*, G.R. No. 233535, July 1, 2019.

[17] *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, *supra;* and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

People v. Caray,[18] we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule. Similarly, in *Matabilas v. People*,[19] sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

In this case, the absence of a representative of the National Prosecution Service or the media as an insulating witness to the inventory and photograph of the seized item[20] puts serious doubt as to the integrity of the chain of custody. To be sure, only an elected public official signed the inventory of evidence at the place of arrest. Worse, the items were photographed at the police station without the presence of any insulating witness. However, the operatives failed to provide any justification for non-compliance showing that the integrity of the evidence had all along been preserved. They did not describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. The utter disregard of the required procedures created a huge gap in the chain of custody.

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption

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[18] G.R. No. 245391, September 11, 2019.

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

[20] The offense was allegedly committed on December 17, 2014. Hence, the applicable law is RA No. 9165, as amended by RA No. 10640, which mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof. (RA No. 10640 took effect on July 23, 2014. See OCA Circular No. 77-2015 dated April 23, 2015.)

of regularity is disputable and cannot be regarded as binding truth.[21] Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.[22]

We reiterate that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Jemuel must be acquitted of the charges against him given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is **GRANTED**. The Court of Appeals' Decision dated September 19, 2018 in CA-G.R. CR-HC No. 09362 is **REVERSED** and **SET ASIDE**. Jemuel Padua *y* Cequeña is **ACQUITTED** in Criminal Case Nos. 14-668 and 14-669, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Resolution.

SO ORDERED.

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

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[21] *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Lopez v. People*, 576 Phil. 576 (2008).

[22] *People v. Dela Cruz*, 589 Phil. 259 (2008).

FIRST DIVISION

[G.R. No. 246471. June 15, 2020]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **DIEGO FLORES *y* CASERO,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); CHAIN OF CUSTODY; IN ILLEGAL SALE OF DANGEROUS DRUGS, THE CONTRABAND ITSELF CONSTITUTES THE VERY *CORPUS DELICTI* OF THE OFFENSE AND THE FACT OF ITS EXISTENCE IS VITAL TO A JUDGMENT OF CONVICTION; THUS, IT IS ESSENTIAL TO ENSURE THAT THE SUBSTANCE RECOVERED FROM THE ACCUSED IS THE SAME SUBSTANCE OFFERED IN COURT; LINKS IN THE CHAIN OF CUSTODY, NOT ESTABLISHED. — In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court. Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court. Here, the records reveal a broken chain of custody.

2. ID.; ID.; ID.; DEVIATION FROM THE STANDARD PROCEDURE DISMALLY COMPROMISES THE EVIDENCE, UNLESS SUCH NON-COMPLIANCE WAS UNDER JUSTIFIABLE GROUNDS, AND THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED BY THE APPREHENDING TEAM; THE THREE INSULATING WITNESSES MUST BE PRESENT DURING THE PHYSICAL INVENTORY AND THE PHOTOGRAPH OF THE

SEIZED ITEMS, BUT THE ABSENCE THEREOF DOES NOT *PER SE* RENDER THE CONFISCATED ITEMS INADMISSIBLE PROVIDED A JUSTIFIABLE REASON FOR SUCH FAILURE OR A SHOWING OF ANY GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES WAS ADDUCED; "EARNEST EFFORTS" EXPLAINED. — [T]he alleged crime happened before R.A. No. 10640 amended R.A. No. 9165. Thus, the original provisions of Section 21 and its IRR shall apply x x x. In earlier cases, this Court ruled that the deviation from the standard procedure in Section 21 dismally compromises the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Later, we emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items. In *People v. Lim*, it was explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus: It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such,

police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

3. ID.; ID.; ID.; THE ABSENCE OF THE REQUIRED INSULATING WITNESSES DURING THE INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEMS PUTS SERIOUS DOUBT AS TO THE INTEGRITY OF THE CHAIN OF CUSTODY.— Indeed, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs. In *People v. Caray*, we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule. Similarly, in *Matabilas v. People*, sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance. In this case, we acknowledge that there was a threat to the security of the entrapment team which forced them to immediately proceed to the nearest police station. At that time, a crowd was forming and their presence might cause a commotion. Moreover, Diego could potentially resist arrest with help from his relatives. Nevertheless, the absence of the required insulating witnesses during the inventory and photograph of the seized items puts serious doubt as to the integrity of the chain of custody. Here, there was no representative from the media and the Department of Justice, and any elected public official. Admittedly, the buy-bust team no longer waited for the required witnesses so they can timely deliver the suspected drugs to the crime laboratory. Thus, a representative from the City Drug Abuse Prevention and Control Office signed the inventory. This is unacceptable considering that members of the buy-bust team have ample opportunity to prepare and make necessary arrangements to observe the rigidities of Section 21 of R.A. No. 9165. This non-compliance of the required procedure created a serious gap in the chain of custody.

4. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IS EFFECTIVELY DESTROYED WHERE THE LAW ENFORCERS' PERFORMANCE OF DUTY IS TAINTED WITH IRREGULARITIES; THE FAILURE OF THE PROSECUTION

TO PROVE AN UNBROKEN CHAIN OF CUSTODY WARRANTS THE ACQUITTAL OF THE ACCUSED-APPELLANT.— [I]t must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth. Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed. We reiterate that the provisions of Section 21 R.A. No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Diego must be acquitted of the charge against him given the prosecution's failure to prove an unbroken chain of custody.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

LOPEZ, *J.*:

The conviction of Diego Flores for illegal sale of dangerous drugs is the subject of review in this appeal assailing the Court of Appeals' Decision[1] dated May 31, 2018 in CA-G.R. CR-HC No. 08634, which affirmed the findings of the Regional Trial Court.

ANTECEDENTS

On October 12, 2009, the Muntinlupa City Police Station Anti-Illegal Drugs Special Operations Task Group planned a

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[1] *Rollo*, pp. 3-18. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Ramon A. Cruz and Pablito A. Perez.

buy-bust operation against Diego based on the information and surveillance report that he is selling *shabu* to jeepney drivers. After the briefing, PO1 Michael Leal was designated as the *poseur-buyer*, PO3 Agosto Enrile as back-up, and the other team members as perimeter guards. The following day, the confidential informant arranged a meeting in Diego's house at #355 National Road, Barangay Alabang, Muntinlupa City. The entrapment team went to the target area. Thereat, the informant introduced PO1 Leal to Diego who greeted them *"Kanina ko pa kayo inaantay pare, siya ba yung sinabi mo so akin na kumpare mo na iiskor?"* The confidential informant replied, *"Oo pare siya nga."* Diego then showed a gun and said *"Huwag kayo mag-alala safe kayo dito, takot sila sa akin dito."*[2]

Thereafter, PO1 Leal gave Diego the boodle money.[3] Upon receipt of the payment, Diego handed to PO1 Leal a plastic sachet containing white crystalline substance. At that moment, PO1 Leal drew his gun and introduced himself as a police officer. The rest of the entrapment team rushed in. They arrested Diego and recovered from him a gun, three ammunitions and the buy-bust money. Immediately, the team proceeded to the police station because a crowd was forming which included Diego's relatives and their presence might cause a commotion. At the station, PO1 Leal marked the sachet with Diego's initials.[4] The police officers conducted an inventory and photograph of the seized items witnessed by a representative from the City Drug Abuse Prevention and Control Office.[5]

Afterwards, PO1 Leal and PO3 Enrile personally delivered the marked item to Ma. Victoria Meman, a non-uniformed personnel of the SPD Crime Laboratory Office, who then gave it to the forensic chemist PCI Abraham Verde Tecson.[6] After

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[2] *Id.*, pp. 5-6.

[3] The boodle money is a ₱200.00 bill with initials "ML".

[4] PO1 Leal marked the plastic sachet Diego's initials "DF".

[5] *Id.*, pp. 6-7.

[6] *Id.* at 7.

examination, the substance tested positive for methamphetamine hydrochloride.[7] PCI Tecson then marked the sachet with his initials[8] and handed it to the evidence custodian PO3 Aires Abian for safekeeping. Accordingly, Diego was charged with violation of Section 5, Article II of R.A. No. 9165 before the Regional Trial Court docketed as Criminal Case No. 09-681, to wit:

> That on or about 13th day of October, 2009 around 12:00 [p.m.], in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, [Flores], not being authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, deliver and give away to another a white crystalline substance which when tested is (sic) positive for Methamphetamine Hydrochloride, [a] dangerous drug, weighing 0.03 grams, contained in a heat transparent plastic sachet in violation of the above-cited law.[9]

Diego denied the accusation and claimed that he was on his way to work when a police mobile parked beside him. Suddenly, three armed men in civilian clothes alighted and pointed their guns at him. One of them searched him but found nothing. Yet, he was forcibly brought to the police station and was interrogated. The person who earlier searched him demanded ₱5,000.00 in exchange for his liberty. Unable to produce the money, they detained him and was placed under inquest proceedings.[10]

On August 23, 2016, the RTC convicted Diego of illegal sale of dangerous drugs. It gave credence to the prosecution's version as to the transaction that transpired between Diego and the *poseur-buyer*.[11] On May 31, 2018, the Court of Appeals

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[7] Physical Science Report No. D-475-09S.

[8] PCI Tecson sealed the item, marked it with "D-475-09S" and his initials "AVT".

[9] *Rollo*, p. 3.

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

[11] CA *rollo*, pp. 47-68. The RTC Decision disposed as follows:

affirmed the RTC's findings and ruled that the prosecution presented an unbroken chain of custody of dangerous drugs.[12]

RULING

We acquit.

In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.[13] Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.[14] Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused

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WHEREFORE, premises considered, the [RTC] finds [Flores] GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and hereby sentences him to *life imprisonment* and a fine of Five Hundred Thousand Pesos (₱500,000.00).

The preventive imprisonment undergone by [Flores] shall be credited in his favor.

The Branch Clerk of Court is directed to turn-over the methamphetamine hydrochloride subject of the case to [PDEA] for proper disposition.

SO ORDERED.

[12] *Rollo*, pp. 17-18. The CA disposed as follows:

On May 31, 2018, the CA rendered the Assailed Decision denying the appeal for lack of merit and affirming the RTC Decision. The appellate court held that Flores was not able to discharge his burden of proving that the evidence was tampered, thus, failing to overcome the presumption of regularity in the discharge of duties of the police officers. The dispositive portion reads:

WHEREFORE, the Appeal is ***DENIED*** for lack of merit. The Decision dated August 23, 2016 of the Regional Trial Court of Muntinlupa City, Branch 203 in Criminal Case No. 09-681 is hereby ***AFFIRMED***.

SO ORDERED.

[13] *People of the Philippines v. Partoza*, G.R. No. 182418, May 8, 2009.

[14] *People v. Ismael*, G.R. No. 208093, February 20, 2017.

by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.[15] Here, the records reveal a broken chain of custody.

Notably, the alleged crime happened before R.A. No. 10640[16] amended R.A. No. 9165. Thus, the original provisions of Section 21 and its IRR shall apply, to wit:

[Section 21, paragraph 1, Article II of RA 9165]
(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof.

[Section 21(a), Article II of the IRR of RA 9165]
(a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof: ***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***

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[15] *People v. Bugtong*, G.R. No. 220451, February 26, 2018.

[16] R.A. No. 10640 took effect on July 23, 2014. See OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis Supplied.)

In earlier cases, this Court ruled that the deviation from the standard procedure in Section 21 dismally compromises the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[17] Later, we emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items.[18] In *People v. Lim*,[19] it was explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a busy-bust operation

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[17] *People v. De la Cruz*, G.R. No. 177222, October 29, 2008, citing *People v. Orteza*, G.R. No. 173501, July 31, 2007, 528 SCRA 750; *People v. Nazareno*, G.R. No. 174771, September 11, 2007, 532 SCRA 630; *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489.

[18] *People v. Rodriguez*, G.R. No. 233535, July 1, 2019.

[19] G.R. No. 231989, September 4, 2018.

and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Emphasis in the original)

Indeed, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.[20] In *People v. Caray*,[21] we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule. Similarly, in *Matabilas v. People*,[22] sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

In this case, we acknowledge that there was a threat to the security of the entrapment team which forced them to immediately proceed to the nearest police station. At that time, a crowd was forming and their presence might cause a commotion. Moreover, Diego could potentially resist arrest with help from his relatives. Nevertheless, the absence of the required insulating witnesses during the inventory and photograph of the seized items puts serious doubt as to the integrity of the chain of custody. Here, there was no representative from the media and the Department of Justice, and any elected public official. Admittedly, the buy-bust team no longer waited for the required witnesses so they can timely deliver the suspected drugs to the crime laboratory. Thus, a representative from the City Drug Abuse Prevention and Control Office signed the inventory. This is

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[20] *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

[21] G.R. No. 245391, September 11, 2019.

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

unacceptable considering that members of the buy-bust team have ample opportunity to prepare and make necessary arrangements to observe the rigidities of Section 21 of R.A. No. 9165.[23] This non-compliance of the required procedure created a serious gap in the chain of custody.

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.[24] Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.[25]

We reiterate that the provisions of Section 21 of R.A. No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Diego must be acquitted of the charge against him given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is **GRANTED**. The Court of Appeals' Decision dated May 31, 2018 in CA-G.R. CR-HC No. 08634 is **REVERSED** and **SET ASIDE**. Diego Flores *y* Casero is **ACQUITTED** in Criminal Case No. 09-681 and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Resolution.

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[23] *People v. Patacsil*, G.R. No. 234052, August 6, 2018.

[24] *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Lopez v. People*, G.R. No. 172953, April 30, 2008.

[25] *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 247221. June 15, 2020]

WILFREDO LIM SALAS, *petitioner*, *vs.* **TRANSMED MANILA CORPORATION, TRANSMED SHIPPING LTD., and EGBERT M. ELLEMA,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; WHEN THE SEAFARER SUFFERS FROM A WORK-RELATED INJURY OR ILLNESS DURING THE TERM OF HIS CONTRACT, THE EMPLOYER IS LIABLE FOR DISABILITY BENEFITS, AND THE BURDEN IS ON THE EMPLOYER TO PROVE THAT THE ILLNESS IS NOT WORK-RELATED. — [T]he employer is liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, "***work-related illness***" is defined as "*any sickness as a result of an occupational disease listed under Section 32-A of [the 2010 POEA-SEC] with the conditions set therein satisfied.*" Corollarily, Section 20 (A) (4) thereof further provides that "[t]hose illnesses not listed in Section 32 of [the 2010 POEA-SEC] are disputably presumed as work-related." Given the legal presumption in favor of the seafarer, he *may rely on and invoke such legal presumption to establish a fact in issue*. Thus, the burden is on the employer, not the employee, to prove that the illness is not work-related. In the

case at bar, respondents averred that Salas is not entitled to the benefits provided under the 2010 POEA-SEC since his illnesses were declared by the company-designated physician to be not work-related. However, other than the company-designated physician's explanation that diabetes mellitus "is usually familial/hereditary," and that gouty arthritis "is a metabolic disorder secondary to defect in purine metabolism and/or high purine diet," no further assessment or evaluation was given in relation to Salas' illness that would dispute the legal presumption. x x x [T]he presumption remains in Salas' favor that his illnesses were work-related or aggravated by his work condition.

2. ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; THE FAILURE OF THE COMPANY-DESIGNATED PHYSICIAN TO ARRIVE AT A DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR PERMANENT DISABILITY WITHIN THE PRESCRIBED PERIODS RENDERS THE SEAFARER'S DISABILITY AS TOTAL AND PERMANENT BY OPERATION OF LAW. — [I]t is well-settled that the failure of the company-designated physician to comply with his or her duty to issue a definite assessment of the seafarer's fitness or unfitness to resume work within the prescribed 120/240-day period **shall entitle the seafarer to total and permanent disability benefits by *operation of law.*** x x x In this case, records show that the company-designated physician's Medical Report dated May 4, 2015 – which was the most recent medical report issued by respondents on Salas' medical status after his repatriation on March 21, 2015 – merely indicated that the specialist had opined Salas to be "cleared orthopedic wise." On its face, the said report did not state whether or not Salas was already fit to resume work or had been assessed with a certain disability grading. In fact, in the same report, Salas was required to undergo a repeat laboratory examination and to return for re-evaluation, the conduct of which were, however, not even shown by respondents. Neither was it claimed that Salas abandoned any further treatment. Thus, from all indications, it is fairly apparent that the May 4, 2015 Medical Report is not the final and definite disability assessment which respondents were required, by law, to issue within 120/240 days from Salas' repatriation on March 21, 2015. It bears reiteration that a final and definite disability assessment is

necessary in order to truly reflect the true extent of the sickness or injuries of the seafare and his or her capacity to resume work as such. Accordingly, the failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods — as in this case — renders the seafarer's disability as total and permanent by operation of law.

APPEARANCES OF COUNSEL

Bantog & Andaya Law Offices for petitioner.
Nolasco & Associates Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 18, 2019 and the Resolution[3] dated May 14, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 150519 which affirmed the Decision[4] dated November 29, 2016 and the Resolution[5] dated January 31, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 09-000644-16, finding petitioner Wilfredo Lim Salas (Salas) not entitled to disability benefits.

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[1] *Rollo*, pp. 3-28.

[2] *Id.* at 34-50. Penned by Associate Justice Sesinando E. Villon with Associate Justices Edwin D. Sorongon and Germano Francisco D. Legaspi, concurring.

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

[4] CA *rollo*, pp. 31-49. Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Presiding Commissioner Joseph Gerard E. Mabilog, concurring, and Commissioner Nieves E. Vivar-De Castro, dissenting.

[5] *Id.* at 51-56.

The Facts

On March 6, 2014, Salas was hired as Second Officer by respondent Transmed Manila Corporation (TMC) for its principal, Transmed Shipping Ltd. (TSL), on board the vessel M/V Coalmax for a period of eight (8) months.[6] After undergoing the required pre-employment medical examination (PEME) where he was declared fit for duty by the company-designated physician, Salas boarded the vessel on April 4, 2014 and commenced his tour of duty.[7] Upon the expiration of Salas' Contract of Employment on February 9, 2015, the parties agreed to extend the same for another two (2) months under the same terms and conditions.[8]

Sometime in February 2015, Salas reported a generalized feeling of weakness, easy fatigability, loss of appetite, and difficulty in sleeping. He was brought to a hospital in Rio de Janeiro, Brazil, and thereat, was diagnosed to be suffering from diabetes mellitus and gouty arthritis (on both knees), for which reason he was declared unfit for work[9] and **repatriated on March 21, 2015** for further medical evaluation and management.[10]

Upon arrival in Manila, Salas was admitted at Marine Medical Services and referred to a company-designated physician for evaluation and management. He was brought to an orthopedic surgeon, Dr. Ferdinand Bernal (Dr. Bernal), who confirmed that his joint pains were due to gouty arthritis and opined that the illness was not work-related, considering that it is caused by an increased uric level in the blood and that based on medical science, the risk factors of said illness are high purine diet.[11] Based on the foregoing, the company-designated physician,

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[6] See Contract of Employment dated March 6, 2014; *rollo*, p. 54.

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

[8] See *id.* See also Contract of Employment dated February 9, 2015; CA *rollo*, p. 99.

[9] See Medical Report dated March 19, 2015; *id.* at 56.

[10] See *id.* at 35-36.

[11] See *id.* at 36.

Dr. Margarita Justine O. Bondoc (Dr. Bondoc), in a private and confidential Medical Report[12] dated March 23, 2015, informed TMC that Salas' diabetes mellitus is "*usually familial/ hereditary*," while his gouty arthritis "*is a metabolic disorder secondary to a defect in purine metabolism and/or high purine diet*," and hence, declared the same to be not work-related.[13]

After a series of follow-up check-ups, the company-designated physician, in a Medical Report[14] dated May 4, 2015, reported that Salas' range of motion on both knees were already normal with no swelling and noted the specialist's opinion that the former was "cleared orthopedic wise." For this reason, Salas was directed to undergo repeat laboratory examinations and to return on May 18, 2015 for his next follow-up check up.[15] However, records fail to disclose whether or not the same was conducted or that there was any further update on the status of Salas' medical condition.

For his part, Salas claimed that his medical treatment was discontinued despite the fact that he was still suffering from bilateral knee pain and that his request for continued medical assistance was denied without furnishing him copies of his medical records or definite assessment. Consequently, Salas was compelled to consult an independent physician, Dr. Victor Gerardo E. Pundavela (Dr. Pundavela), who, in a Medical Certificate[16] dated July 23, 2015, diagnosed him to have "Degenerative Osteoarthritis with Gouty [A]rthritis, bilateral knee; NIDDM controlled." Dr. Pundavela pointed out that aside from Salas' chronically elevated blood uric acid levels, the knee pain could be brought about by repeated stresses and strains to his knees while performing his tasks as a Second Officer. He explicated

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[12] CA *rollo*, p. 103.

[13] See *rollo*, p. 37.

[14] CA *rollo*, p. 104.

[15] See *id.* See also *rollo*, p. 38.

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

that joint stresses from prolonged standing and, at times, faulty work posture cannot be avoided and may have taken a toll on Salas' knees. Considering that Salas' bilateral knee pain significantly decreased his activity tolerance and can no longer be returned to his pre-injury capacity, he was found to be unfit to work as a seafarer.[17]

Hence, Salas filed a complaint[18] for disability benefits, moral and exemplary damages, and attorney's fees against TMC, TSL, and Egbert M. Ellema (respondents) before the NLRC, docketed as NLRC NCR Case No. (M) 11-13007-15.

In their defense, respondents countered that Salas is not entitled to disability benefits as provided under the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) since his diabetes mellitus was declared by the company-designated physician to be not work-related, while his gouty arthritis, aside from also not being work-related, was a pre-existing illness. They likewise denied the claims for damages and attorney's fees for lack of factual and legal bases.[19]

The Labor Arbiter Ruling

In a Decision[20] dated June 28, 2016, the Labor Arbiter (LA) ruled in favor of Salas, ordering respondents to jointly and severally pay him US$60,000.00 representing total and permanent disability benefits, as well as ten percent (10%) attorney's fees. The other claims were dismissed for lack of merit.

In so ruling, the LA held that Salas was able to establish a causal connection between his illnesses and the nature of his work as Second Officer to prove that he was entitled to disability compensation. The LA noted that no contrary evidence was adduced to rebut Salas' claim that his gouty arthritis was aggravated by repeated stresses and strains to his knees.

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[17] See *id.* at 37-38.

[18] CA *rollo*, p. 66 and its dorsal portion.

[19] See Position Paper January 7, 2016; *id.* at 82-95.

[20] *Id.* at 152-158. Penned by Labor Arbiter Fedriel S. Panganiban.

Moreover, although the May 4, 2015 Medical Report cleared Salas "orthopedic wise," the company-designated physician nonetheless failed to indicate if he was already fit to resume work. Accordingly, since Salas' illnesses rendered him totally and permanently incapable of resuming work for more than 240 days, he was granted the maximum disability compensation rate provided under the 2010 POEA-SEC.[21]

Aggrieved, respondents filed an appeal[22] to the NLRC.

The NLRC Ruling

In a Decision[23] dated November 29, 2016, the NLRC reversed and set aside the LA's Decision and dismissed the complaint for lack of merit.[24] It held that Salas failed to prove that his gouty arthritis and diabetes mellitus were work-related. It also did not give credence to the medical report of Salas' independent physician, Dr. Pundavela, pointing out that the latter's declarations were mere conjectures and as such, cannot be given weight. Moreover, it ruled that while the POEA-SEC creates a disputable presumption of work-relatedness, the seafarer must still prove by substantial evidence that his work conditions caused or at least increased the risk of contracting the disease, which Salas failed to show. Accordingly, absent any causal connection between the nature of Salas' work and the risk factors involved in the development of his ailments, the lapse of the 240-day period as basis of the award was rendered irrelevant.[25]

Notably, Commissioner Nieves E. Vivar-De Castro (Commissioner Vivar-De Castro) tendered a dissent to the majority ruling, opining, *inter alia*, that "[s]ince there is no

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[21] See *id.* at 155-157.

[22] See Notice of Appeal with Memorandum of Appeal dated July 25, 2016; *id.* at 160-185.

[23] *Id.* at 31-49.

[24] *Id*. at 44.

[25] See *id.* at 38-44.

definitive final assessment as to [Salas'] ability to resume work as a seafarer, x x x Dr. Pundevela's July 23, 2015 Medical Report finding [Salas] partially and permanently unfit to work as a seafarer must be given credence. Said disability, having exceeded more than 240 days, is deemed total and permanent, by operation of law. As such, [Salas] is, without a doubt, entitled to compensation therefor under the POEA-SEC."[26]

Salas' motion for reconsideration was denied in a Resolution[27] dated January 31, 2017, prompting him to elevate the case *via* a petition for *certiorari*[28] before the CA.

The CA Ruling

In a Decision[29] dated February 18, 2019, the CA found no grave abuse of discretion on the part of the NLRC in dismissing the complaint for disability benefits. It ruled that Salas failed to prove that his illnesses were work-related under Section 32-A of the POEA-SEC. Further, it held that Salas failed to substantiate his claim that the nature of his job as Second Officer was a risk factor that aggravated his illnesses while he was onboard the vessel. It likewise noted that even Salas' independent physician failed to elaborate on how he arrived at his conclusion to justify the award of disability benefits. As such, the CA found no further need to discuss the nature of Salas' disability.[30]

Salas' motion for reconsideration[31] was denied in a Resolution[32] dated May 14, 2019; hence, this petition.

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[26] *Id.* at 47-48.

[27] *Id.* at 51-56.

[28] Dated April 19, 2017. *Id.* at 3-28.

[29] *Rollo*, pp. 34-50.

[30] *Id.* at 44-50.

[31] Dated January 6, 2019. CA *rollo*, pp. 220-232.

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

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the finding that Salas is not entitled to total and permanent disability benefits.

The Court's Ruling

The petition is meritorious.

Section 20 (A) of the 2010 POEA-SEC, which applied at the time Salas executed his employment contract with respondents, states that:

SECTION 20. COMPENSATION AND BENEFITS. —

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

x x x x x x x x x

2. x x x [I]f after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is **declared fit or the degree of his disability has been established by the company-designated physician**.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of permanent 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. (Emphases supplied)

Based on the afore-cited provision, the employer is liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, "***work-related illness***" is defined as "*any sickness as a result of an occupational disease listed under Section 32-A of [the 2010 POEA-SEC] with the conditions set therein satisfied*." Corollarily, Section 20 (A) (4) thereof further provides that "[t]hose illnesses not listed in Section 32 of [the 2010 POEA-SEC] are disputably presumed as work-related." Given the legal presumption in favor of the seafarer, he *may rely on and invoke such legal presumption to establish a fact in issue*. Thus, the burden is on the employer, not the employee, to prove that the illness is not work-related.[33]

In the case at bar, respondents averred that Salas is not entitled to the benefits provided under the 2010 POEA-SEC since his illnesses were declared by the company-designated physician to be not work-related. However, other than the company-designated physician's explanation that diabetes mellitus "is usually familial/hereditary," and that gouty arthritis "is a metabolic disorder secondary to defect in purine metabolism and/or high purine diet," no further assessment or evaluation was given in relation to Salas' illness that would dispute the legal presumption. In fact, as noted by NLRC Commissioner Vivar-De Castro in her dissent, the company-designated physician's findings were merely descriptive of the general nature of Salas' illnesses:

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[33] See *Romana v. Magsaysay Maritime Corporation*, 816 Phil. 194, 203-204 (2017).

With [regard to Salas'] Diabetes Mellitus, [the Labor Arbiter observed] that "no qualification was made as to [Salas'] medical history of diabetes, *i.e.*, whether familial/hereditary or acquired because of his lifestyle." Moreover, **the company-designated physician's statement was a mere characterization of the illness itself, and not the actual illness acquired by [Salas]**. Otherwise stated, it merely informed the Respondents what Diabetes Mellitus is, *i.e.*, "usually familial/hereditary." Said doctor made no categorical declaration that [Salas'] case fell within that category. As such, there is a strong possibility that [his] Diabetes Mellitus could have been an acquired illness. Considering that said illness manifested while [he] was on board the vessel; and that there is no previous diagnosis of the same, it can be safely inferred that said illness was acquired by [Salas] while on board the vessel x x x.

With regard to Salas'] Gouty Arthritis, the company-designated physician's March 23, 2015 "opinion" merely described such illness and the probability of its causes. As correctly observed by the Labor Arbiter, the medical opinion indicated that Gouty Arthritis is a metabolic disorder, and is qualified secondary to defect in purine metabolism and/or high purine diet. Since there is no express finding that [Salas'] Gouty Arthritis was due to defective purine metabolism, it necessarily follows that said illness resulted and was acquired while aboard. [Salas'] dietary intake while on board the vessel could have therefore contributed to the aggravation of said illness. x x x[34] (Emphases supplied)

Hence, contrary to the findings of the NLRC and the CA, the presumption remains in Salas' favor that his illnesses were work-related or aggravated by his work condition.

Further, it is well-settled that the failure of the company-designated physician to comply with his or her duty to issue a definite assessment of the seafarer's fitness or unfitness to resume work within the prescribed 120/240-day period **shall entitle the seafarer to total and permanent disability benefits by *operation of law***. To be sure, the pertinent obligations of the employer to the seafarer were detailed and explained in

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[34] CA *rollo*, pp. 46-47.

the case of *Ampo-on v. Reinier Pacific International Shipping, Inc.*,[35] to wit:

> Pursuant to the 2010 POEA-SEC, which applies to this case, the employer is liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, work-related injury is defined as an injury arising out of and in the course of employment.
>
> Upon finding that the seafarer suffers a work-related injury or illness, the employer is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation. This period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists.
>
> The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. To be conclusive and to give proper disability benefits to the seafarer, this assessment must be complete and definite; otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored. **As case law holds, 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.**
>
> **Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.**[36] (Emphases supplied)

In this case, records show that the company-designated physician's Medical Report dated May 4, 2015 — which was

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[35] See G.R. No. 240614, June 10, 2019.

[36] See *id.*

the most recent medical report issued by respondents on Salas' medical status after his repatriation on March 21, 2015 — merely indicated that the specialist had opined Salas to be "cleared orthopedic wise." On its face, the said report did not state whether or not Salas was already fit to resume work or had been assessed with a certain disability grading. In fact, in the same report, Salas was required to undergo a repeat laboratory examination and to return for re-evaluation, the conduct of which were, however, not even shown by respondents. Neither was it claimed that Salas abandoned any further treatment. Thus, from all indications, it is fairly apparent that the May 4, 2015 Medical Report is not the final and definite disability assessment which respondents were required, by law, to issue within 120/240 days from Salas' repatriation on March 21, 2015. It bears reiteration that 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. Accordingly, the failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods — as in this case — renders the seafarer's disability as total and permanent by operation of law.

In view of the foregoing, the Court therefore deems it proper to reverse the CA ruling and reinstate that of the LA, with modification imposing on the monetary awards due to Salas legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment, in accordance with prevailing jurisprudence.[37] At this juncture, it is apt to mention that — as observed by the LA — Salas' claims for moral and exemplary damages were not supported by any proof of bad faith or malice on respondents' part and hence, must be denied.[38] However, Salas is entitled to attorney's fees pursuant to Article 2208 (8) of the New Civil Code which states that

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[37] See *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[38] See *BPI Family Bank v. Franco*, 563 Phil. 495, 514-515 (2007).

the award of attorney's fees is justified in actions for indemnity under workmen's compensation and employer's liability laws.[39]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated February 18, 2019 and the Resolution dated May 14, 2019 of the Court of Appeals in CA-G.R. SP No. 150519 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated June 28, 2016 of the Labor Arbiter in NLRC NCR Case No. (M) 11-13007-15 awarding petitioner Wilfredo Lim Salas the amount of US$60,000.00 representing his total and permanent disability benefits and ten percent (10%) attorney's fees is hereby **REINSTATED** with **MODIFICATION** imposing on said awards legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.

SO ORDERED.

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

THIRD DIVISION

[G.R. No 247661. June 15, 2020]

DEEPAK KUMAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; BASIC PROCEDURAL STANDARDS; FAILURE THEREOF, THE

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[39] See *Esguerra v. United Philippine Lines, Inc.*, 713 Phil. 487, 501 (2013).

[*] Designated Additional Member per Special Order No. 2780 dated May 11, 2020.

PETITION MAY BE DENIED DUE COURSE AND DISPOSED WITHOUT FURTHER ACTION BY THE COURT. — From Rule 45's provisions will be gleaned basic procedural standards which a petitioner must satisfy if one's Rule 45 Petition is to be entertained: (1) that the petition does not only exclusively raise questions of law, but also that it distinctly sets forth those legal issues; (2) that it be filed within 15 days of notice of the adverse ruling that impels it; (3) that docket and other lawful fees are paid; (4) that proper service is made; (5) that all matters that Section 4 specifies are indicated, stated, or otherwise contained in it; (6) that it is manifestly meritorious; (7) that it is not prosecuted manifestly for delay; and (8) that that the questions raised in it are of such substance as to warrant consideration. Failing in these, this Court is at liberty to deny outright or deny due course to a Rule 45 Petition. Any such denial may be done without the need of any further action, such as the filing of responsive pleadings or submission of documents, the elevation of records, or the conduct of oral arguments. Furthermore, this Court's denial may come in the form of a minute resolution which does not go into the merits of the case, and instead merely states which among the eight (8) standards it is based. A denial by minute resolution does not violate the constitutional imperative that judicial decisions "[express]. . . clearly and distinctly the facts and the law on which [they are] based." This is because any such minute resolution is not a judgment on a case, but is a declaration that a Rule 45 petition is insufficient in form and substance.

APPEARANCES OF COUNSEL

D Dimayacyac Law Firm for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The remedy facilitated by Rule 45 of the Rules of Court is appeal by *certiorari*. For any petition for review on *certiorari* to prosper and warrant attention by this Court, it must satisfy the basic procedural requisites imposed by Rule 45. Among

others, it must not only raise pure questions of law but also questions of such substance as to be of distinctly significant consequence and value. A Rule 45 petition that fails to readily demonstrate "special and important reasons[,]" as required by Rule 45, Section 6, may be denied due course, and disposed without further action by this Court.

This resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court praying that the assailed Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 156711 be reversed and set aside. The assailed Decision denied petitioner Deepak Kumar's (Kumar) Petition for *Certiorari* under Rule 65 of the Rules of Court and found no grave abuse of discretion on the part of the Regional Trial Court in declining to entertain Kumar's Notice of Appeal, as the trial court decision which Kumar sought to appeal had lapsed into finality. The assailed Resolution denied Kumar's Motion for Reconsideration.

In an August 18, 2016 Joint Decision,[4] the Regional Trial Court of Muntinlupa City found Kumar guilty for charges of violating Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004 (the "Anti-VAWC Law"), specifically, that he choked his wife, hit her head, pulled her hair, and forced her into sexual activity. The dispositive portion of this Decision read:

WHEREFORE, the Court finds accused Deepak Kumar guilty beyond reasonable doubt in Criminal Case No. 11-544 for violation

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[1] *Rollo*, pp. 9-27.

[2] *Id.* at 29-36. The Decision dated November 23, 2018 was penned by Associate Justice Marlene Gonzales-Sison (Chairperson), and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Perpetua T. Atal-Paño of the Thirteenth Division of the Court of Appeals, Manila.

[3] *Id.* at 38-39. The Resolution dated May 21, 2019 was penned by Associate Justice Marlene Gonzales-Sison (Chairperson), and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Perpetua T. Atal-Paño of the Former Thirteenth Division of the Court of Appeals, Manila.

[4] *Id.* at 47-59. The Joint Decision was penned by Presiding Judge Philip A. Aguinaldo of the Regional Trial Court of Muntinlupa City, Branch 207.

of Section 5(a) of Republic Act No. 9262 and is sentenced to a straight penalty of four (4) months of *arresto mayor* in its medium in the absence of an aggravating or mitigating circumstance, and is further ordered to pay the private complainant ₱5,000.00 as and for civil indemnity; ₱10,000.00 as and for moral damages; ₱5,000.00 as and for temperate damages; and ₱10,000.00 as and for exemplary damages, all with 6% per annum [interest] from the finality of this decision.

The court also finds accused Deepak Kumar guilty beyond reasonable doubt in Criminal Case No. 11-545 for violation of Section 5(g) of Republic Act No. 9262 and is sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* in its medium as the minimum to eight (8) years and one (1) day of *prision mayor* in its medium, as the maximum period, in the absence of a mitigating or an aggravating circumstance, with all the accessory penalties under the Revised Penal [Code] and other laws. He is further ordered to pay the private complainant ₱20,000.00 as and for civil indemnity; ₱20,000.00 as and for moral damages; ₱5,000.00 as and for temperate damages[;] and ₱20,000.00 as and for exemplary damages, all with 6% per annum [interest] from the finality of this decision.

In both cases, the accused is prohibited from threatening or attempting to threaten, personally or through another, the private complainant and her family, or from harassing, annoying, telephoning, contacting, or otherwise communicating with the private complainant, directly or indirectly, and is further ordered to stay away from the private complainant or any member of her family or household, or from their residence or places the private complainant usually goes, at a distance of 500 meter radius. Accused is further prohibited from any use [sic] or possession of any firearm or deadly weapon, and is ordered to surrender the same to the court for appropriate disposition. Accused is warned that any violation of this protection order is punishable by contempt, or it is basis to file another criminal case against him.

SO ORDERED.[5]

Despite notice, Kumar was absent during the promulgation of judgment.[6] In any case, a copy of this Decision was received

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

[6] *Id.* at 34.

by Kumar's counsel of record on August 23, 2016. As no motion, pleading, or any other submission in reference to this Decision was ever filed before the Regional Trial Court, this Decision lapsed into finality. Entry of judgment was thereafter made. Kumar's counsel of record was served notice of such entry on September 8, 2016.[7]

A year and a half later, on March 14, 2018, D Dimayacyac Law Firm filed before the Regional Trial Court an Entry of Appearance with Notice of Appeal.[8]

In a March 27, 2018 Order, the Regional Trial Court, still through Judge Aguinaldo, denied the Notice of Appeal as the Decision sought to be appealed had become final.[9]

Following the denial of his Motion for Reconsideration, Kumar filed a Petition for *Certiorari* before the Court of Appeals.[10]

In its assailed November 23, 2018 Decision,[11] the Court of Appeals dismissed Kumar's Rule 65 Petition as it found no grave abuse of discretion on the part of Judge Aguinaldo in denying Kumar's Notice of Appeal.

Following the denial of his Motion for Reconsideration,[12] Kumar filed the present Petition.

For this Court's resolution is the sole issue of whether or not the Court of Appeals erred in not finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Regional Trial Court Judge Philip A. Aguinaldo in refusing to entertain petitioner Deepak Kumar's Notice of Appeal.

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[7] *Id.* at 31.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 29.

[11] *Id.* at 29-36.

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

This Court dispenses with the filing of a Comment by respondent and outright denies due course to the present Petition. It fails to present any consideration of such character as those identified in Rule 45, Section 6 of the Rules of Court and as would warrant the exercise of this Court's power of judicial review.

I

Petitioner comes to this Court by way of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Other than appeals brought to this Court concerning "criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment[,]"[13] a Petition for Review on *Certiorari* is the sole procedural vehicle through which appeals may be taken to this Court.

The entirety of Rule 45 reads:

SECTION 1. *Filing of Petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall ***raise only questions of law, which must be distinctly set forth***. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

SECTION 2. *Time for filing; extension.* — The petition shall be ***filed within fifteen (15) days from notice*** of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

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[13] RULES OF COURT, Rule 45, Sec. 9.

SECTION 3. *Docket and other lawful fees; proof of service of petition.* — Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition. Proof of service of a copy, thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.

SECTION 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

SECTION 5. *Dismissal or denial of petition.* — The ***failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents*** which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is ***without merit***, or is ***prosecuted manifestly for delay***, or that the ***questions raised therein are too unsubstantial to require consideration.***

SECTION 6. *Review discretionary.* — A review is not a matter of right, but of sound judicial discretion, and will be ***granted only when there are special and important reasons therefor.*** The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:

(a) When the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or

(b) When the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

SECTION 7. *Pleadings and documents that may be required; sanctions.* — For purposes of determining whether the petition should be dismissed or denied pursuant to Section 5 of this Rule, or where the petition is given due course under Section 8 hereof, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions therefor.

SECTION 8. *Due course; elevation of records*. — If the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice.

SECTION 9. *Rule applicable to both civil and criminal cases.* — The mode of appeal prescribed in this Rule shall be applicable to both civil and criminal cases, except in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment. (Emphasis supplied)

From Rule 45's provisions will be gleaned basic procedural standards which a petitioner must satisfy if one's Rule 45 Petition is to be entertained:

(1) that the petition does not only exclusively raise questions of law, but also that it distinctly sets forth those legal issues;[14]

(2) that it be filed within 15 days of notice of the adverse ruling that impels it;[15]

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

[15] RULES OF COURT, Rule 45, Sec. 2.

(3) that docket and other lawful fees are paid;[16]

(4) that proper service is made;[17]

(5) that all matters that Section 4 specifies are indicated, stated, or otherwise contained in it;[18]

(6) that it is manifestly meritorious;[19]

(7) that it is not prosecuted manifestly for delay;[20] and

(8) that that the questions raised in it are of such substance as to warrant consideration.[21]

Failing in these, this Court is at liberty to deny outright or deny due course to a Rule 45 Petition. Any such denial may be done without the need of any further action, such as the filing of responsive pleadings or submission of documents, the elevation of records, or the conduct of oral arguments.

Furthermore, this Court's denial may come in the form of a minute resolution which does not go into the merits of the case, and instead merely states which among the eight (8) standards it is based. A denial by minute resolution does not violate the constitutional imperative that judicial decisions "[express]. . . clearly and distinctly the facts and the law on which [they are] based."[22] This is because any such minute resolution is not a judgment on a case, but is a declaration that a Rule 45 petition is insufficient in form and substance.

Hence, it is that petition's manifest inadequacies that prevent it from proceeding any further, not the ultimate quality of its factual and legal assertions.

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[16] RULES OF COURT, Rule 45, Sec. 5 (1), in relation to Sec. 3.

[17] RULES OF COURT, Rule 45, Sec. 5 (1).

[18] RULES OF COURT, Rule 45, Sec. 5 (1), in relation to Sec. 4.

[19] RULES OF COURT, Rule 45, Sec. 5 (2).

[20] RULES OF COURT, Rule 45, Sec. 5 (2).

[21] RULES OF COURT, Rule 45, Sec. 5 (2).

[22] CONST., Art. 8, Sec. 14.

Rule 45, Section 6 expounds on the eighth standard. Thus, to say that the questions raised in a Rule 45 Petition must be of such substance as to warrant consideration is to say that judicial review shall proceed "only when there are *special and important* reasons."[23] The use of the conjunctive "and" *vis-á-vis* the adjectives "special" and "important" means that the reasons invoked for review must be of distinctly significant consequence and value. Rule 45, Section 6 (a) and (b) illustrate the gravity of reasons which would move this Court to act:

> (a) When the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or
>
> (b) When the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision. (Emphasis in the original)

From these, this Court is better advised to stay its hand and not entertain the appeal when there is no novel legal question involved, or when a case presents no doctrinal or pedagogical value whereby it is opportune for this Court to review and expound on, rectify, modify and/or clarify existing legal policy, or lay out novel principles and delve into unexplored areas of law.

This Court may decline to review cases when all that are involved are settled rules for which nothing remains but their application. Also, when there is no manifest or demonstrable departure from legal provisions and/or jurisprudence. So too, when the court whose ruling is assailed has not been shown to have so wantonly deviated from settled procedural norms or otherwise enabled such deviation.

Litigants may very well aggrandize their petitions, but it is precisely this Court's task to pierce the veil of what they purport to be questions warranting this Court's sublime consideration.

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[23] RULES OF COURT, Rule 45, Sec. 6.

It remains in this Court's exclusive discretion to determine whether a Rule 45 Petition is attended by the requisite important and special reasons.

II

The stringent requirements for Rule 45 petitions to prosper and the immense discretion vested in this Court are in keeping with the basic nature of a Rule 45 Petition as an "appeal by *certiorari*[.]"[24]

Nominally, the remedy of a Petition for Review on *Certiorari* is a novel creation of the 1997 Rules of Civil Procedure. However, this Court has existed and has been the court of last resort long before 1997. For obvious reasons, the present remedy provided by Rule 45 is not the first time that our procedural rules have stipulated on how appeals may be taken to this Court. A petition for review on *certiorari* under Rule 45 is but the contemporary iteration of what the present Rules of Court's predecessors have themselves, also denominated as an "appeal by *certiorari*[.]"

Concerning appeals from the Court of Appeals to this Court, Rule 45 of the 1964 Rules of Court provided:

RULE 45

Appeal from Court of Appeals to Supreme Court

SECTION 1. *Filing of Petition with Supreme Court*. — A party may ***appeal by certiorari***, from a judgment of the Court of Appeals, ***by filing with the Supreme Court a petition for certiorari,*** within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time, and paying at the same time, to the clerk of said court the corresponding docketing fee. The petition shall not be acted upon without proof of service of a copy thereof to the Court of Appeals. (Emphasis supplied)

The 1964 Rules of Court echoed the 1940 Rules of Court in providing for appeal by *certiorari* as the vehicle for assailing

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

rulings of the Court of Appeals before this Court. Rule 46, Section 1 of the 1940 Rules of Court provided:

RULE 46

Appeal from Court of Appeals to Supreme Court

SECTION 1. *Filing of Petition with Supreme Court*. — A party may ***appeal by certiorari*** from a judgment of the Court of Appeals, ***by filing with the Supreme Court a petition for certiorari***, within ten (10) days from the date of entry of such judgment, and paying at the same time, to the clerk of said court the corresponding docketing fee. Copy of the petition shall be furnished the Court of Appeals within the time herein provided. (Emphasis supplied)

Under the 1964 Rules of Court, appeals may also be taken to this Court from Courts of First Instance. This was governed by Rule 42. Rule 42 Section 1 provided for the mode of appeal and referenced the "rules governing appeals to the Court of Appeals." Rule 42, Section 2 also implied that appeals from courts of first instance to this Court need not involve pure questions of law:

RULE 42

Appeal from Courts of First Instance to Supreme Court

SECTION 1. *Procedure*. — The procedure of appeal to the Supreme Court from Courts of First Instance shall be ***governed by the same rules governing appeals to the Court of Appeals,*** except as hereinafter provided.

SECTION 2. *Appeal on Pure Question of Law.* — Where the appellant states in his notice of appeal or record on appeal that he will raise only questions of law, no other questions shall be allowed, and the evidence need not be elevated. (Emphasis supplied)

Rule 41, Section 3 of the 1964 Rules of Court provided for the mode of appeal from courts of first instance to the Court of Appeals:

RULE 41

Appeals from Courts of First Instance and the Social Security Commission to Court of Appeal

. . . . . .

SECTION 3. *How Appeal Is Taken.* — Appeal may be taken ***by serving upon the adverse party and filing with the trial court*** **within thirty (30) days from notice of order or judgment,** ***a notice of appeal, an appeal bond, and a record on appeal.*** The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

Under the 1964 Rules of Court, appeals may also be taken to this Court from specified quasi-judicial agencies, the Court of Agrarian Relations, the Court of Industrial Relations, and the Court of Tax Appeals. On these, Rule 43, Section 1 and Rule 44, Section 1 provided:

RULE 43

Appeal From an Order or Decision of Securities and Exchange Commission, Land Registration Commission, Court of Agrarian Relations, Social Security Commission, Secretary of Labor Under Section 7 of the Minimum Wage Law, Court of Industrial Relations, Civil Aeronautics Board, Workmen's Compensation Commission and Commission on Elections

SECTION 1. *How Appeal Taken.* — Any party may appeal from a final order, ruling or decision of the Securities and Exchange Commission, the Land Registration Commission, the Court of Agrarian Relations, the Social Security Commission, the Secretary of Labor under Section 7 of the Minimum Wage Law, the Court of Industrial Relations, the Civil Aeronautics Board, the Workmen's Compensation Commission, and the Commission on Elections ***by filing with said bodies a notice of appeal and with the Supreme Court*** twelve (12) printed or mimeographed copies of ***a petition for certiorari or review*** of such order, ruling or decision, ***as the corresponding statute may provide.*** A copy of the petition shall be served upon the court, commission, board or officer concerned and upon the adverse party, and proof of service thereof attached to the original of the petition.

. . . . . .

RULE 44

Appeal from an Award, Order or Decision of Public Service Commission, Patent Office, Agricultural Inventions Board, Court of Tax Appeals, and General Auditing Office

SECTION 1. *How Appeal Taken*. — An appeal from a final award, order or decision of the Public Service Commission, the Patent Office, the Agricultural Inventions Board, the Court of Tax Appeals, and the General Auditing Office, shall be perfected ***by filing with said bodies a notice of appeal and with the Supreme Court*** twelve (12) copies of a petition for review of the award, order or ruling complained of, within a period of thirty (30) days from notice of such award, order or decision. (Emphasis supplied)

The 1997 Rules of Court thereby consolidated and streamlined the manner by which appeals are brought to this Court. Previously, one could appeal through an appeal by *certiorari*, by filing a notice of appeal (accompanied by an appeal bond and record on appeal), or through a petition for review, depending on which court's or body's ruling is being assailed.

Under the present Rules of Court, with the exception of "criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment[,]"[25] rulings of lower courts may be assailed in this Court only through a petition for review on *certiorari* where, as a rule, factual issues cannot be entertained. Further, no longer may appeals be taken from quasi-judicial bodies. Rather, under Rule 43, petitions for review are to be filed with the Court of Appeals.[26]

The present Rule 45's continuing use of the term "appeal by *certiorari*" is telling. Even as a petition filed under Rule 45 is now called a "petition for *review on certiorari*," rather than a "petition for *certiorari*" (as was the case with the 1964 and 1940 versions of the Rules of Court), Rule 45 continues to

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[25] RULES OF COURT, Rule 45, Sec. 9.

[26] RULES OF COURT, Rule 43, Sec. 1.

hearken to relief obtained by way of the issuance of the prerogative writ of *certiorari*.

Heirs of Zoleta v. Land Bank of the Philippines,[27] extensively discussed the origin and history of *certiorari*, how it was "[c]onceived in England, transplanted into our jurisdiction during American occupation, and presently [exists] under the 1987 Constitution,"[28] as well as how it "was and remains [to be] a means for superior judicial bodies to undo the excesses of inferior tribunals."[29] It explained:

> The writ of *certiorari* was a prerogative writ "issued by the King by virtue of his position as fountain of justice and supreme head of the whole judicial administration."
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> . . . . . .
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> While most writs were issued *de cursu* and upon proper demand, there remained writs reserved only for the King's Bench: *certiorari, mandamus, prohibition, and quo warranto*. Consistent with the status of the King's Bench as "the highest court in the land," it "controlled the action of the other courts" through these writs. Nevertheless, the King's Bench issued these writs "only in extraordinary cases ... and only when some gross injustice was being done by other authorities." They were used only sparingly and in the most urgent of circumstances: "It remained the function of the King, through his court of King's Bench, to [be the] judge of the necessity for their issue, and they accordingly came to be known as prerogative writs."

Spouses Delos Santos v. Metropolitan Bank and Trust Company recounted the purposes of and circumstances under which writs of *certiorari* were issued by the King's Bench:

> In the common law, from which the remedy of *certiorari* evolved, the writ of *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so

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[27] *Heirs of Zoleta v. Land Bank of the Philippines*, 816 Phil. 389 (2017) [Per *J.* Leonen, Third Division].

[28] *Id.* at 401.

[29] *Id.*

> as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.

The United States of America carried this English tradition. There, historically, only the courts which "have inherited the jurisdiction of the English court of King's Bench" could issue a writ of *certiorari*.

The writ of *certiorari*, as a means of judicially rectifying a jurisdictional error, was adopted by the Philippines from the California Code of Civil Procedure. . .

. . . . . .

As *Spouses Delos Santos v. Metropolitan Bank and Trust Company* further explained:

> The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the Rules of Court in which a superior court may issue the writ of *certiorari* to an inferior court or officer.[30] (Emphasis in the original, citations omitted)

It is in keeping with this basic nature of *certiorari* as a prerogative writ that is issued only in extraordinary circumstances that Rule 45 of the Rules of Court sets stringent standards that must be satisfied before this Court is impelled to commit its limited time and resources to reviewing a case. As it seeks the issuance of an extraordinary prerogative writ, every Rule 45

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[30] *Id.* at 401-406.

petition must initially demonstrate itself to be compliant with the eight (8) standards previously discussed. Among others, it must raise questions of substance (*i.e.*, issues that are of distinctly significant consequence and value) and not merely involve settled rules that need only be applied.

III

This Court finds the present Petition to be so utterly devoid of merit and so woefully failing to present questions of substance. This Petition merits outright denial through a mere minute resolution. The only consideration that justified the issuance of this full Decision is how the fact of the Petition being so utterly devoid of merit makes it an opportune illustrative case to discuss the standards for when Rule 45 petitions ought to be denied due course.

It is basic that appeal is not a matter of right. Parties wishing to appeal must comply with the rules, otherwise they lose their opportunity to appeal:

> [T]he right to appeal is not a natural right or a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the remedy of appeal must comply with the requirements of the rules; otherwise, the appeal is lost. Rules of procedure are required to be followed, except only when, for the most persuasive of reasons, they may be relaxed to relieve the litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[31] (Citation omitted)

It was therefore incumbent on petitioner, and on those representing him, to timely act on the adverse judgment that he later sought to appeal. Failure to do so meant the adverse judgment's lapsing into finality as a matter of course. Such is the case here when, following proper service upon petitioner's counsel of record on August 23, 2016 of the Regional Trial

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[31] *Gabriel v. Court of Appeals*, 561 Phil. 673, 681-682 (2007) [Per *J.* Nachura, Third Division].

Court's August 18, 2016 Joint Decision, that Decision lapsed into finality. Accordingly, entry of judgment was made. Notice of such entry was further served on petitioner's counsel of record on September 8, 2016.

The finality of the Regional Trial Court's Decision means that it can no longer be disturbed:

> [A] decision that has acquired finality becomes immutable and unalterable. As such, it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[32] (Citation omitted)

From these, it is clear that Judge Aguinaldo merely acted in keeping with settled principles in declining to entertain the Notice of Appeal filed by petitioner through another counsel a year and a half after entry of judgment was made. This is not at all grave abuse of discretion amounting to lack or excess of jurisdiction.

The Court of Appeals, thus, did not err in dismissing petitioner's Rule 65 Petition.

Petitioner would insist on a more basic error: that the Regional Trial Court erred in promulgating its Joint Decision in his absence. He would claim that service of prior and subsequent notices on his counsel of record was ineffectual as this counsel had already withdrawn.[33] However, as noted by both the Regional Trial Court and the Court of Appeals, the records show no indication of any such withdrawal.[34] This claim of withdrawal remains to be nothing more than an unsubstantiated, self-serving allegation.

Thus, promulgation of the Joint Decision in petitioner's absence "by recording [it] in the criminal docket and serving

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[32] *Republic v. Catubag*, G.R. No. 210580, April 18, 2018, 861 SCRA 697, 707 [Per *J.* Reyes, Jr., Second Division].

[33] *Rollo*, p. 34.

[34] *Id.*

a copy [thereof]. . . thru his counsel"—pursuant to the fourth paragraph of Rule 120, Section 6 of the Rules of Court[35]—was validly conducted by the Regional Trial Court.[36]

WHEREFORE, in view of petitioner's failure to show that the discretionary power of the Court to review meets the requirements of Rule 45, Section 6 of the Rules of Court, the Petition is **DENIED DUE COURSE**. The assailed November 23, 2018 Decision and May 21, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 156711 are **AFFIRMED**.

SO ORDERED.

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

EN BANC

[A.M. No. 20-01-38-RTC. June 16, 2020]

RE: ANONYMOUS LETTER-COMPLAINT AGAINST JUDGE IRIN ZENAIDA BUAN, Branch 56, Regional Trial Court, Angeles City, Pampanga for ALLEGED DELAY OF DRUG CASES, BAD ATTITUDE, AND INSENSITIVITY TO HIV-AIDS POSITIVE ACCUSED.

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[35] RULES OF COURT, Rule 120, Sec. 6 (4) provide:

SECTION 6. *Promulgation of judgment.* —

. . . . . .

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

[36] See *Rollo*, p. 34.

SYLLABUS

1. LEGAL ETHICS; JUDGES; THE ALLEGATIONS IN THE COMPLAINT WHICH INCLUDE CORRUPTION AND FORGERY, ARE CLASSIFIED AS SERIOUS CHARGES, AND ARE PREJUDICIAL TO THE IMAGE OF THE JUDICIARY. — Judge Buan and Ms. Gonzales argue that the allegations in the anonymous complaint do not pertain to offenses classified as serious which would merit the penalty of preventive suspension. The Court disagrees. The allegations against Judge Buan and Ms. Gonzales are serious charges, as it includes corruption and forgery, and are prejudicial to the image of the judiciary. Hence, it is proper for Judge Buan's court to be subjected to judicial audit in order to verify the veracity and truthfulness of the anonymous complaint claims.

2. ID.; ID.; DOCTRINE OF COMPASSIONATE JUSTICE OR JUDICIAL CLEMENCY; ALTHOUGH JUDGES AND COURT PERSONNEL ARE NOT "LABORERS" IN A TECHNICAL SENSE WHO GET TO BENEFIT FROM THE CONSTITUTIONAL POLICY OF SOCIAL JUSTICE, SUCH POLICY MANDATES A COMPASSIONATE ATTITUDE TOWARD THE WORKING CLASS IN ITS RELATION TO MANAGEMENT; BUT THIS SHOULD NOT BE CONSIDERED AS A FORM OF CONDONATION BECAUSE JUDICIAL CLEMENCY IS NOT A PRIVILEGE OR A RIGHT THAT CAN BE AVAILED OF AT ANY TIME, AS THE COURT WILL GRANT IT ONLY IF THERE IS A SHOWING THAT IT IS MERITED; APPLIED; PREVENTIVE SUSPENSION IMPOSED AGAINST RESPONDENTS, MODIFIED. — Judge Buan and Ms. Gonzales plead humanitarian consideration as a ground to lift their preventive suspension so that they may receive their respective salaries and other monetary benefits in this time of COVID-19 pandemic. The Court partially reconsiders its position in light of the COVID-19 pandemic and partially grants the plea of Judge Buan and Ms. Gonzales. In cases concerning this Court's constitutional power of administrative supervision, there have been several occasions where the doctrine of compassionate justice or judicial clemency had been applied to accord monetary benefits such as accrued leave credits and retirement benefits to erring judges and court personnel for humanitarian reasons. Although judges and court

> personnel are not "laborers" in a technical sense who get to benefit from the constitutional policy of social justice, such policy mandates a compassionate attitude toward the working class in its relation to management. However, this should not be considered as a form of condonation because judicial clemency is not a privilege or a right that can be availed of at any time, as the Court will grant it only if there is a showing that it is merited. x x x. Here, the following factors constrain this Court to consider the peculiar circumstances of Judge Buan and Ms. Gonzales *vis-á-vis* their plea for humanitarian considerations: 1. Judge Buan and Ms. Gonzales have not yet been penalized as they still have to face the charges levelled against them; and 2. Withholding Judge Buan and Ms. Gonzales' salaries and other monetary benefits during the COVID-19 pandemic severely affects their economic and family life. As a matter of compassionate justice, the Court deems it proper to modify the preventive suspension imposed against Judge Buan and Ms. Gonzales, taking into account the hardships brought about by the COVID-19 pandemic that is currently crippling the economic lives of everyone. Withholding the release of Judge Buan and Ms. Gonzales' respective salaries and monetary benefits until further orders from this Court will bring more personal and economic hardship on them and their families.

R E S O L U T I O N

DELOS SANTOS, *J.*:

This treats the Motion for Reconsideration[1] jointly filed by Presiding Judge Irin Zenaida S. Buan (Judge Buan) and Branch Clerk of Court Nida E. Gonzales (Ms. Gonzales) both from the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 56.

The instant administrative complaint stemmed from an undated anonymous letter[2] filed by a concerned citizen of Mabalacat City against Judge Buan for conduct unbecoming of a judge.

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[1] *Rollo*, pp. 37-44.

[2] *Id.* at 16.

The anonymous complainant alleged the following violations of Judge Buan: (a) undue delay in the court processes, *e.g.*, release of accused in drug cases despite entering into a plea bargaining agreement; (b) habitual absences; (c) humiliating party-litigants while in court, and claims that she and President Duterte went to the same school; (d) imposing a fine of ₱15,000.00 with no legal basis in some drug cases where the accused has entered into a plea bargaining agreement; and (e) insensitivity to an accused who is afflicted with HIV-AIDS.

Acting on the said anonymous letter, the Office of the Court Administrator (OCA), created a team to verify the authenticity of the aforementioned allegations against Judge Buan. After conducting the initial investigation, the team reported its findings to Court Administrator Jose Midas P. Marquez (Court Administrator Marquez), who then submitted his own Memorandum[3] to Chief Justice Diosdado M. Peralta dated January 17, 2020, with the following findings and observations:

1. Judge Buan and Ms. Nida E. Gonzales, Officer-in-Charge, Branch Clerk of Court, Branch 56, RTC, Angeles City, Pampanga, appeared a little uncooperative and hesitant in bringing out all the records of the cases pending before their court.
2. From the sample cases: (a) there are cases that Judge Buan decided beyond the reglementary period, without any request for extension of time to decide the said cases; (b) cases that were already submitted for decision but remained undecided; and (c) cases with unresolved/ pending incidents.
3. The court's case records were mismanaged and unorganized and Ms. Gonzales failed to provide the team of the number of their current caseload. Aside from the delays in the submission of the monthly reports and the required Docket Inventory Report, the team discovered discrepancies in their monthly reports.

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[3] *Id.* at 1-15.

4. From the interviews conducted, there are allegations of corruption against Judge Buan, Ms. Gonzales, and Prosecutor Mark Sison in exchange of favorable rulings/ decisions.
5. Ms. Gonzales allegedly forged the signature of Executive Judge Omar T. Viola, RTC, Angeles City, Pampanga, relative to the monthly reports submitted to the Court, specifically for the months January, February, April, and May of 2019.
6. The team was able to secure a copy of a letter[4] allegedly issued by Court Administrator Marquez addressed to Judge Buan, imposing a penalty of one (1) month suspension against one Atty. Edmond V. Dantes.

In the said Memorandum, Court Administrator Marquez recommended, among others, that his report be considered as an administrative complaint against Judge Buan and Ms. Gonzales and to conduct a judicial audit in her court. Court Administrator Marquez likewise recommended that Judge Buan and Ms. Gonzales be preventively suspended for six (6) months pending the resolution of the matter, to prevent them from intimidating or influencing witnesses who would like to testify against them.

In a Resolution[5] dated February 4, 2020, the Court *En Banc* placed Judge Buan and Ms. Gonzales under preventive suspension effective immediately and until further orders from the Court. The Court also took note of the Memorandum dated January 17, 2020 of Court Administrator Marquez.

Hence, this motion for reconsideration.

In their verified joint Motion for Reconsideration,[6] Judge Buan and Ms. Gonzales deny the allegations hurled against them and pray for the reconsideration of this Court's resolution placing them under preventive suspension pending investigation, for

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[4] *Id.* at 33.

[5] *Id.* at 34-36.

[6] *Id.* at 37-44.

humanitarian consideration. They assert that the charges in the anonymous complaint are not classified as serious offenses which reasonably merits the severe preemptive disciplinary measure of preventive suspension.[7] They also claim that withholding their salary, allowances, and other monetary benefits have brought havoc to their economic and family life, specifically during this COVID-19 pandemic.

Judge Buan denies the allegations against her and raises the following defenses: (a) that her strict, stern, and firm attitude should not be mistaken as bad attitude because part of her duties as a judge is to implement and enforce the policies laid down by this Court, and to maintain order in her court; (b) that she had not been insensitive to an accused who is inflicted with HIV-AIDS but instead mindful of the latter's needs by granting the request for a medical furlough; and (c) that the delays incurred in some of the drug cases before her court are beyond her control, thus, should not be attributed to her. While Ms. Gonzales asserts that she has performed her duties and obligations in a regular and professional manner. Thus, they prayed for the lifting of their preventive suspension.

The Court partially grants the motion for reconsideration of Judge Buan and Ms. Gonzales.

Firstly, Judge Buan and Ms. Gonzales argue that the allegations in the anonymous complaint do not pertain to offenses classified as serious which would merit the penalty of preventive suspension.

The Court disagrees.

The allegations against Judge Buan and Ms. Gonzales are serious charges, as it includes corruption and forgery, and are prejudicial to the image of the judiciary.[8] Hence, it is proper for Judge Buan's court to be subjected to judicial audit in order to verify the veracity and truthfulness of the anonymous complaint's claims.

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[7] *Id.* at 38.

[8] See: *Committee on Security and Safety, Court of Appeals v. Dianco*, 760 Phil. 169 (2015).

Secondly, Judge Buan and Ms. Gonzales plead humanitarian consideration as a ground to lift their preventive suspension so that they may receive their respective salaries and other monetary benefits in this time of the COVID-19 pandemic.

The Court partially reconsiders its position in light of the COVID-19 pandemic and partially grants the plea of Judge Buan and Ms. Gonzales.

In cases concerning this Court's constitutional power of administrative supervision, there have been several occasions where the doctrine of compassionate justice or judicial clemency had been applied to accord monetary benefits such as accrued leave credits and retirement benefits to erring judges and court personnel for humanitarian reasons.[9] Although judges and court personnel are not "laborers" in a technical sense who get to benefit from the constitutional policy of social justice, such policy mandates a compassionate attitude toward the working class in its relation to management.[10] However, this should not be considered as a form of condonation because judicial clemency is not a privilege or a right that can be availed of at any time, as the Court will grant it only if there is a showing that it is merited.[11]

Here, the following factors constrain this Court to consider the peculiar circumstances of Judge Buan and Ms. Gonzales *vis-à-vis* their plea for humanitarian considerations:

1. Judge Buan and Ms. Gonzales have not yet been penalized as they still have to face the charges levelled against them; and

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[9] See: *Engr. Garcia v. Judge de la Peña*, 593 Phil. 569 (2008); see also: *Junio v. Judge Rivera*, 509 Phil. 65 (2005).

[10] *Gandara Mill Supply v. National Labor Relations Commission*, 360 Phil. 871, 879 (1998).

[11] *Concerned Lawyers of Bulacan v. Judge Villalon-Pornillos*, 805 Phil. 688, 693 (2017).

2. Withholding Judge Buan and Ms. Gonzales' salaries and other monetary benefits during the COVID-19 pandemic severely affects their economic and family life.

As a matter of compassionate justice, the Court deems it proper to modify the preventive suspension imposed against Judge Buan and Ms. Gonzales, taking into account the hardships brought about by the COVID-19 pandemic that is currently crippling the economic lives of everyone. Withholding the release of Judge Buan and Ms. Gonzales' respective salaries and monetary benefits until further orders from this Court will bring more personal and economic hardship on them and their families.

Besides, should the anonymous complaint of Judge Buan and Ms. Gonzales be dismissed, the Court would no longer need to order the payment of back salaries and other accrued monetary benefits to the former. Conversely, should Judge Buan and Ms. Gonzales be found liable, salaries and other monetary benefits received and to be received by them may be deducted from the accrued benefits that they will be entitled to by reason of their years of service.

WHEREFORE, the Court **RESOLVES** to:

1. **PARTIALLY GRANT** the joint Motion for Reconsideration of Judge Irin Zenaida S. Buan and Branch Clerk of Court Nida E. Gonzales;

2. **ORDER** the Financial Management Office to **RELEASE** the withheld salaries and other monetary benefits due to both respondents; and

3. **DIRECT** the Office of the Court Administrator to **COMMENT** on the prayer of the respondents to lift the order of preventive suspension within **five (5) days** from receipt of this Resolution.

SO ORDERED.

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

EN BANC

[G.R. No. 244045. June 16, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **JERRY SAPLA *y* GUERRERO *a.k.a.* ERIC SALIBAD *y* MALLARI,** *accused-appellant*.

SYLLABUS

1. **POLITICAL LAW; PHILIPPINE CONSTITUTION; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE; ANY DEVIATION FROM THE RIGHT IS STRICTLY CONSTRUED AGAINST THE GOVERNMENT. —** The right of the people against unreasonable searches and seizures is found in Article III, Section 2 of the 1987 Constitution, x x x [A]s a rule, a search and seizure operation conducted by the authorities is reasonable *only* when a court issues a search warrant after it has determined the existence of probable cause through the personal examination under oath or affirmation of the complainant and the witnesses presented before the court, with the place to be searched and the persons or things to be seized particularly described. Because of the sacrosanct position occupied by the right against unreasonable searches and seizures in the hierarchy of rights, any deviation or exemption from the aforementioned rule is not favored and is *strictly construed against the government*.

2. **ID.; ID.; ID.; ID.; INSTANCES OF VALID WARRANTLESS SEARCHES AND SEIZURES. —** There are, however, instances wherein searches are reasonable even in the absence of a search warrant, taking into account the "uniqueness of circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured." The known jurisprudential instances of reasonable warrantless searches and seizures are: (1) warrantless search incidental to a lawful arrest; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.

3. ID.; ID.; ID.; ID.; VALID WARRANTLESS SEARCH OF A MOVING VEHICLE; DISCUSSED. — According to jurisprudence, "warrantless search and seizure of moving vehicles are allowed in recognition of the impracticability of securing a warrant under said circumstances as the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought. Peace officers in such cases, however, *are limited to routine checks where the examination of the vehicle is limited to visual inspection*." On the other hand, an extensive search of a vehicle is permissible, but only when "the officers made it upon probable cause, *i.e.*, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains [an] item, article or object which by law is subject to seizure and destruction."

4. ID.; ID.; ID.; ID.; ID.; IN SEARCH OF A MOVING VEHICLE, THE VEHICLE IS THE TARGET AND NOT A SPECIFIC PERSON. — In [*People v.*] *Comprado*, the Court held that the search conducted "**could not be classified as a search of a moving vehicle. In this particular type of search, the vehicle is the target and not a specific person**." x x x [I]n the instant case, it cannot be seriously disputed that the target of the search conducted was not the passenger jeepney boarded by accused-appellant Sapla nor the cargo or contents of the said vehicle. The target of the search was the person who matched the description given by the person who called the Regional Public Safety Battalion (RPSB) Hotline, *i.e.*, the person wearing a collared white shirt with green stripes, red ball cap, and carrying a blue sack. As explained in *Comprado*, "to extend to such breadth the scope of searches on moving vehicles would open the floodgates to unbridled warrantless searches which can be conducted by the mere expedient of waiting for the target person to ride a motor vehicle, setting up a checkpoint along the route of that vehicle, and then stopping such vehicle when it arrives at the checkpoint in order to search the target person."

5. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; VALID SEARCH OF VEHICLES IN A CHECKPOINT; LIMITATIONS. — In *People v. Manago*, the Court, through Senior Associate Justice Estela M. Perlas-Bernabe, explained that a variant of searching moving vehicles without a warrant may entail the setting up of military or police

checkpoints. The setting up of such checkpoints is not illegal *per se* for as long as its necessity is justified by the exigencies of public order and conducted in a way least intrusive to motorists. However, in order for the search of vehicles in a checkpoint to be non-violative of an individual's right against unreasonable searches, **the search must be limited to the following**: (a) **where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds;** (b) **where the officer simply looks into a vehicle;** (c) **where the officer flashes a light therein without opening the car's doors;** (d) **where the occupants are not subjected to a physical or body search;** (e) **where the inspection of the vehicles is limited to a visual search or visual inspection;** and (f) **where the routine check is conducted in a fixed area**.

6. ID.; ID.; ID.; ID.; EXTENSIVE AND INTRUSIVE WARRANTLESS SEARCH IS VALID ONLY WHEN THERE IS PROBABLE CAUSE TO BELIEVE BEFORE THE SEARCH THAT EVIDENCE PERTAINING TO A CRIME WILL BE FOUND; SHEER UNVERIFIED INFORMATION FROM AN ANONYMOUS INFORMANT DOES NOT ENGENDER PROBABLE CAUSE. — Routine inspections do not give the authorities *carte blanche* discretion to conduct intrusive warrantless searches in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search, as opposed to a mere routine inspection, "**such a warrantless search has been held to be valid only as long as the officers conducting the search have *reasonable or probable cause* to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched**." Simply stated, a more extensive and intrusive search that goes beyond a mere visual search of the vehicle necessitates ***probable cause*** on the part of the apprehending officers. x x x As explained by the Court in *Caballes v. Court of Appeals*, probable cause means that there is the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched: x x x The Court has already held with unequivocal clarity that in situations involving warrantless searches and seizures, "**law enforcers cannot act solely on the basis of confidential or tipped**

information. A tip is still hearsay no matter how reliable it may be. *It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.*"

7. ID.; ID.; ID.; ID.; NO VALID STOP AND FRISK SEARCH IN CASE AT BAR. — Neither can the search conducted on accused-appellant Sapla be considered a valid *stop and frisk* search. The Court has explained that *stop and frisk* searches refer to "'the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. Thus, the allowable scope of a 'stop and frisk' search is limited to a "protective search of outer clothing for weapons.'" The search conducted by the authorities on accused-appellant Sapla went beyond a protective search of outer clothing for weapons or contraband. Moreover, while it was clarified by the Court in *Malacat v. Court of Appeals* that probable cause is not required to conduct *stop and frisk* searches, "mere suspicion or a hunch will not validate a 'stop and frisk.' A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him." In *Comprado, Cogaed*, and *Veridiano*, the Court has held that mere reliance on information relayed by an informant does not suffice to provide a genuine reason for the police to conduct a warrantless search and seizure. In other words, in the aforesaid cases, the Court has held that information from an informant is mere suspicion that does not validate a *stop and frisk* search.

8. ID.; ID.; ID.; EFFECTIVE WAIVER OF RIGHTS AGAINST UNREASONABLE SEARCHES AND SEIZURES; REQUISITES. — In *Tudtud*, the Court held that there can only be an effective waiver of rights against unreasonable searches and seizures if the following requisites are present: 1. It must appear that the rights exist; 2. The person involved had knowledge, actual or constructive, of the existence of such right; and 3. Said person had an actual intention to relinquish the right. Considering that a warrantless search is in derogation of a constitutional right, the Court has held that "**[t]he fundamental law and jurisprudence require more than the presence of these circumstances to constitute a valid waiver of the constitutional right against unreasonable searches and seizures. Courts indulge every reasonable presumption against waiver of fundamental**

constitutional rights; acquiescence in the loss of fundamental rights is not to be presumed. The fact that a person failed to object to a search does not amount to permission thereto." Hence, even in cases where the accused voluntarily handed her bag or the chairs containing marijuana to the arresting officer, the Court has held there was no valid consent to the search. Again, in *Veridiano*, the Court emphasized that the consent to a warrantless search and seizure must be **unequivocal, specific, intelligently given and unattended by duress or coercion**. **Mere passive conformity to the warrantless search is only an implied acquiescence which does not amount to consent and that the presence of a coercive environment negates the claim that the petitioner therein consented to the warrantless search.**

9. ID.; ID.; ID.; EVIDENCE OBTAINED FROM UNREASONABLE SEARCH AND SEIZURE SHALL BE INADMISSIBLE IN EVIDENCE. — The necessary and inescapable consequence of the illegality of the search and seizure conducted by the police in the instant case is the *inadmissibility* of the drug specimens retrieved. According to Article III, Section 3 (2) of the Constitution, any evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. Known as the *exclusionary rule*, "evidence obtained and confiscated on the occasion of such unreasonable searches and seizures [is] deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding."

LEONEN, *J.*, *concurring opinion*:

1. POLITICAL LAW; PHILIPPINE CONSTITUTION; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE; EXCEPTIONS TO JUSTIFY WARRANTLESS SEARCHES OF PASSENGERS ON MOVING VEHICLES; STOP-AND-FRISK SEARCH REQUIRES THE PRESENCE OF MORE THAN ONE SUSPICIOUS CIRCUMSTANCE. — [T]o not violate the constitutional right against unreasonable searches, a stop-and-frisk search must be based on suspicion, which, to be deemed reasonable, requires the presence of *more than one (1) suspicious circumstance* that aroused the officer's suspicion that criminal activity is afoot. Considering this

requirement, information provided by a confidential informant, without additional grounds for suspicion, is not enough to arouse suspicion that may be characterized as reasonable. That a person matches the informant's tip is not an additional circumstance separate from the fact that information was given. They are part and parcel of one (1) strand of information. Thus, assuming that a person arrives matching an informant's description, for an officer's suspicion of that person to be deemed reasonable, there must be another observed activity which, taken together with the tip, aroused such suspicion.

2. ID.; ID.; ID.; ID.; ID.; SEARCH OF A MOVING VEHICLE; VALID ONLY UNDER SPECIFIC CIRCUMSTANCES, FOR EXCEPTIONAL REASONS. — When warrantless searches target individuals who happen to be on motor vehicles, recognized exceptions pertaining to searches of motor vehicles are often invoked to justify them. These searches are valid only under specific circumstances, for exceptional reasons. In *Valmonte v. De Villa*, x x x this Court concluded that searches at military checkpoints may be valid, provided that they are conducted "within reasonable limits": x x x to be deemed reasonable, a search of a motor vehicle at a checkpoint must be limited only to a visual search, and must not be extensive. A reasonable search at a routine checkpoint excludes extensive searches, absent other recognized exceptional circumstances leading to an extensive search. x x x The concept of consent to extensive warrantless searches was elaborated in *Dela Cruz v. People*, which involved routine security inspections conducted at a seaport terminal. x x x [It] likened seaports to airports and explained that the extensive inspections regularly conducted there proceed from the port personnel's "authority and policy to ensure the safety of travelers and vehicles within the port." In ports of travel, persons have a reduced expectation of privacy, due to public safety and security concerns over terrorism and hijacking. Travelers are generally notified that they and their baggage will be searched, and even subject to x-rays; as such, they are well aware ahead of time that they must submit to searches at the port. x x x *Saluday v. People* extended this reasoning to cover warrantless searches of public buses. x x x Its only basis for not rejecting the search as unreasonable was that, prior to the intrusive search, the officer obtained clear consent to open the bag[.]

GAERLAN, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; PHILIPPINE CONSTITUTION; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; AMERICAN JURISPRUDENCE CITES THREE BASES FOR THE CONSTITUTIONALITY OF A WARRANTLESS SEARCH OF AN AUTOMOBILE IN MOTION. — I submit that despite the absence of any citation of sources, the conception of a moving vehicle search in *People v. Comprado* is nevertheless supported by applicable jurisprudence. x x x American jurisprudence cites three bases for the constitutionality of a warrantless search of an automobile in motion. First, the "ready mobility" of automobiles, and the consequent utility thereof in the transport of contraband, makes it impracticable for police officers to secure a warrant prior to stopping and searching an automobile. Second, there is a lesser expectation of privacy with respect to an automobile as compared to a dwelling or an office; and third, related to the first two bases, is the "pervasive regulation of vehicles capable of traveling on the public highways."

2. ID.; ID.; ID.; ID.; AN ANONYMOUS TIP, STANDING ALONE, DOES NOT CONSTITUTE PROBABLE CAUSE SUFFICIENT TO VALIDATE AN AUTOMOBILE SEARCH. — Likewise, I do not subscribe to the assertion that an anonymous tip, standing alone, constitutes probable cause sufficient to validate an automobile search. Recourse must be had once again to American jurisprudence on the matter, given that most of our jurisprudential doctrines on the matter are adopted from American precedents. In *Lampkins v. White*, it was observed that "x x x as a general rule, an anonymous tip alone is not likely to constitute the reasonable suspicion necessary for a valid Terry stop. However, where significant aspects of the tip are corroborated by the police, a Terry stop is likely valid." Thus, to constitute probable cause sufficient to make a traffic stop and automobile search, the SCOTUS has required anonymous tips to either meet certain criteria of reliability or be corroborated by other police work.

LAZARO-JAVIER, *J.*, *dissenting opinion*:

POLITICAL LAW; PHILIPPINE CONSTITUTION; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCH AND

SEIZURE; APPELLANT CHARGED OF TRANSPORTING ALMOST FOUR (4) KILOS OF MARIJUANA THROUGH A PUBLIC JEEPNEY, PROPERLY CONVICTED BY THE LOWER COURT. — With due respect, I cannot concur in the decision to acquit appellant of the charge of transporting **almost four (4) kilos** of **marijuana** through a public jeepney as the lower courts' rulings were fully consistent with valid and binding jurisprudence. x x x [T]he police officers **did not rely** on an **unverified** tip. The tip **was verified** by a **subsequent tip describing in detail** the person who was **actually riding** the passenger jeepney and the **sack** he was **actually carrying**. The **tip was also verified** by the **exact match of the tip with the description of the passenger** whom the police officers were targeting and actually approached. x x x [The case of *California v.*] ***Acevedo*** is **keenly relevant to our present case** because the police targeted **not exactly** the **passenger jeepney but the transporter** and ***more particularly the sack*** *was being stored for transportation*. ***Acevedo*** ruled that the *motor vehicle exemption* extends to containers carried by passengers inside a moving vehicle, **even if** there is ***no probable cause to search the motor vehicle itself*** and *the* ***probable cause*** *and the* ***interest*** *of the police officers has been* ***piqued only by the circumstances of the passenger and the container*** he or she is carrying and transporting. x x x [S]ince appellant **consented** to the warrantless search, he **cannot** claim that it is invalid. x x x [A]ppellant, a **passenger on board a public jeepney, voluntarily opened** his blue sack at the request of police officers who had previously received information that such blue sack most likely contained illegal drugs. x x x [T]he *ponencia* now relies on the exclusionary rule or the *fruit of the poisonous tree* doctrine as a basis to acquit accused-appellant. Suffice it to state, since it is my view there was a valid warrantless search of a moving vehicle in this case, **I likewise hold that the prosecution's evidence is admissible against appellant** and fully supports the lower courts' finding of guilt.

LOPEZ, *J.*, *dissenting opinion*:

1. POLITICAL LAW; PHILIPPINE CONSTITUTION; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE; CASE OF *SALUDAY V. PEOPLE* ON THE

DISTINCTION BETWEEN REASONABLE SEARCH AND WARRANTLESS SEARCH. — In *Saluday v. People*, we distinguished a reasonable search from a warrantless search and described them as mutually exclusive, thus: To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. **A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application.** Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. **In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with.** Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle. Moreover, we clarified that the constitutional guarantee under Section 2, Article III of the Constitution is not a blanket prohibition. Rather, it operates against "*unreasonable*" searches and seizures only. Thus, the general rule is that no search can be made without a valid warrant subject to certain legal and judicial exceptions. Otherwise, any evidence obtained is inadmissible in any proceeding. On the other hand, the recognized exceptions do not apply when the search is "*reasonable*" simply because there is nothing to exempt.

2. ID.; ID.; ID.; ID.; ID.; WHAT HAPPENED IN CASE AT BAR IS REASONABLE SEARCH OF A PUBLIC TRANSPORTATION THAT DOES NOT REQUIRE PROBABLE CAUSE. — In that case [of Saluday], we likewise formulated guidelines in conducting reasonable searches of public transport buses and any moving vehicle that similarly accepts passengers at the terminal and along its route, x x x Applying [the] guidelines, it becomes clearer that what happened is a reasonable search. *First*, **the accused is on board a passenger jeepney or a vehicle of public transportation where passengers have a reduced expectation of privacy**. *Second*, **the authorities properly set up a checkpoint.** The guidelines in Saluday are explicit that upon receipt of information that a passenger is carrying contraband, the law enforcers are authorized to stop the vehicle *en route* to allow for an inspection of the person and his or her effects. *Third*, **the police did not perform an intrusive**

search of the jeepney but merely inquired by asking about the ownership of the blue sack which the accused admitted. As such, Section 2, Article III of the Constitution finds no application in the reasonable search conducted in this case. Corollarily, there is no need to discuss whether the law enforcers have probable cause to search the vehicle. The requirement of probable cause is necessary in applications for search warrant and warrantless searches but not to a reasonable search. Otherwise, to require probable cause before the authorities could conduct a search, no matter how reasonable, would cripple law enforcement resulting in non-action and dereliction of duty. It must be emphasized that police officers are duty bound to respond to any information involving illegal activities. But the involution of intelligence materials obliges them to be discerning and vigilant in scintillating truthful information from the false ones.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Can the police conduct a warrantless intrusive search of a vehicle on the sole basis of an unverified tip relayed by an anonymous informant? On this question, jurisprudence has vacillated over the years. *The Court definitively settles the issue once and for all*.

In threshing out this issue, it must be remembered that in criminal prosecutions, including prosecutions for violations of the law on dangerous drugs, our constitutional order does not adopt a stance of neutrality — *the law is heavily in favor of the accused*. By constitutional design, the accused is afforded the presumption of innocence[1] — it is for the State to prove

[1] SECTION 14 (1), THE 1987 CONSTITUTION.

the guilt of the accused. Without the State discharging this burden, the Court is given no alternative but to acquit the accused.

Moreover, if the process of gathering evidence against the accused is tainted by a violation of the accused's right against unreasonable searches and seizures, which is a most cherished and protected right under the Bill of Rights, the evidence procured must be excluded, inevitably leading to the accused's acquittal.

Therefore, while the Court recognizes the necessity of adopting a decisive stance against the scourge of illegal drugs, the eradication of illegal drugs in our society cannot be achieved by subverting the people's constitutional right against unreasonable searches and seizures. In simple terms, *the Constitution does not allow the end to justify the means*. Otherwise, in eradicating one societal disease, a deadlier and more sinister one is cultivated — the trampling of the people's fundamental, inalienable rights. The State's steadfastness in eliminating the drug menace must be equally matched by its determination to uphold and defend the Constitution. This Court will not sit idly by and allow the Constitution to be added to the mounting body count in the State's war on illegal drugs.

The Case

Before the Court is an appeal[2] filed by the accused-appellant Jerry Sapla *y* Guerrero *a.k.a.* Eric Salibad *y* Mallari (accused-appellant Sapla), assailing the Decision[3] dated April 24, 2018 (assailed Decision) of the Court of Appeals (CA)[4] in CA-G.R. CR-HC No. 09296, which affirmed the Judgment[5] dated January 9, 2017 of the Regional Trial Court (RTC) of Tabuk City, Branch 25 in Criminal Case No. 11-2014-C entitled *People*

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[2] See Notice of Appeal dated April 24, 2018; *rollo*, pp. 16-18.

[3] *Id.* at 2-15. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Remedios A. Salazar-Fernando and Zenaida T. Galapate-Laguilles.

[4] Second Division.

[5] Records, pp. 325-334. Penned by Presiding Judge Marcelino K. Wacas.

of the Philippines v. Jerry Sapla y Guerrero a.k.a. Eric Salibad y Mallari, finding accused-appellant Sapla guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (R.A.) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts and Antecedent Proceedings

The facts and antecedent proceedings, as narrated by the CA in the assailed Decision, and as culled from the records of the case, are as follows:

In an *Information* dated 14 January 2014, the appellant was charged with violation of *Section 5, Article II of R.A. No. 9165*. The accusatory portion of the said *Information* reads:

> "That at around 1:20 in the afternoon of January 10, 2014 at Talaca, Agbannawag, Tabuk City, Kalinga and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and knowingly have in his possession, control and custody four (4) bricks of marijuana leaves, a dangerous [drug], with a total net weight of 3,9563.11[1] grams and transport in transit through a passenger [jeepney] with Plate No. AYA 270 the said marijuana without license, permit or authority from any appropriate government entity or agency.
>
> **CONTRARY TO LAW.**"

The next day, or on 15 January 2014, [accused-appellant Sapla] was committed to the Bureau of Jail Management and Penology (BJMP) at Tabuk City, Kalinga.

Upon his arraignment on 29 January 2014, [accused-appellant Sapla] pleaded *"not guilty"* to the crime charged against him. In the court *a quo's Pre-Trial Order* dated 11 March 2014, the Prosecution and the Defense stipulated their respective legal issues to be resolved

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

by the court *a quo*. Also, the Prosecution identified and marked its pieces of evidence, while the Defense made no proposals nor pre-mark[ed] any exhibits.

Trial ensued thereafter.

The Prosecution presented three (3) police officers as its witnesses, namely: 1) Police Officer (PO) 2 Jim Mabiasan (hereinafter referred to as ***PO2 Mabiasan***), an officer assigned at the 3rd Maneuver Company, Regional Public Safety Battalion (***RPSB***) at Tabuk City and was the seizing officer; 2) PO3 Lito Labbutan (hereinafter referred to as ***PO3 Labbutan***), an intelligence operative of Kalinga Police Provincial Office-Provincial Anti-Illegal Drugs Special Operations Task Group (***KPPO-PAIDSOTG***) who was tasked as the arresting officer; and 3) Police Senior Inspector (***PSI***) Delon Ngoslab (hereinafter referred to as ***PSI Ngoslab***), deputy company commander of the RPSB and team leader of the joint checkpoint operation.

The evidence for the Prosecution established that on 10 January 2014, at around 11:30 in the morning, an officer on duty at the RPSB office received a phone call from a concerned citizen, who informed the said office that a certain male individual [would] be transporting marijuana from Kalinga and into the Province of Isabela. PO2 Mabiasan then relayed the information to their deputy commander, PSI Ngoslab, who subsequently called KPPO-PAIDSOTG for a possible joint operation. Thereafter, as a standard operating procedure in drug operations, PO3 Labbutan, an operative of KPPO-PAIDSOTG, coordinated with the Philippine Drug Enforcement Agency (***PDEA***). Afterwards, the chief of KPPO-PAIDSOTG, PSI Baltazar Lingbawan (hereinafter referred to as ***PSI Lingbawan***), briefed his operatives on the said information. Later on, the said operatives of KPPO-PAIDSOTG arrived at the RPSB. PSI Ngoslab immediately organized a team and as its team leader, assigned PO2 Mabiasan as the seizing officer, PO3 Labbutan as the arresting officer, while the rest of the police officers would provide security and backup. The said officers then proceeded to the Talaca detachment.

At around 1:00 in the afternoon, the RPSB hotline received a text message which stated that the subject male person who [would] transport marijuana [was] wearing a collared white shirt with green stripes, red ball cap, and [was] carrying a blue sack on board a passenger jeepney, with plate number AYA 270 bound for Roxas, Isabela. Subsequently, a joint checkpoint was strategically organized at the Talaca command post.

The passenger jeepney then arrived at around 1:20 in the afternoon, wherein the police officers at the Talaca checkpoint flagged down the said vehicle and told its driver to park on the side of the road. Officers Labbutan and Mabiasan approached the jeepney and saw [accused-appellant Sapla] seated at the rear side of the vehicle. The police officers asked [accused-appellant Sapla] if he [was] the owner of the blue sack in front of him, which the latter answered in the affirmative. The said officers then requested [accused-appellant Sapla] to open the blue sack. After [accused-appellant Sapla] opened the sack, officers Labbutan and Mabiasan saw four (4) bricks of suspected dried marijuana leaves, wrapped in newspaper and an old calendar. PO3 Labbutan subsequently arrested [accused-appellant Sapla], informed him of the cause of his arrest and his constitutional rights in [the] Ilocano dialect. PO2 Mabiasan further searched [accused-appellant Sapla] and found one (1) LG cellular phone unit. Thereafter, PO2 Mabiasan seized the four (4) bricks of suspected dried marijuana leaves and brought [them] to their office at the Talaca detachment for proper markings.

At the RPSB's office, PO2 Mabiasan took photographs and conducted an inventory of the seized items, one (1) blue sack and four (4) bricks of suspected dried marijuana leaves, wherein the same officer placed his signature on the said items. Also, the actual conduct of inventory was witnessed by [accused-appellant Sapla], and by the following: 1) Joan K. Balneg from the Department of Justice; 2) Victor Fontanilla, an elected barangay official; and 3) Geraldine G. Dumalig, as media representative. Thereafter, PO3 Labbutan brought the said [accused-appellant Sapla] at the KPPO-PAIDSOTG Provincial Crime Laboratory Office at Camp Juan M. Duyan for further investigation.

At the said office, PO2 Mabiasan personally turned over the seized items to the investigator of the case, PO2 Alexander Oman (hereinafter referred to as ***PO2 Oman***), for custody, safekeeping and proper disposition. Also, PSI Lingbawan wrote a letter addressed to the Provincial Chief, which requested that a chemistry examination be conducted on the seized items. The following specimens were submitted for initial laboratory examination: 1) one (1) blue sack with label J&N rice, marked "**2:30PM JAN. 10, 2014 EXH. "A" PNP-TALACA and signature**"; 2) one (1) brick of suspected dried marijuana leaves, which weighed 998.376 grams, marked "**2:30PM JAN. 10, 2014 EXH. "A-1" PNP-TALACA and signature**"; 3) one (1) brick of suspected dried marijuana leaves, which weighed 929.735 grams, marked

"**2:30PM JAN. 10, 2014 EXH "A-2" PNP-TALACA and signature**"; 4) one (1) brick of suspected dried marijuana leaves, which weighed 1,045.629 grams, marked "**2:30PM JAN. 10, 2014 EXH "A-3" PNP-TALACA and signature**"; 5) one (1) brick of suspected dried marijuana leaves, which weighed 979.371 grams, marked "**2:30PM JAN. 10, 2014 EXH. "A-4" PNP-TALACA and signature**." The said initial examination revealed that the specimens "A-1" to "A-4" with a total net weight of 3,9563.111 grams, yielded positive results for the presence of marijuana, a dangerous drug. In addition, *Chemistry Report No. D-003-2014* revealed that indeed the said specimens [did] contain marijuana and that the said report indicated that the "specimen[s] submitted are retained in this laboratory for future reference."

Also, further investigation revealed that [accused-appellant Sapla] tried to conceal his true identity by using a fictitious name — *Eric Mallari Salibad*. However, investigators were able to contact [accused-appellant Sapla's] sister, who duly informed the said investigators that [accused-appellant Sapla's] real name is *Jerry Guerrero Sapla*.

On the other hand, the Defense presented [accused-appellant Sapla] as its sole witness.

The [accused-appellant Sapla] denied the charges against him and instead, offered a different version of the incident. He claimed that on 8 January 2014, he went to Tabuk City to visit a certain relative named Tony Sibal. Two (2) days later, [accused-appellant Sapla] boarded a jeepney, and left for Roxas, Isabela to visit his nephew. Upon reaching Talaca checkpoint, police officers flagged down the said jeepney in order to check its passenger[s'] baggages and cargoes. The police officers then found marijuana inside a sack and were looking for a person who wore fatigue pants at that time. From the three (3) passengers who wore fatigue pants, the said police officers identified him as the owner of the marijuana found inside the sack. [Accused-appellant Sapla] denied ownership of the marijuana, and asserted that he had no baggage at that time. Thereafter, the police officers arrested [accused-appellant Sapla] and brought him to the Talaca barracks, wherein the sack and marijuana bricks were shown to him.[7]

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[7] *Rollo*, pp. 3-7. Emphasis in the original.

The Ruling of the RTC

On January 9, 2017, the RTC rendered its Decision convicting accused-appellant Sapla for violating Section 5 of R.A. 9165. The RTC found that the prosecution was able to sufficiently establish the *corpus delicti* of the crime. The dispositive portion of the Decision reads:

> **ACCORDINGLY**, in view of the foregoing, this Court finds accused **JERRY SAPLA Y GUERRERO, *a.k.a.* ERIC SALIBAD Y MALLARI** guilty beyond reasonable doubt of the crime charged and suffer the penalty of *reclusion perpetua*.
>
> The accused to pay the fine of Five Million (₱5,000,000.00) Pesos.
>
> The 4 bricks of dried marijuana leaves be submitted to any authorized representative of the PDEA for proper disposition.
>
> SO ORDERED.[8]

Feeling aggrieved, accused-appellant Sapla filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA denied accused-appellant Sapla's appeal and affirmed the RTC's Decision with modifications. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the instant appeal is **DENIED**. The *Decision* dated 9 January 2017 of the Regional Trial Court of Tabuk City, Branch 25 in *Criminal Case No. 11-2014-C* is hereby **AFFIRMED with MODIFICATIONS** in that accused-appellant Jerry Sapla *y* Guerrero is sentenced to suffer the penalty of life imprisonment and to pay the fine of ₱1,000,000.00.
>
> **SO ORDERED.**[9]

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[8] Records, pp. 333-334.

[9] *Rollo*, p. 14.

The CA found that although the search and seizure conducted on accused-appellant Sapla was without a search warrant, the same was lawful as it was a valid warrantless search of a moving vehicle. The CA held that the essential requisite of probable cause was present, justifying the warrantless search and seizure.

Hence, the instant appeal.

The Issue

Stripped to its core, the essential issue in the instant case is whether there was a valid search and seizure conducted by the police officers. The answer to this critical question determines whether there is enough evidence to sustain accused-appellant Sapla's conviction under Section 5 of R.A. 9165.

The Court's Ruling

The instant appeal is impressed with merit. The Court finds for accused-appellant Sapla and immediately orders his release from incarceration.

The Constitutional Right against Unreasonable Searches and Seizures

As eloquently explained by the Court in *People v. Tudtud (Tudtud)*,[10] "the Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on governmental power."[11]

And in the Bill of Rights, the right against unreasonable searches and seizures is "at the top of the hierarchy of rights,

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[10] 458 Phil. 752-802 (2003).

[11] *Id.* at 788.

next only to, if not on the same plane as, the right to life, liberty and property, x x x for the right to personal security which, along with the right to privacy, is the foundation of the right against unreasonable search and seizure."[12]

The right of the people against unreasonable searches and seizures is found in Article III, Section 2 of the 1987 Constitution, which reads:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Hence, as a rule, a search and seizure operation conducted by the authorities is reasonable *only* when a court issues a search warrant after it has determined the existence of probable cause through the personal examination under oath or affirmation of the complainant and the witnesses presented before the court, with the place to be searched and the persons or things to be seized particularly described.

Because of the sacrosanct position occupied by the right against unreasonable searches and seizures in the hierarchy of rights, any deviation or exemption from the aforementioned rule is not favored and is *strictly construed against the government*.

Valid Warrantless Searches and Seizures

There are, however, instances wherein searches are reasonable even in the absence of a search warrant, taking into account the "uniqueness of circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made,

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[12] *Id.* at 788-789.

the place or thing searched, and the character of the articles procured."[13]

The known jurisprudential instances of reasonable warrantless searches and seizures are:

(1) warrantless search incidental to a lawful arrest;

(2) seizure of evidence in plain view;

(3) search of a moving vehicle;

(4) consented warrantless search;

(5) customs search;

(6) stop and frisk; and

(7) exigent and emergency circumstances.[14]

Search of a Moving Vehicle and its Non-Applicability in the Instant Case

In upholding the warrantless search and seizure conducted by the authorities, the RTC and CA considered the police operation as a valid warrantless *search of a moving vehicle*.

According to jurisprudence, "warrantless search and seizure of moving vehicles are allowed in recognition of the impracticability of securing a warrant under said circumstances as the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought. Peace officers in such cases, however, are *limited to routine checks where the examination of the vehicle is limited to visual inspection*."[15]

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[13] *People v. Cogaed*, 740 Phil. 212, 228 (2014), citing *Esquillo v. People*, 643 Phil. 577, 593 (2010).

[14] *Id.* at 228.

[15] *People v. Comprado*, G.R. No. 213225, April 4, 2018, 860 SCRA 420, 440. Italics supplied.

On the other hand, an extensive search of a vehicle is permissible, but only when "the officers made it upon probable cause, *i.e.*, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains [an] item, article or object which by law is subject to seizure and destruction."[16]

The Court finds error in the CA's holding that the search conducted in the instant case is a search of a moving vehicle. The situation presented in the instant case *cannot* be considered as a search of a moving vehicle.

The fairly recent case of *People v. Comprado*[17] (*Comprado*) is controlling inasmuch as the facts of the said case are *virtually identical* to the instant case.

In *Comprado*, a confidential informant (CI) sent a text message to the authorities as regards an alleged courier of marijuana who had in his possession a backpack containing marijuana and would be traveling from Bukidnon to Cagayan de Oro City. The CI eventually called the authorities and informed them that the alleged drug courier had boarded a bus with body number 2646 and plate number KVP 988 bound for Cagayan de Oro City. The CI added that the man would be carrying a backpack in black and violet colors with the marking "*Lowe Alpine.*" With this information, the police officers put up a checkpoint, just as what the authorities did in the instant case. Afterwards, upon seeing the bus bearing the said body and plate numbers approaching the checkpoint, again similar to the instant case, the said vehicle was flagged down. The police officers boarded the bus and saw a man matching the description given to them by the CI. The man was seated at the back of the bus with a backpack placed on his lap. The man was asked to open the bag. When the accused agreed to do so, the police officers saw a transparent cellophane containing dried marijuana leaves.

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[16] *Id.*

[17] *Id.*

In *Comprado*, the Court held that the search conducted "**could not be classified as a search of a moving vehicle. In this particular type of search, the vehicle is the target and not a specific person.**"[18] The Court added that "in search of a moving vehicle, the vehicle was intentionally used as a means to transport illegal items. It is worthy to note that the information relayed to the police officers was that a passenger of that particular bus was carrying marijuana such that when the police officers boarded the bus, they searched the bag of the person matching the description given by their informant and not the cargo or contents of the said bus."[19]

Applying the foregoing to the instant case, it cannot be seriously disputed that the target of the search conducted was not the passenger jeepney boarded by accused-appellant Sapla nor the cargo or contents of the said vehicle. The target of the search was the person who matched the description given by the person who called the RPSB Hotline, *i.e.*, the person wearing a collared white shirt with green stripes, red ball cap, and carrying a blue sack.

As explained in *Comprado*, "to extend to such breadth the scope of searches on moving vehicles would open the floodgates to unbridled warrantless searches which can be conducted by the mere expedient of waiting for the target person to ride a motor vehicle, setting up a checkpoint along the route of that vehicle, and then stopping such vehicle when it arrives at the checkpoint in order to search the target person."[20]

Therefore, the search conducted in the instant case cannot be characterized as a search of a moving vehicle.

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[18] *Id.* at 440-441. Emphasis supplied.

[19] *Id.* at 441.

[20] *Id.*

Probable Cause as an Indispensable Requirement for an Extensive and Intrusive Warrantless Search of a Moving Vehicle

In any case, even if the search conducted can be characterized as a search of a moving vehicle, the operation undertaken by the authorities in the instant case *cannot be deemed a valid warrantless search of a moving vehicle*.

In *People v. Manago*,[21] the Court, through Senior Associate Justice Estela M. Perlas-Bernabe, explained that a variant of searching moving vehicles without a warrant may entail the setting up of military or police checkpoints. The setting up of such checkpoints is not illegal *per se* for as long as its necessity is justified by the exigencies of public order and conducted in a way least intrusive to motorists.

However, in order for the search of vehicles in a checkpoint to be non-violative of an individual's right against unreasonable searches, **the search must be limited to the following**: (a) **where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds**; (b) **where the officer simply looks into a vehicle**; (c) **where the officer flashes a light therein without opening the car's doors**; (d) **where the occupants are not subjected to a physical or body search**; (e) **where the inspection of the vehicles is limited to a visual search or visual inspection**; and (f) **where the routine check is conducted in a fixed area**.[22]

Routine inspections do not give the authorities *carte blanche* discretion to conduct intrusive warrantless searches in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search, as opposed to a mere routine inspection, "**such a warrantless search has been held to be valid only as long as the officers conducting the search**

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[21] 793 Phil. 505, 519 (2016).

[22] *Id.* at 519-520.

have *reasonable or probable cause* to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched."[23]

Simply stated, a more extensive and intrusive search that goes beyond a mere visual search of the vehicle necessitates ***probable cause*** on the part of the apprehending officers.

It was in *Valmonte v. de Villa*[24] (*Valmonte*) where the Court first held that vehicles can be stopped at a checkpoint and extensively searched only when there is "probable cause which justifies a reasonable belief of the men at the checkpoints that either the motorist is a law-offender or the contents of the vehicle are or have been instruments of some offense."[25] This doctrine was directly adopted from United States jurisprudence, specifically from the pronouncement of the Supreme Court of the United States (SCOTUS) in *Dyke v. Taylor*.[26]

As subsequently explained by the Court in *Caballes v. Court of Appeals*,[27] probable cause means that there is the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and, destruction by law is in the place to be searched:

> x x x a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. The required probable cause

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[23] *Id.* at 520. Emphasis and italics supplied.

[24] 264 Phil. 265 (1990).

[25] *Id.* at 266.

[26] 391 US 216, 20 L Ed 538, 88 S Ct 1472.

[27] 424 Phil. 263 (2002).

that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of each case.[28]

Sheer Unverified Information from an Anonymous Informant does not engender Probable Cause on the part of the Authorities that warrants an Extensive and Intrusive Search of a Moving Vehicle

As readily admitted by the CA, **the singular circumstance that engendered probable cause on the part of the police officers was the information they received through the RPSB Hotline (*via* text message) from an anonymous person**. Because of this information, the CA held that there was probable cause on the part of the police to conduct an intrusive search.[29]

Does the mere reception of a text message from an anonymous person suffice to create probable cause that enables the authorities to conduct an extensive and intrusive search without a search warrant? **The answer is a resounding *no***.

The Court has already held with unequivocal clarity that in situations involving warrantless searches and seizures, "**law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. *It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion***."[30]

A. United States Jurisprudence on Probable Cause vis-à-vis Tipped Information

Considering that the doctrine that an extensive warrantless search of a moving vehicle necessitates probable cause was

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[28] *Id.* at 279.

[29] *Rollo*, p. 10.

[30] *Veridiano v. People*, 810 Phil. 642, 668 (2017). Emphasis, italics, and underscoring supplied.

adopted by the Court from United States jurisprudence, examining United States jurisprudence can aid in a fuller understanding on the existence of probable cause *vis-à-vis* tipped information received from confidential informants.

In the 1964 case of *Aguilar v. Texas*,[31] the SCOTUS delved into the constitutional requirements for obtaining a state search warrant. In the said case, two Houston police officers applied to a local Justice of the Peace for a warrant to search for narcotics in the petitioner's home based on "reliable information" received from a supposed credible person that the "heroin, marijuana, barbiturates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of the law."[32]

In invalidating the search warrant, the SCOTUS held that a two-pronged test must be satisfied in order to determine whether an informant's tip is sufficient in engendering probable cause, *i.e.*, (1) the informant's "basis of knowledge" must be revealed and (2) sufficient facts to establish either the informant's "veracity" or the "reliability" of the informant's report must be provided:

> Although an affidavit may be based on hearsay information, and need not reflect the direct personal observations of the affiant, *Jones v. United States*, 362 U.S. 257, the magistrate must be informed of **some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed**, *see Rugendorf v. United States*, 376 U.S. 528, **was "credible" or his information "reliable."**[33]

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[31] 378 U.S. 108 (1964).

[32] *Id.*

[33] *Id.* Emphasis supplied.

Subsequently, in the 1983 case of *Illinois v. Gates*,[34] the police received an anonymous letter alleging that the respondents were engaged in selling drugs and that the car of the respondents would be loaded with drugs. Agents of the Drug Enforcement Agency searched the respondents' car, which contained marijuana and other contraband items.

In finding that there was probable cause, the SCOTUS adopted the *totality of circumstances test* and held that tipped information may engender probable cause under "a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability) attending an informant's tip."[35] In the said case, the SCOTUS found that the details of the informant's tip were corroborated by independent police work.

The SCOTUS emphasized however that "*standing alone*, the anonymous letter sent to the Bloomingdale Police Department would not provide the basis for a magistrate's determination that there was probable cause to believe contraband would be found in the Gateses' car and home. x x x Something more was required, then, before a magistrate could conclude that there was probable cause to believe that contraband would be found in the Gateses' home and car."[36]

B. The Line of Philippine Jurisprudence on the Inability of a Solitary Tip to Engender Probable Cause

As early as 1988, our own Court had ruled that an extensive warrantless search and seizure conducted on the sole basis of a confidential tip is tainted with illegality. In *People v. Aminnudin*,[37] analogous to the instant case, the authorities acted upon an information that the accused would be arriving from Iloilo on board a vessel, the M/V Wilcon 9. The authorities

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[34] 462 U.S. 213 (1983).

[35] *Id.*

[36] *Id.* Italics and underscoring supplied.

[37] 246 Phil. 424 (1988).

waited for the vessel to arrive, accosted the accused, and inspected the latter's bag wherein bundles of marijuana leaves were found. The Court declared that the search and seizure was illegal, holding that, at the time of his apprehension, Aminnudin was not "committing a crime nor was it shown that he was about to do so or that he had just done so. x x x To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension."[38]

Subsequently, in *People v. Cuizon*,[39] the Court, through former Chief Justice Artemio V. Panganiban, held that the warrantless search and subsequent arrest of the accused were deemed illegal because "the prosecution failed to establish that there was sufficient and reasonable ground for the NBI agents to believe that appellants had committed a crime *at the point when the search and arrest of Pua and Lee were made*."[40] In reaching this conclusion, the Court found that the authorities merely relied on "the alleged tip that the NBI agents purportedly received that morning."[41] The Court characterized the tip received by the authorities from an anonymous informant as "hearsay information"[42] that cannot engender probable cause.

In *People v. Encinada*,[43] the authorities acted solely on an informant's tip and stopped the tricycle occupied by the accused and asked the latter to alight. The authorities then rummaged through the two strapped plastic baby chairs that were loaded inside the tricycle. The authorities then found a package of marijuana inserted between the two chairs. The Court, again

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[38] *Id.* at 433-434.

[39] 326 Phil. 345 (1996).

[40] *Id.* at 363. Italics in the original.

[41] *Id.* at 361.

[42] *Id.* at 362.

[43] 345 Phil. 301-324 (1997).

through former Chief Justice Artemio V. Panganiban, held that "raw intelligence"[44] was not enough to justify the warrantless search and seizure. "The prosecution's evidence did not show any suspicious behavior when the appellant disembarked from the ship or while he rode the *motorela*. No act or fact demonstrating a felonious enterprise could be ascribed to appellant under such bare circumstances."[45]

Likewise analogous to the instant case is *People v. Aruta*[46] (*Aruta*) where an informant had told the police that a certain "Aling Rosa" would be transporting illegal drugs from Baguio City by bus. Hence, the police officers situated themselves at the bus terminal. Eventually, the informant pointed at a woman crossing the street and identified her as "Aling Rosa." Subsequently, the authorities apprehended the woman and inspected her bag which contained marijuana leaves.

In finding that there was an unlawful warrantless search, the Court in *Aruta* held that "it was only when the informant pointed to accused-appellant and identified her to the agents as the carrier of the marijuana that she was singled out as the suspect. The NARCOM agents would not have apprehended accused-appellant were it not for the furtive finger of the informant because, as clearly illustrated by the evidence on record, there was no reason whatsoever for them to suspect that accused-appellant was committing a crime, except for the pointing finger of the informant."[47] Hence, the Court held that **the search conducted on the accused therein based solely on the pointing finger of the informant was "a clear violation of the constitutional guarantee against unreasonable search and seizure."**[48]

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[44] *Id.* at 318.

[45] *Id.* at 319.

[46] 351 Phil. 868 (1998).

[47] *Id.* at 885. Emphasis supplied.

[48] *Id.* Emphasis supplied.

Of more recent vintage is *People v. Cogaed*[49] (*Cogaed*), which likewise involved a search conducted through a checkpoint put up after an "unidentified civilian informer" shared information to the authorities that a person would be transporting marijuana.

In finding that there was no probable cause on the part of the police that justified a warrantless search, the Court, through Associate Justice Marvic Mario Victor F. Leonen, astutely explained that in cases finding sufficient probable cause for the conduct of warrantless searches, "the police officers using their senses observed facts that led to the suspicion. Seeing a man with reddish eyes and walking in a swaying manner, based on their experience, is indicative of a person who uses dangerous and illicit drugs."[50] However, the Court reasoned that the case of the accused was different because "he was simply a passenger carrying a bag and traveling aboard a jeepney. There was nothing suspicious, moreover, criminal, about riding a jeepney or carrying a bag. The assessment of suspicion was not made by the police officer but by the jeepney driver. It was the driver who signaled to the police that Cogaed was 'suspicious.'"[51]

In *Cogaed*, the Court stressed that in engendering probable cause that justifies a valid warrantless search, "[i]t is the police officer who should observe facts that would lead to a reasonable degree of suspicion of a person. ***The police officer should not adopt the suspicion initiated by another person***. This is necessary to justify that the person suspected be stopped and reasonably searched. Anything less than this would be an infringement upon one's basic right to security of one's person and effects."[52] The Court explained that "***the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act," and not merely rely on the information passed on to him or her***.[53]

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[49] 740 Phil. 212 (2014).

[50] *Id.* at 231.

[51] *Id.*

[52] *Id.* at 232. Emphasis and underscoring supplied.

[53] *Id.* at 230. Emphasis and underscoring supplied.

Adopting former Chief Justice Lucas P. Bersamin's Dissenting Opinion in *Esquillo v. People*,[54] the Court in *Cogaed* stressed that reliance on only one suspicious circumstance or none at all will not result in a reasonable search.[55] The Court emphasized that the matching of information transmitted by an informant "still remained only as one circumstance. This should not have been enough reason to search Cogaed and his belongings without a valid search warrant."[56]

Subsequently, in *Veridiano v. People*[57] (*Veridiano*), a concerned citizen informed the police that the accused was on the way to San Pablo City to obtain illegal drugs. Based on this tip, the authorities set up a checkpoint. The police officers at the checkpoint personally knew the appearance of the accused. Eventually, the police chanced upon the accused inside a passenger jeepney coming from San Pablo, Laguna. The jeepney was flagged down and the police asked the passengers to disembark. The police officers instructed the passengers to raise their t-shirts to check for possible concealed weapons and to remove the contents of their pockets. The police officers recovered from the accused a tea bag containing what appeared to be marijuana.

In finding the warrantless search invalid, the Court, again through Associate Justice Marvic Mario Victor F. Leonen, held that the accused was a "mere passenger in a jeepney who did not exhibit any act that would give police officers reasonable suspicion to believe that he had drugs in his possession. x x x There was no evidence to show that the police had basis or personal knowledge that would reasonably allow them to infer anything suspicious."[58]

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[54] 643 Phil. 577, 606 (2010).

[55] *People v. Cogaed, supra* note 13, at 233-234.

[56] *Id.* at 234.

[57] *Supra* note 30.

[58] *Id.* at 665.

The Court correctly explained that "**law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion**."[59]

A year after *Veridiano*, the Court decided the case of *Comprado*. As in the instant case, the authorities alleged that they possessed reasonable cause to conduct a warrantless search solely on the basis of information relayed by an informant.

The Court held in *Comprado* that the sole information relayed by an informant was not sufficient to incite a genuine reason to conduct an intrusive search on the accused. The Court explained that "**no overt physical act could be properly attributed to accused-appellant as to rouse suspicion in the minds of the arresting officers that he had just committed, was committing, or was about to commit a crime**."[60]

The Court emphasized that **there should be the** "**presence of more than one seemingly innocent activity from which, taken together, warranted a reasonable inference of criminal activity**."[61] In the said case, as in the instant case, the accused was just a passenger carrying his bag. "There is nothing suspicious much less criminal in said act. Moreover, such circumstance, by itself, could not have led the arresting officers to believe that accused-appellant was in possession of marijuana."[62]

Recently, the Court unequivocally declared in *People v. Yanson*[63] (*Yanson*) that a solitary tip hardly suffices as probable

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[59] *Id.* at 668. Emphasis supplied.

[60] *People v. Comprado, supra* note 15, at 435. Emphasis supplied.

[61] *Id.*, at 438; citing *C.J.* Lucas P. Bersamin's Dissenting Opinion in *Esquillo v. People*, 643 Phil. 577, 606 (2010). Emphasis supplied.

[62] *Id.*

[63] G.R. No. 238453, July 31, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65605>.

cause that warrants the conduct of a warrantless intrusive search and seizure.

In *Yanson*, which involves an analogous factual milieu as in the instant case, "the Municipal Police Station of M'lang, North Cotabato received a radio message about a silver gray Isuzu pickup — with plate number 619 and carrying three (3) people — that was transporting marijuana from Pikit. The Chief of Police instructed the alert team to set up a checkpoint on the riverside police outpost along the road from Matalam to M'lang."[64]

Afterwards, "[a]t around 9:30 a.m., the tipped vehicle reached the checkpoint and was stopped by the team of police officers on standby. The team leader asked the driver about inspecting the vehicle. The driver alighted and, at an officer's prodding, opened the pickup's hood. Two (2) sacks of marijuana were discovered beside the engine."[65]

In the erudite *ponencia* of Associate Justice Marvic Mario Victor F. Leonen, the Court held that, in determining whether there is probable cause that warrants an extensive or intrusive warrantless searches of a moving vehicle, "**bare suspicion is never enough**. While probable cause does not demand moral certainty, or evidence sufficient to justify conviction, it requires the existence of 'a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.'"[66]

The Court explained that in prior cases wherein the Court validated warrantless searches and seizures on the basis of tipped information, "the seizures and arrests were not merely and exclusively based on the initial tips. Rather, they were prompted by other attendant circumstances. Whatever initial suspicion they had from being tipped was progressively heightened

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[64] *Id.*

[65] *Id.*

[66] *Id.* Emphasis supplied.

by other factors, such as the accused's failure to produce identifying documents, papers pertinent to the items they were carrying, or their display of suspicious behavior upon being approached."[67] In such cases, the finding of probable cause was premised "on more than just the initial information relayed by assets. It was the confluence of initial tips and a myriad of other occurrences that ultimately sustained probable cause."[68] However, the case of *Yanson* was markedly different from these other cases. Just as in the instant case, the police officers proceeded to effect a search, seizure, and arrest on the basis of a solitary tip:

> This case is markedly different. The police officers here proceeded to effect a search, seizure, and arrest on the basis of a solitary tip: the radio message that a certain pickup carrying three (3) people was transporting marijuana from Pikit. When the accused's vehicle (ostensibly matching this description) reached the checkpoint, the arresting officers went ahead to initiate a search asking the driver about inspecting the vehicle. Only upon this insistence did the driver alight. It was also only upon a police officer's further prodding did he open the hood.
>
> The records do not show, whether on the basis of indubitably established facts or the prosecution's mere allegations, that the three (3) people on board the pickup were acting suspiciously, or that there were other odd circumstances that could have prompted the police officers to conduct an extensive search. Evidently, the police officers relied solely on the radio message they received when they proceeded to inspect the vehicle.[69]

In ruling that the sole reliance on tipped information, on its own, furnished by informants cannot produce probable cause, the Court held that "**[e]xclusive reliance on information tipped by informants goes against the very nature of probable cause. A single hint hardly amounts to the existence of such facts and circumstances which would lead a reasonably**

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[67] *Id.* Italics supplied.

[68] *Id.*

[69] *Id.*

discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched."[70]

As correctly explained by the Court in *Yanson*, "[t]o maintain otherwise would be to sanction frivolity, opening the floodgates to unfounded searches, seizures, and arrests that may be initiated by sly informants."[71]

And very recently, on September 4, 2019, the Court, through former Chief Justice Lucas P. Bersamin, promulgated its Decision in *People v. Gardon-Mentoy*[72] (*Gardon-Mentoy*). In the said case, police officers had set up a checkpoint on the National Highway in Barangay Malatgao, Narra, Palawan based on a tip from an unidentified informant that the accused-appellant would be transporting dangerous drugs on board a shuttle van. Eventually, the authorities flagged down the approaching shuttle van matching the description obtained from the informant and conducted a warrantless search of the vehicle, yielding the discovery of a block-shaped bundle containing *marijuana*.

In holding that the warrantless search and seizure were without probable cause, the Court held that a tip, in the absence of other circumstances that would confirm their suspicion coming from the personal knowledge of the searching officers, was not yet actionable for purposes of conducting a search:

> Without objective facts being presented here by which we can test the basis for the officers' suspicion about the block-shaped bundle contained *marijuana*, we should not give unquestioned acceptance and belief to such testimony. The mere subjective conclusions of the officers concerning the existence of probable cause is never binding on the court whose duty remains to "independently scrutinize the objective facts to determine the existence of probable cause," for, indeed, "the courts have never hesitated to overrule an officer's determination of probable cause when none exists."

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[70] *Id.* Emphasis and underscoring supplied.

[71] *Id.*

[72] G.R. No. 223140, September 4, 2019.

But SPO2 Felizarte also claimed that it was about then when the accused-appellant panicked and tried to get down from the van, impelling him and PO1 Rosales to restrain her. Did such conduct on her part, assuming it did occur, give sufficient cause to search and to arrest?

For sure, the transfer made by the accused-appellant of the block-shaped bundle from one bag to another should not be cited to justify the search if the search had earlier commenced at the moment PO1 Rosales required her to produce her baggage. **Neither should the officers rely on the still-unverified tip from the unidentified informant, without more, as basis to initiate the search of the personal effects. The officers were themselves well aware that the tip, being actually double hearsay as to them, called for independent verification as its substance and reliability, and removed the foundation for them to rely on it even under the circumstances then obtaining. In short, the tip, in the absence of other circumstances that would confirm their suspicion coming to the knowledge of the searching or arresting officer, was not yet actionable for purposes of effecting an arrest or conducting a search**.[73]

The Court is not unaware that in the recent case of *Saluday v. People*[74] *(Saluday)*, a bus inspection conducted by Task Force Davao at a military checkpoint was considered valid. However, in the said case, the authorities merely conducted a "*visual and minimally intrusive inspection*"[75] of the accused's bag — by simply lifting the bag that noticeably appeared to have contained firearms. **This is markedly dissimilar to the instant case wherein the search conducted entailed the probing of the contents of the blue sack allegedly possessed by accused-appellant Sapla**.

Moreover, in *Saluday*, the authorities never received nor relied on sheer information relayed by an informant, unlike in the instant case. In *Saluday*, the authorities had relied on their

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[73] *Id.* Emphasis supplied.

[74] G.R. No. 215305, April 3, 2018, 860 SCRA 231, 256.

[75] *Id.* at 253. Underscoring supplied.

own senses in determining probable cause, *i.e.*, having personally lifted the bag revealing that a firearm was inside, as well as having seen the very suspicious looks being given by the accused therein.

Further, in *Saluday*, the Court laid down the following conditions in allowing a reasonable search of a bus while in transit: (1) the manner of the search must be least intrusive; (2) the search must not be discriminatory; (3) as to the purpose of the search, it must be confined to ensuring public safety; and (4) the courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.[76]

It must be stressed that *none of these conditions exists in the instant case*.

First, unlike in *Saluday* wherein the search conducted was merely visual and minimally intrusive, the search undertaken on accused-appellant Sapla was extensive, reaching inside the contents of the blue sack that he allegedly possessed.

Second, the search was directed exclusively towards accused-appellant Sapla; it was discriminatory. Unlike in *Saluday* where the bags of the other bus passengers were also inspected, the search conducted in the instant case focused exclusively on accused-appellant Sapla.

Third, there is no allegation that the search was conducted with the intent of ensuring public safety. At the most, the search was conducted to apprehend a person who, as relayed by an anonymous informant, was transporting illegal drugs.

Lastly, the Court is not convinced that sufficient precautionary measures were undertaken by the police to ensure that no evidence was planted against accused-appellant Sapla, considering that the inventory, photographing, and marking of the evidence were not immediately conducted after the

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[76] *Id.* at 256.

apprehension of accused-appellant Sapla at the scene of the incident.

C. The Divergent Line of Jurisprudence

At this juncture, the Court clarifies that there is indeed a line of jurisprudence holding that information received by the police provides a valid basis for conducting a warrantless search,[77] tracing its origins to the 1990 cases of *People v. Tangliben* [78] (*Tangliben*) and *People v. Maspil, Jr.*[79] (*Maspil, Jr.*). Several of the cases following this line of jurisprudence also heavily rely on the 1992 case of *People v. Bagista*[80] (*Bagista*).

It is high time for a re-examination of this divergent line of jurisprudence.

In *Tangliben*, acting on information supplied by informers that dangerous drugs would be transported through a bus, the authorities conducted a surveillance operation at the Victory Liner Terminal compound in San Fernando, Pampanga. At 9:30 in the evening, the police noticed a person carrying a red travelling bag who was acting suspiciously. They confronted him and requested him to open his bag. The police found marijuana leaves wrapped in a plastic wrapper inside the bag.

It must be stressed that in *Tangliben*, the authorities' decision to conduct the warrantless search did not rest *solely* on the tipped information supplied by the informants. *The authorities, using their own personal observation, saw that the accused was acting suspiciously*.

Similar to *Tangliben*, in the ***great majority*** of cases upholding the validity of a warrantless search and seizure on the basis

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[77] See *People v. Valdez*, 363 Phil. 481 (1999) and *People v. Mariacos*, 635 Phil. 315 (2010).

[78] 263 Phil. 106 (1990).

[79] 266 Phil. 815 (1990).

[80] 288 Phil. 828 (1992).

of a confidential tip, the police did not rely *exclusively* on information sourced from the informant. ***There were overt acts and other circumstances personally observed by the police that engendered great suspicion***. Hence, the holding that an intrusive warrantless search can be conducted on the *solitary* basis of tipped information is far from being an established and inflexible doctrine.

To cite but a few examples, in the early case of *People v. Malmstdedt*,[81] the authorities set up a checkpoint in response to some reports that a Caucasian man was coming from Sagada with dangerous drugs in his possession. At the checkpoint, the officers intercepted a bus and inspected it. Upon reaching the accused, the police personally observed that there was a bulge on the accused's waist. This prompted the officer to ask for the accused's identification papers, which the accused failed to provide. The accused was then asked to reveal what was bulging on his waist, which turned out to be hashish, a derivative of marijuana. In this case, the Court ruled that the probable cause justifying the warrantless search was based on the *personal observations* of the authorities and not solely on the tipped information:

> It was only when one of the officers noticed a bulge on the waist of accused, during the course of the inspection, that accused was required to present his passport. The failure of accused to present his identification papers, when ordered to do so, only managed to arouse the suspicion of the officer that accused was trying to hide his identity.[82]

In *People v. Tuazon*,[83] the authorities did not solely rely on confidential information that the accused would deliver an unspecified amount of *shabu* using a Gemini car bearing plate number PFC 411. Upon conducting a visual search of the motor vehicle that was flagged down by the authorities, the police

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[81] 275 Phil. 447 (1991).

[82] *Id.*

[83] 588 Phil. 759 (2007).

personally saw a gun tucked on the accused's waist. Moreover, the accused was not able to produce any pertinent document related to the firearm. This was what prompted the police to order the accused to alight from the vehicle.

In *People v. Quebral*,[84] the authorities did not solely rely on the police informer's report that two men and a woman on board an owner type jeep with a specific plate number would deliver *shabu*, a prohibited drug, at a Petron Gasoline Station in Balagtas, Bulacan. The authorities conducted a surveillance operation and personally saw the accused handing out a white envelope to her co-accused, a person included in the police's drug watch list.

In *People v. Saycon*,[85] in holding that the authorities had probable cause in conducting an intrusive warrantless search, the Court explained that probable cause was not engendered solely by the receipt of confidential information. Probable cause was produced because a prior test-buy was conducted by the authorities, which confirmed that the accused was engaged in the transportation and selling of *shabu*.

In *Manalili v. Court of Appeals and People*,[86] the person subjected to a warrantless search and seizure was personally observed by the police to have reddish eyes and to be walking in a swaying manner. Moreover, he appeared to be trying to avoid the policemen. When approached and asked what he was holding in his hands, he tried to resist. The Court held that the policemen had sufficient reason to accost the accused-appellant to determine if he was actually "high" on drugs due to his suspicious actuations, coupled with the fact that based on information, this area was a haven for drug addicts.[87]

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[84] 621 Phil. 226 (2009).

[85] 306 Phil. 359 (1994).

[86] 345 Phil. 632 (1997).

[87] *People v. Aruta, supra* note 46, at 884.

In *People v. Solayao*,[88] "police officers noticed a man who appeared drunk. This man was also 'wearing a camouflage uniform or a jungle suit.' Upon seeing the police, the man fled. His flight added to the suspicion. After stopping him, the police officers found an unlicensed 'homemade firearm' in his possession."[89]

In *People v. Lo Ho Wing*,[90] the authorities did not rely on an anonymous, unverified tip. Deep penetration agents were recruited to infiltrate the crime syndicate. An undercover agent actually met and conferred with the accused, personally confirming the criminal activities being planned by the accused. In fact, the agent regularly submitted reports of his undercover activities on the criminal syndicate.

The jurisprudence cited by the CA in holding that the anonymous text message sent to the RPSB Hotline sufficed to engender probable cause on the part of the authorities, *i.e.*, *People v. Tampis*[91] (*Tampis*), stated that "tipped information is sufficient to provide probable cause to effect a warrantless search and seizure."[92]

However, in *Tampis*, as in the aforementioned jurisprudence, the police did not merely rely on information relayed by an informant. Prior to the warrantless search conducted, the police actually "conducted a surveillance on the intended place and saw both appellants packing the suspected marijuana leaves into a brown bag with the markings 'Tak Tak Tak Ajinomoto' inscribed on its side."[93] In *Tampis*, the authorities were able to personally witness the accused packing illegal drugs into the brown bag prior to the warrantless search and seizure.

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[88] 330 Phil. 811 (1996).

[89] *People v. Cogaed, supra* note 13, at 230-231.

[90] 271 Phil. 120 (1991).

[91] 455 Phil. 371-385 (2003).

[92] *Id.* at 381.

[93] *Id.*

Moreover, it is observed that when the Court in *Tampis* held that "tipped information is sufficient to provide probable cause to effect a warrantless search and seizure,"[94] the Court cited the case of *Aruta* as its, basis. However, the Court in *Aruta* did not hold that tipped information in and of itself is sufficient to create probable cause. In fact, in *Aruta*, as already previously explained, despite the fact that the apprehending officers already had prior knowledge from their informant regarding Aruta's alleged activities, the warrantless search conducted on Aruta was deemed unlawful for lack of probable cause.

The earliest case decided by the Court which upheld the validity of an extensive warrantless search based *exclusively* on a solitary tip is the case of *Maspil, Jr.*, wherein the authorities set up a checkpoint, flagged down the jeep driven by the accused, and examined the contents thereof on the sole basis of information provided by confidential informers.

In justifying the validity of the warrantless search, the Court in *Maspil, Jr.* depended heavily on the early case of *Valmonte*, which delved into the constitutionality of checkpoints set up in Valenzuela City.

It bears stressing that the Court in *Valmonte* never delved into the validity of warrantless searches and seizures on the pure basis of confidential information. *Valmonte* did not hold that in checkpoints, intrusive searches can be conducted on the sole basis of tipped information. *Valmonte* merely stated that checkpoints are not illegal *per se*.[95] In fact, in *Valmonte*, the Court stressed that "[f]or as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search."[96]

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[94] *Id.*

[95] *Valmonte v. de Villa*, *supra* note 24, at 269.

[96] *Id.* at 270.

Hence, the jurisprudential support of the Court's holding in *Maspil, Jr.* is, at best, frail.

With respect to *Bagista*, the Court held therein that the authorities had probable cause to search the accused's belongings without a search warrant based solely on information received from a confidential informant.

In *Bagista*, the Court relied heavily on the SCOTUS' decision in *Carroll vs. U.S.*[97] (*Carroll*) in holding that "[w]ith regard to the search of moving vehicles, this had been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought."[98]

Does *Carroll* support the notion that an unverified tipped information engenders probable cause? In *Carroll*, which upheld the validity of a warrantless search of a vehicle used to transport contraband liquor in Michigan, the SCOTUS found that the warrantless search was justified in light of the following circumstances:

> The search and seizure were made by Cronenwett, Scully and Thayer, federal prohibition agents, and one Peterson, a state officer, in December, 1921, as the car was going westward on the highway between Detroit and Grand Rapids at a point 16 miles outside of Grand Rapids. The facts leading to the search and seizure were as follows: on September 29th, Cronenwett and Scully were in an apartment in Grand Rapids. Three men came to that apartment, a man named Kruska and the two defendants, Carroll and Kiro. Cronenwett was introduced to them as one Stafford, working in the Michigan Chair Company in Grand Rapids, who wished to buy three cases of whiskey. The price was fixed at $13 a case. The three men said they had to go to the east end of Grand Rapids to get the liquor and that they would be back in half or three-quarters of an hour. They went away, and in a short time Kruska came back and said they could not get it that night, that the man who had it was not in, but that they would deliver it the next day. They had come to the apartment in an automobile known

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[97] 267 U.S. 132, 153 (1925).

[98] *Supra* note 80, at 836.

as an Oldsmobile Roadster, the number of which Cronenwett then identified, a[s] did Scully. The proposed vendors did not return the next day, and the evidence disclosed no explanation of their failure to do so. One may surmise that it was suspicion of the real character of the proposed purchaser, whom Carroll subsequently called by his first name when arrested in December following. Cronenwett and his subordinates were engaged in patrolling the road leading from Detroit to Grand Rapids, looking for violations of the Prohibition Act. This seems to have been their regular tour of duty. On the 6th of October, Carroll and Kiro, going eastward from Grand Rapids in the same Oldsmobile Roadster, passed Cronenwett and Scully some distance out from Grand Rapids. Cronenwett called to Scully, who was taking lunch, that the Carroll boys had passed them going toward Detroit, and sought with Scully to catch up with them to see where they were going. The officers followed as far as East Lansing, half way to Detroit, but there lost trace of them. On the 15th of December, some two months later, Scully and Cronenwett, on their regular tour of duty, with Peterson, the State officer, were going from Grand Rapids to Ionia, on the road to Detroit, when Kiro and Carroll met and passed them in the same automobile, coming from the direction of Detroit to Grand Rapids. The government agents turned their car and followed the defendants to a point some sixteen miles east of Grand Rapids, where they stopped them and searched the car.

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We know in this way that Grand Rapids is about 152 miles from Detroit, and that Detroit and its neighborhood along the Detroit River, which is the International Boundary, is one of the most active centers for introducing illegally into this country spirituous liquors for distribution into the interior. It is obvious from the evidence that the prohibition agents were engaged in a regular patrol along the important highways from Detroit to Grand Rapids to stop and seize liquor carried in automobiles. They knew or had convincing evidence to make them believe that the Carroll boys, as they called them, were so-called "bootleggers" in Grand Rapids, *i.e.*, that they were engaged in plying the unlawful trade of selling such liquor in that city. The officers had soon after noted their going from Grand Rapids half way to Detroit, and attempted to follow them to that city to see where they went, but they escaped observation. Two months later, these officers suddenly met the same men on their way westward, presumably from Detroit. The partners in the original combination to sell liquor in Grand Rapids were together in the same automobile

they had been in the night when they tried to furnish the whisky to the officers which was thus identified as part of the firm equipment. They were coming from the direction of the great source of supply for their stock to Grand Rapids, where they plied their trade. That the officers, when they saw the defendants, believed that they were carrying liquor we can have no doubt, and we think it is equally clear that they had reasonable cause for thinking so. Emphasis is put by defendant's counsel on the statement made by one of the officers that they were not looking for defendants at the particular time when they appeared. We do not perceive that it has any weight. As soon as they did appear, the officers were entitled to use their reasoning faculties upon all the facts of which they had previous knowledge in respect to the defendants.[99]

Hence, in *Carroll*, the probable cause justifying the warrantless search was *not* founded on information relayed by confidential informants; there were no informants involved in the case whatsoever. Probable cause existed because the state authorities themselves had personally interacted with the accused, having engaged with them in an undercover transaction.

Therefore, just as in *Maspil, Jr.*, the jurisprudential support upon which *Bagista* heavily relies is not strong.

It is also not lost on the Court that in *Bagista, the Court did not decide with unanimity*.

In his Dissenting Opinion in *Bagista*, Associate Justice Teodoro R. Padilla expressed the view that "the information alone received by the NARCOM agents, *without other suspicious circumstances surrounding the accused*, did not give rise to a probable cause justifying the warrantless search made on the bag of the accused." In explaining his dissent, Justice Padilla correctly explained that:

In the case at bar, the NARCOM agents searched the bag of the accused *on the basis alone* of an information they received that a woman, 23 years of age with naturally curly hair, and 5'2" or 5'3" in height would be transporting marijuana. The extensive search was

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[99] *Supra* note 97.

indiscriminately made on *all* the baggages of *all* passengers of the bus where the accused was riding, whether male or female, and whether or not their physical appearance answered the description of the suspect as described in the alleged information. If there really was such an information, as claimed by the NARCOM agents, it is a perplexing thought why they had to search the baggages of ALL passengers, not only the bags of those who appeared to answer the description of the woman suspected of carrying marijuana.

Moreover, the accused was not at all acting suspiciously when the NARCOM agents searched her bag, where they allegedly found the marijuana.

From the circumstances of the case at bar, it would seem that the NARCOM agents were only fishing for evidence when they searched the baggages of all the passengers, including that of the accused. They had no probable cause to reasonably believe that the *accused* was *the woman* carrying marijuana alluded to in the information they allegedly received. Thus, the warrantless search made on the personal effects of herein accused on the basis of mere information, *without more*, is to my mind bereft of probable cause and therefore, null and void. It follows that the marijuana seized in the course of such warrantless search was inadmissible in evidence.[100]

It is said that dissenting opinions often appeal to the intelligence of a future age.[101] For Justice Padilla's Dissenting Opinion, such age has come. This holding, which is reflected in the recent tide of jurisprudence, must now fully find the light of day as it is more in line with the basic constitutional precept that the Bill of Rights occupies a *position of primacy* in the fundamental law, hovering above the articles on governmental power. The Court's holding that tipped information, on its own, cannot engender probable cause is guided by the principle that the right against unreasonable searches and seizures sits at the very top of the hierarchy of rights, wherein any allowable transgression of such right is subject to the most stringent of scrutiny.

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[100] Dissenting Opinion of Associate Justice Teodoro R. Padilla in *People v. Bagista, supra* note 80, at 838-840.

[101] SCOTUS Associate Justice Ruth Bader Ginsburg, *Remarks on Writing Separately*, 65 WASH. L.REV. 133, 144 (1990).

Hence, considering the foregoing discussion, the Court now holds that **the cases adhering to the doctrine that *exclusive* reliance on an unverified, anonymous tip *cannot engender probable cause* that permits a warrantless search of a moving vehicle that goes beyond a visual search** — *which include both long-standing and the most recent jurisprudence* — **should be the prevailing and controlling line of jurisprudence**.

Adopting a contrary rule would set *an extremely dangerous and perilous precedent* wherein, on the sheer basis of an unverified information passed along by an alleged informant, the authorities are given the unbridled license to undertake extensive and highly intrusive searches, even in the absence of any overt circumstance that engenders a reasonable belief that an illegal activity is afoot.

This fear was eloquently expressed by former Chief Justice Artemio V. Panganiban in his Concurring and Dissenting Opinion in *People v. Montilla*.[102] In holding that law and jurisprudence require *stricter grounds* for valid arrests and searches, former Chief Justice Panganiban explained that allowing warrantless searches and seizures based on tipped information alone places the sacred constitutional right against unreasonable searches and seizures in great jeopardy:

x x x **Everyone would be practically at the mercy of so-called informants, reminiscent of the *Makapilis* during the Japanese occupation. Any one whom they point out to a police officer as a possible violator of the law could then be subject to search and possible arrest. This is placing limitless power upon informants who will no longer be required to affirm under oath their accusations, for they can always delay their giving of tips in order to justify warrantless arrests and searches. Even law enforcers can use this as an oppressive tool to conduct searches without warrants, for they can always claim that they received raw intelligence information only on the day or afternoon before. This would clearly be a circumvention of the legal requisites for validly effecting an arrest**

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[102] Concurring and Dissenting Opinion of Associate Justice Artemio V. Panganiban in *People v. Montilla*, 349 Phil. 640 (1998).

or conducting a search and seizure. Indeed, the majority's ruling would open loopholes that would allow unreasonable arrests, searches and seizures.[103]

It is not hard to imagine the horrid scenarios if the Court were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips.

Any person can easily hide in a shroud of anonymity and simply send false and fabricated information to the police. Unscrupulous persons can effortlessly take advantage of this and easily harass and intimidate another by simply giving false information to the police, allowing the latter to invasively search the vehicle or premises of such person on the sole basis of a bogus tip.

On the side of the authorities, unscrupulous law enforcement agents can easily justify the infiltration of a citizen's vehicle or residence, violating his or her right to privacy, by merely claiming that raw intelligence was received, even if there really was no such information received or if the information received was fabricated.

Simply stated, *the citizen's sanctified and heavily-protected right against unreasonable search and seizure will be at the mercy of phony tips*. The right against unreasonable searches and seizures will be rendered hollow and meaningless. The Court cannot sanction such erosion of the Bill of Rights.

D. The Absence of Probable Cause in the Instant Case

Applying the foregoing discussion in the instant case, to reiterate, the police merely adopted the unverified and unsubstantiated suspicion of another person, *i.e.*, the person who sent the text through the RPSB Hotline. Apart from the information passed on to them, the police simply had no reason to reasonably believe that the passenger vehicle contained an

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[103] *Id.* at 733-734 Emphasis and underscoring supplied.

item, article or object which by law is subject to seizure and destruction.

What further militates against the finding that there was sufficient probable cause on the part of the police to conduct an intrusive search is the fact that the information regarding the description of the person alleged to be transporting illegal drugs, *i.e.*, wearing a collared white shirt with green stripes, red ball cap, and carrying a blue sack, **was relayed merely through a text message from a *completely anonymous person***. The police did not even endeavor to inquire how this stranger gathered the information. The authorities did not even ascertain in any manner whether the information coming from the complete stranger was credible. After receiving this anonymous text message, without giving any second thought, the police accepted the unverified information as gospel truth and immediately proceeded in establishing the checkpoint. To be sure, information coming from a complete and anonymous stranger, *without the police officers undertaking even a semblance of verification*, on their own, cannot reasonably produce probable cause that warrants the conduct of an intrusive search.

In fact, as borne from the cross-examination of PO3 Mabiasan, **the authorities did not even personally receive and examine the anonymous text message. The contents of the text message were only relayed to them by a duty guard, whose identity the police could not even recall**:

Q **x x x [W]ho received the information, was it you or another person, Mr. Witness?**

A **The duty guard, sir.**

Q And usually now, informations (*sic*) is usually transmitted and text (*sic*) to the duty guard, Mr. Witness?

A Yes, sir.

Q Can you produce the transcript of the text message (*sic*) can you write in a piece of paper, Mr. Witness?

A **Our duty guard just informed us the information, sir.**

Q **So the text was not preserve (*sic*), Mr. Witness?**

A **Yes, sir.**

Q **Who is you duty guard, Mr. Witness?**

A **I cannot remember, sir.**[104]

Simply stated, the information received through text message was not only hearsay evidence; it is ***double hearsay***.

Moreover, as testified by PO3 Mabiasan himself, tipped information received by the authorities through the duty guard was unwritten and unrecorded, *violating the Standard Operating Procedure* that any information received by a police station that shall be duly considered by the authorities should be properly written in a log book or police blotter:

Q Is it not an (*sic*) Standard Operating Procedure that any information received by the Police Stations or a detachment properly written in a log book or written in a Police blotter, that is the Standard Operating Procedure, correct, Mr. Witness?

A Yes, sir.

Q It was not written the information that you received, correct, Mr. Witness?

A Not at that time, sir.[105]

Further, it does not escape the attention of the Court that, as testified to by PSI Ngoslab on cross-examination, the mobile phone which received the anonymous person's text message *was not even an official government-issued phone*.[106] From the records of the case, *it is unclear as to who owned or possessed the said phone used as the supposed official hotline of the RPSB Office*. Furthermore, PSI Ngoslab testified

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[104] TSN, April 3, 2014, p. 22. Emphasis and underscoring supplied.

[105] *Id.* at p. 23.

[106] TSN, April 22, 2015, p. 15.

that he was not even sure whether the said official hotline still existed.[107]

Surely, probable cause justifying an intrusive warrantless search and seizure cannot possibly arise from double hearsay evidence and from an irregularly-received tipped information. A reasonably discreet and prudent man will surely not believe that an offense has been committed and that the item sought in connection with said offense are in the place to be searched based *solely* on the say-so of an unknown duty guard that a random, unverified text message was sent to an unofficial mobile phone by a complete stranger.

Therefore, with the glaring absence of probable cause that justifies an intrusive warrantless search, considering that the police officers failed to rely on their personal knowledge and depended solely on an unverified and anonymous tip, ***the warrantless search conducted on accused-appellant Sapla was an invalid and unlawful search of a moving vehicle***.

The Inapplicability of The Other Instances of Reasonable Warrantless Searches and Seizures

Neither are the other instances of reasonable warrantless searches and seizures applicable in the instant case.

Without need of elaborate explanation, the search conducted on accused-appellant Sapla was not incidental to a lawful arrest. Such requires a lawful arrest that precedes the search, which is not the case here. Further, the prosecution has not alleged and proven that there was a seizure of evidence in plain view, that it was a customs search, and that there were exigent and emergency circumstances that warranted a warrantless search.

Neither can the search conducted on accused-appellant Sapla be considered a valid *stop and frisk* search. The Court has explained that *stop and frisk* searches refer to "'the act of a police officer to stop a citizen on the street, interrogate him,

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[107] *Id.* at 16.

and pat him for weapon(s) or contraband. Thus, the allowable scope of a 'stop and frisk' search is limited to a 'protective search of outer clothing for weapons.'"[108] The search conducted by the authorities on accused-appellant Sapla went beyond a protective search of outer clothing for weapons or contraband.

Moreover, while it was clarified by the Court in *Malacat v. Court of Appeals*[109] that probable cause is not required to conduct *stop and frisk* searches, "mere suspicion or a hunch will not validate a 'stop and frisk.' A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him."[110] In *Comprado*, *Cogaed*, and *Veridiano*, the Court has held that mere reliance on information relayed by an informant does not suffice to provide a genuine reason for the police to conduct a warrantless search and seizure. In other words, in the aforesaid cases, the Court has held that information from an informant is mere suspicion that does not validate a *stop and frisk* search.

Invalid Consented Warrantless Search

Neither can the Court consider the search conducted on accused-appellant Sapla as a valid consented search.

The CA found that accused-appellant Sapla "consented to the search in this case and that the illegal drugs — *four (4) bricks of marijuana*, discovered as a result of consented search [are] admissible in evidence."[111]

The Court disagrees.

In *Tudtud*, the Court held that there can only be an effective waiver of rights against unreasonable searches and seizures if the following requisites are present:

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[108] *People v. Veridiano, supra* note 30, at 662.

[109] 347 Phil. 462 (1997).

[110] *Id.* at 481.

[111] *Rollo*, p. 11.

1. It must appear that the rights exist;
2. The person involved had knowledge, actual or constructive, of the existence of such right; and
3. Said person had an actual intention to relinquish the right.[112]

Considering that a warrantless search is in derogation of a constitutional right, the Court has held that "**[t]he fundamental law and jurisprudence require more than the presence of these circumstances to constitute a valid waiver of the constitutional right against unreasonable searches and seizures. Courts indulge every reasonable presumption against waiver of fundamental constitutional rights; acquiescence in the loss of fundamental rights is not to be presumed. The fact that a person failed to object to a search does not amount to permission thereto**."[113]

Hence, even in cases where the accused voluntarily handed her bag[114] or the chairs containing marijuana to the arresting officer,[115] the Court has held there was no valid consent to the search.[116]

Again, in *Veridiano*, the Court emphasized that the consent to a warrantless search and seizure must be **unequivocal, specific, intelligently given and unattended by duress or coercion.** [117] **Mere passive conformity to the warrantless search is only an implied acquiescence which does not amount to consent and that the presence of a coercive environment negates the claim that the petitioner therein consented to the warrantless search.**[118]

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[112] *People v. Tudtud, supra* note 10, at 785.

[113] *Id.* at 786. Emphasis and underscoring supplied.

[114] *People v. Aruta, supra* note 46.

[115] *People v. Encinada, supra* note 43.

[116] *People v. Tudtud, supra* note 10, at 786.

[117] *Veridiano v. People, supra* note 30, at 666. Emphasis supplied.

[118] *Id.* Emphasis supplied.

The very recent case of *Yanson* is likewise instructive. As in the instant case, "Sison, [the therein accused] who was then unarmed, was prodded by the arresting officers to open the pickup's hood. His beguiling conformity is easily accounted by how he was then surrounded by police officers who had specifically flagged him and his companions down. He was under the coercive force of armed law enforcers. His consent, if at all, was clearly vitiated."[119]

In the instant case, the totality of the evidence presented convinces the Court that accused-appellant Sapla's apparent consent to the search conducted by the police was not unequivocal, specific, intelligently given, and unattended by duress or coercion. It cannot be seriously denied that accused-appellant Sapla was subjected to a *coercive environment*, considering that he was confronted by several armed police officers in a checkpoint.

In fact, from the testimony of PO3 Mabiasan himself, it becomes readily apparent that accused-appellant Sapla's alleged voluntary opening of the sack was *not unequivocal*. When PO3 Mabiasan asked accused-appellant Sapla to open the sack, the latter clearly hesitated and it was only "[*a*]*fter a while* [that] he voluntarily opened [the sack]."[120]

At most, accused-appellant Sapla's alleged act of opening the blue sack was *mere passive conformity* to a warrantless search conducted in a *coercive and intimidating environment*. Hence, the Court cannot consider the search conducted as a valid consented search.

The Exclusionary Rule or Fruit of the Poisonous Tree Doctrine

The necessary and inescapable consequence of the illegality of the search and seizure conducted by the police in the instant case is the *inadmissibility* of the drug specimens retrieved.

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[119] *Supra* note 63.

[120] TSN dated May 8, 2014, p. 49. Italics supplied.

According to Article III, Section 3 (2) of the Constitution, any evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding.

Known as the *exclusionary rule*, "evidence obtained and confiscated on the occasion of such unreasonable searches and seizures [is] deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding."[121]

Therefore, with the inadmissibility of the confiscated marijuana bricks, there is no more need for the Court to discuss the other issues surrounding the apprehension of accused-appellant Sapla, particularly the gaps in the chain of custody of the alleged seized marijuana bricks, which likewise renders the same inadmissible. **The prosecution is left with no evidence left to support the conviction of accused-appellant Sapla. *Consequently, accused-appellant Sapla is acquitted of the crime charged.***

Epilogue

The Court fully recognizes the necessity of adopting a resolute and aggressive stance against the menace of illegal drugs. Our Constitution declares that the maintenance of peace and order and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.[122]

Nevertheless, by sacrificing the sacred and indelible right against unreasonable searches and seizures for expediency's sake, the very maintenance of peace and order sought after is rendered wholly nugatory. By disregarding basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general

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[121] *People v. Comprado, supra* note 15, at 441.

[122] *People v. Narvasa*, G.R. No. 241254, July 8, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65495>.

welfare is viciously assaulted. In other words, when the Constitution is disregarded, the battle waged against illegal drugs becomes a self-defeating and self-destructive enterprise. **A battle waged against illegal drugs that tramples on the rights of the people is not a war on drugs; *it is a war against the people*.**[123]

The Bill of Rights should never be sacrificed on the altar of convenience. Otherwise, the malevolent mantle of the rule of men dislodges the rule of law.[124]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated April 24, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09296 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jerry Sapla *y* Guerrero *a.k.a.* Eric Salibad *y* Mallari 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 Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director 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., Perlas-Bernabe, Gesmundo, Reyes, J. Jr., Hernando, Inting, Zalameda, and *Delos Santos, JJ.*, concur.

Leonen and *Gaerlan, JJ.*, see separate concurring opinions.

Carandang, J., joins the dissenting opinions of *J.* Lazaro-Javier and *J.* Lopez.

Lazaro-Javier and *Lopez*, *JJ.*, see dissenting opinions.

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[123] *Id.*

[124] *Id.*

CONCURRING OPINION

LEONEN, *J.*:

I concur.

To aid courts in upholding the constitutional right against unreasonable searches, I revisit the doctrines regarding two (2) exceptions often invoked to justify warrantless searches of passengers on moving vehicles, such as the one in this case: first, stop-and-frisk searches based on probable cause, genuine reason, or reasonable suspicion; and second, the search of a moving vehicle.

I

Philippine doctrine on stop-and-frisk searches originates in the American case of *Terry v. Ohio*.[1] In that case, the United States Supreme Court ruled on the admissibility of evidence obtained from a warrantless search of a person whose actions suggested to a police officer that he was casing a joint for a robbery. According to it, a limited search was permissible when preceded by unusual conduct that, by virtue of a police officer's experience, led him to reasonably conclude that criminal activity was afoot, and the person to be searched may have been armed and dangerous.[2]

Terry was later cited in *Posadas v. Court of Appeals*.[3] There, this Court held that to deem a warrantless search justified, a court must look into its reasonableness, which was, in turn, predicated on the presence of observable suspicious acts by the person to be searched:

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[1] 392 U.S. 1 (1968).

[2] *People v. Cristobal*, G.R. No. 234207, June 10, 2019, http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65317> [Per *J.* Caguioa, Second Division].

[3] 266 Phil. 306 (1990) [Per *J.* Gancayco, First Division].

Thus, as between a warrantless search and seizure conducted at military or police checkpoints and the search thereat in the case at bar, there is no question that, indeed, the latter is more reasonable considering that unlike in the former, it was effected on the basis of a probable cause. The probable cause is that when the petitioner acted suspiciously and attempted to flee with the buri bag there was a probable cause that he was concealing something illegal in the bag and it was the right and duty of the police officers to inspect the same.[4]

This Court then cited *Terry* by way of quoting the following submission of the Solicitor General:

The assailed search and seizure may still be justified as akin to a "stop and frisk" situation whose object is either to determine the identity of a suspicious individual or to maintain the *status quo* momentarily while the police officer seeks to obtain more information. This is illustrated in the case of *Terry vs. Ohio*, 392 U.S. 1 (1968). . . The United States Supreme Court held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for the purpose of investigating possible criminal behavior even though there is no probable cause to make an arrest." In such a situation, it is reasonable for an officer rather than simply to shrug his shoulder and allow a crime to occur, to stop a suspicious individual briefly in order to determine his identity or maintain the *status quo* while obtaining more information[.][5]

Applying *Terry* to *Posadas*, this Court concluded that because of the petitioner's suspicious actions, it was reasonable for the police officers to believe that he was concealing something illegal in his bag, and thus, reasonable for them to search it.

In *People v. Solayao*,[6] this Court upheld the validity of the warrantless search based on the circumstances that reasonably aroused the officers' suspicions: the accused looked drunk,

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[4] *Id.* at 311-312.

[5] *Id.* at 312-313.

[6] 330 Phil. 811 (1996) [Per *J.* Romero, Second Division].

wore a "camouflage uniform," and fled upon seeing the officers. It also considered the context within which the officers observed those suspicious actions: they were then verifying reports of armed persons roaming around the barangay at night.

Similarly, in *Manalili v. Court of Appeals*,[7] this Court found that the police officers had sufficient reason to stop and search the petitioner after observing that he had red eyes, was wobbling like a drunk person, and was in an area that was frequented by drug addicts.

Refining the doctrine further, this Court in *Malacat v. Court of Appeals*[8] emphasized that for a stop-and-frisk search to be reasonable, a police officer's suspicion must be based on a "genuine reason." In that case, the officer's claim that the petitioner was part of a group that had earlier attempted to bomb Plaza Miranda was unsupported by any supporting police report, record, or testimonies from other officers who chased that group. This Court also found that the petitioner's behavior — merely standing in a corner with his eyes "moving very fast" — could not be considered genuine reason.

The *ponente* of *Manalili*, Justice Artemio Panganiban, wrote a concurring opinion, elaborating further on the concept of genuine reason. Comparing and contrasting the facts in each case, he explained why the stop-and-frisk search in *Malacat* was founded on no genuine reason, yet the search in *Manalili* was:

> Thus, when these specially trained enforcers saw Manalili with reddish eyes and walking in a wobbly manner characteristic of a person "high" on drugs per their experience, and in a known hangout of drug users, there was sufficient genuine reason to stop and frisk the suspect. It is well to emphasize that under different circumstances, such as where the policemen are not specially trained and in common places where people ordinarily converge, the same features displayed by a person will not normally justify a warrantless arrest or search on him.

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[7] 345 Phil. 632 (1997) [Per *J*. Panganiban, Third Division].

[8] 347 Phil. 462 (1997) [Per *J*. Davide, Jr., *En Banc*].

The case before us presents such a situation. The policemen merely observed that Malacat's eyes were moving very fast. They did not notice any bulges or packets about the bodies of these men indicating that they might be hiding explosive paraphernalia. From their outward look, nothing suggested that they were at the time armed and dangerous. Hence, there was no justification for a stop-and-frisk.[9]

The concept of genuine reason as the basis for reasonable suspicion has been expounded upon further such that, in Philippine jurisprudence, an officer must observe *more than one (1) circumstance*, which when taken alone is apparently innocent, but when taken together with other circumstances, arouse suspicion.

In his dissent in *Esquillo v. People*, [10] Justice Lucas Bersamin (Justice Bersamin) parsed the factual circumstances in cases where the police officers' suspicions were found reasonable, so as to justify a stop-and-frisk search. He concluded that "[t]he common thread of these examples is the presence of *more than one* seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity."[11]

Justice Bersamin's analysis was echoed in *People v. Cogaed*,[12] which was in turn reiterated in a line of cases.[13] In *Cogaed*, this Court agreed that "reliance on *only one suspicious circumstance* or none at all will not result in a reasonable search."[14]

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[9] *Id.* at 489-490.

[10] 643 Phil. 577 (2010) [Per J. Carpio Morales, Third Division].

[11] *Id.* at 606.

[12] 740 Phil. 212 (2014) [Per J. Leonen, Third Division].

[13] *Sanchez v. People*, 747 Phil. 552 (2014) [Per J. Mendoza, Second Division]; *Veridiano v. People*, 810 Phil. 642 (2017) [Per J. Leonen, Second Division]; and *People v. Comprado*, G.R. No. 213225, April 4, 2018, 860 SCRA 420 [Per J. Martires, Third Division].

[14] *Id.* at 233-234 citing J. Bersamin, Dissenting Opinion in *Esquillo v. People*, 643 Phil. 577 (2010) [Per J. Carpio Morales, Third Division].

Thus, to not violate the constitutional right against unreasonable searches, a stop-and-frisk search must be based on suspicion, which, to be deemed reasonable, requires the presence of *more than one (1) suspicious circumstance* that aroused the officer's suspicion that criminal activity is afoot.

Considering this requirement, information provided by a confidential informant, without additional grounds for suspicion, is not enough to arouse suspicion that may be characterized as reasonable. That a person matches the informant's tip is not an additional circumstance separate from the fact that information was given. They are part and parcel of one (1) strand of information. Thus, assuming that a person arrives matching an informant's description, for an officer's suspicion of that person to be deemed reasonable, there must be another observed activity which, taken together with the tip, aroused such suspicion.

II

When warrantless searches target individuals who happen to be on motor vehicles, recognized exceptions pertaining to searches of motor vehicles are often invoked to justify them. These searches are valid only under specific circumstances, for exceptional reasons.

In *Valmonte v. De Villa*,[15] this Court considered the constitutionality of warrantless searches of motor vehicles at military checkpoints. In declining to hold that military checkpoints are per se unconstitutional, this Court observed that certain non-intrusive searches of motor vehicles are reasonable, and thus, need no warrant:

> Where, for example, the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds, or simply looks into a vehicle, or flashes a light therein, these do not constitute unreasonable search.[16] (Citations omitted)

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[15] 258 Phil. 838 (1989) [Per J. Padilla, *En Banc*].

[16] *Id.* at 843.

Thus, this Court concluded that searches at military checkpoints may be valid, provided that they are conducted "within reasonable limits":

> True, the manning of checkpoints by the military is susceptible of abuse by the men in uniform, in the same manner that all governmental power is susceptible of abuse. But, at the cost of occasional inconvenience, discomfort and even irritation to the citizen, the checkpoints during these abnormal times, when conducted within reasonable limits, are part of the price we pay for an orderly society and a peaceful community.[17]

Acting on a motion for reconsideration, this Court in its Resolution[18] in *Valmonte* clarified the limitations that must be observed:

> Admittedly, the routine checkpoint stop does intrude, to a certain extent, on motorist's right to "free passage without interruption," but it cannot be denied that, as a rule, it involves only a brief detention of travellers during which the vehicle's occupants are required to answer a brief question or two. *For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search*. [19] (Emphasis supplied, citation omitted)

Thus, as stated in *Valmonte*, to be deemed reasonable, a search of a motor vehicle at a checkpoint must be limited only to a visual search, and must not be extensive. A reasonable search at a routine checkpoint excludes extensive searches, absent other recognized exceptional circumstances leading to an extensive search.

This was reiterated in *Aniag, Jr. v. Commission on Elections*,[20] in which this Court declared a warrantless search

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[17] *Id.* at 844.

[18] 264 Phil. 265 (1990) [Per *J.* Padilla, *En Banc*].

[19] *Id.* at 270.

[20] 307 Phil. 437 (1994) [Per *J.* Bellosillo, *En Banc*].

made at a checkpoint illegal. This Court reiterated that warrantless searches of moving vehicles are reasonable when these are searches and "seizure of evidence in plain view";[21] conversely, an extensive search is not reasonable simply because it was conducted on a moving vehicle.

After observing that no genuine reason for suspicion was present in *Aniag, Jr.*, this Court considered whether the evidence seized was nonetheless admissible because of consent from the person searched. Rejecting the claim, this Court evaluated how the checkpoint was set up, as well as the circumstances of the person searched:

> It may be argued that the seeming acquiescence of Arellano to the search constitutes an implied waiver of petitioner's right to question the reasonableness of the search of the vehicle and the seizure of the firearms.
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> While Resolution No. 2327 authorized the setting up of checkpoints, it however stressed that "guidelines shall be made to ensure that no infringement of civil and political rights results from the implementation of this authority," and that "the places and manner of setting up of checkpoints shall be determined in consultation with the Committee on Firearms Ban and Security Personnel created under Sec. 5, Resolution No. 2323." The facts show that PNP installed the checkpoint at about five o'clock in the afternoon of 13 January 1992. The search was made soon thereafter, or thirty minutes later. It was not shown that news of impending checkpoints without necessarily giving their locations, and the reason for the same have been announced in the media to forewarn the citizens. Nor did the informal checkpoint that afternoon carry signs informing the public of the purpose of its operation. As a result, motorists passing that place did not have any inkling whatsoever about the reason behind the instant exercise. With the authorities in control to stop and search passing vehicles, the motorists did not have any choice but to submit to the PNP's scrutiny. Otherwise, any attempt to turnabout albeit innocent would raise suspicion and provide probable cause for the police to arrest the motorist and to conduct an extensive search of his vehicle.

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[21] *Id.* at 448.

In the case of petitioner, only his driver was at the car at that time it was stopped for inspection. As conceded by COMELEC, driver Arellano did not know the purpose of the checkpoint. In the face of fourteen (14) armed policemen conducting the operation, driver Arellano being alone and a mere employee of petitioner could not have marshalled the strength and the courage to protest against the extensive search conducted in the vehicle. In such scenario, the "implied acquiescence," if there was any, could not be more than a mere passive conformity on Arellano's part to the search, and "consent" given under intimidating or coercive circumstances is no consent within the purview of the constitutional guaranty.[22] (Citations omitted)

The concept of consent to extensive warrantless searches was elaborated in *Dela Cruz v. People*,[23] which involved routine security inspections conducted at a seaport terminal.

Citing *People v. Suzuki*,[24] which recognized the reasonableness of airport security procedures, this Court in *Dela Cruz* likened seaports to airports and explained that the extensive inspections regularly conducted there proceed from the port personnel's "authority and policy to ensure the safety of travelers and vehicles within the port."[25] In ports of travel, persons have a reduced expectation of privacy, due to public safety and security concerns over terrorism and hijacking. Travelers are generally notified that they and their baggage will be searched, and even subject to x-rays; as such, they are well aware ahead of time that they must submit to searches at the port. This Court pointed out that if the petitioner did not want his bag inspected, he could have opted not to travel.

The authority and policy of port personnel to ensure the safety of travelers, as with the resulting reduced expectation of privacy

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[22] *Id.* at 450-451.

[23] 776 Phil. 653 (2016) [Per J. Leonen, Second Division].

[24] 460 Phil. 146 (2003) [Per J. Sandoval-Gutierrez, *En Banc*].

[25] *Dela Cruz v. People*, 776 Phil. 653, 684 (2016) [Per J. Leonen, Second Division].

at a port of travel, distinguishes the search conducted in *Dela Cruz* from that in *Aniag, Jr.* In *Aniag, Jr.*, the petitioner's driver was stopped at a checkpoint that had only been installed 30 minutes prior, and he did not even know what it was for. In *Dela Cruz*, a traveler voluntarily submits to being searched at a port, informed of why it was being done. It may not have involved moving vehicle searches, but it articulates that a traveler consents to extensive searches at ports as a condition of entry, pursuant to recognized reasonable safeguards for ensuring the traveling public's safety.

Saluday v. People[26] extended this reasoning to cover warrantless searches of public buses. There, a bus was stopped at a military checkpoint and its male passengers were asked to disembark, while its female passengers were allowed to stay put. When a military task force member boarded the bus to inspect it, he noticed a small bag on the rear seat and lifted it, only to find it much heavier than it looked. Upon learning that the petitioner and his brother had been seated near the bag, he asked them to board the bus and open the bag. The petitioner obliged, revealing that the bag contained a gun, ammo, a hand grenade, and a 10-inch hunting knife.[27]

In deciding on whether the items were admissible in evidence, this Court separately evaluated the initial inspection, which consisted of merely lifting the suspicious bag; and the latter inspection, in which the officer inspected the bag after having it opened.

As to the initial inspection, this Court observed that, like in the ports of *Suzuki* and *Dela Cruz*, the traveling public's safety is a concern in buses. This moderates the expectation of privacy a person may reasonably have in that space. Given this, and considering that the act of lifting the bag was visual and minimally intrusive, this initial inspection was deemed reasonable.

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[26] G.R. No. 215305, April 3, 2018, 860 SCRA 231 [Per Acting *C.J.* Carpio, *En Banc*].

[27] *Id.* at 237.

As for the more extensive search of the bag's contents, this Court did not conclude that, because of security issues, it was reasonable. Its only basis for not rejecting the search as unreasonable was that, prior to the intrusive search, the officer obtained clear consent to open the bag:

When SCAA Buco asked if he could open petitioner's bag, petitioner answered "yes, just open it" based on petitioner's own testimony. This is clear consent by petitioner to the search of the contents of his bag. In its Decision dated 26 June 2014, the Court of Appeals aptly held:

> A waiver was found in *People v. Omaweng*. There, the police officers asked the accused if they could see the contents of his bag and he answered "you can see the contents but those are only clothings." When asked if they could open and see it, he said "you can see it." In the present case, accused-appellant told the member of the task force that "it was only a cellphone" when asked who owns the bag and what are its contents. When asked by the member of the task force if he could open it, accused-appellant told him "yes, just open it." Hence, as in *Omaweng*, there was a waiver of accused-appellant's right against warrantless search.[28] (Citation omitted)

Thus, although this Court in *Saluday* did not declare the evidence seized inadmissible, the intrusive search of the bag was not categorically found reasonable. It did not rule on the reasonableness of the intrusive search. Rather, the validity of the search was anchored on the waiver of the petitioner's right when he told the officer, "yes, just open [the bag]."[29]

III

Finally, in reference to the dissent, the guidelines laid down in *Saluday* would be sufficient to address those concerns. I quote:

Further, in the conduct of bus searches, the Court lays down the following guidelines. **Prior to entry**, passengers and their bags and

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

[29] *Id.* at 254.

luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.

While in transit, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First*, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard. *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third*, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.

In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First*, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second*, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. *Third*, as to the purpose of the search, it must be confined to ensuring public safety. *Fourth*, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.

> The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their terminals, just like passenger ships and seaports, are in that category.[30] (Emphasis in the original)

The facts in *Saluday* are not on all fours with this case. The initial search in *Saluday* was the third of the permissible searches of public vehicles in transit: the routine inspection at a military checkpoint. This case, on the other hand, is a targeted search of an individual on board a public vehicle based on an anonymous informant's tip.

It may be argued that this case falls under one (1) of the permissible searches of a public vehicle in transit: "upon receipt of information that a passenger carries contraband or illegal articles[.]"[31] Because the *Saluday* guidelines do not qualify "receipt of information," it may be tempting to say that when officers are told by anyone at all — an anonymous phone call and text message, in this case — that a passenger on a public vehicle is carrying anything illegal, they may stop the vehicle *en route* and intrusively search such passenger.

This, however, is ultimately untenable. The permitted searches in *Saluday* pertain to an exception to the general rule against warrantless searches, *i.e.*, cases where the safety of others may be at risk. Courts must be more circumspect when invoking it, and law enforcers must not treat it as an expedient way to circumvent the Constitution. Before accepting that a search was permissible based on the received information, courts must at the very least evaluate the circumstances of the supposed information.

Even if this case had involved a permissible inspection upon receipt of information that a passenger is carrying contraband, the search would still not be deemed reasonable, as it failed to satisfy the conditions under the *Saluday* guidelines.

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[30] *Id.* at 255-257.

[31] *Id.* at 256.

The guidelines require that the manner of search be the least intrusive, yet the search here involved an intrusive probing of the bag. The guidelines also require that the search be conducted only to ensure public safety; however, the search here was unequivocally made to apprehend a person who, as reported by an anonymous phone call and text message, was transporting marijuana. Finally, the guidelines require that "courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused," but there were no such measures here.

For all these reasons, I find the search conducted on accused-appellant Jerry Sapla *y* Guerrero *a.k.a.* Eric Salibad *y* Mallari unreasonable.

ACCORDINGLY, I concur.

SEPARATE CONCURRING OPINION

GAERLAN, *J.*:

I concur with the *ponencia* of our esteemed colleague Justice Alfredo Benjamin S. Caguioa. The circumstances leading to the apprehension of appellant Jerry Sapla (Sapla) are tainted with constitutional infirmities which render his conviction invalid. Nevertheless, I find it necessary to raise a few points regarding traffic stops and constitutionally permissible searches of a moving automobile.

I submit that despite the absence of any citation of sources, the conception of a moving vehicle search in *People v. Comprado*[1] is nevertheless supported by applicable jurisprudence. For reference, that case described moving vehicle searches in this manner:

The search in this case, however, could not be classified as a search of a moving vehicle. In this particular type of search, **the vehicle is**

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[1] *People v. Comprado*, G.R. No. 213225, April 4, 2018, 860 SCRA 420.

the target and not a specific person. Further, in search of a moving vehicle, **the vehicle was intentionally used as a means to transport illegal items**. It is worthy to note that the information relayed to the police officers was that a passenger of that particular bus was carrying marijuana such that when the police officers boarded the bus, they searched the bag of the person matching the description given by their informant and not the cargo or contents of the said bus. Moreover, in this case, it just so happened that the alleged drug courier was a bus passenger. To extend to such breadth the scope of searches on moving vehicles would open the floodgates to unbridled warrantless searches which can be conducted by the mere expedient of waiting for the target person to ride a motor vehicle, setting up a checkpoint along the route of that vehicle, and then stopping such vehicle when it arrives at the checkpoint in order to search the target person.[2]

American jurisprudence cites three bases for the constitutionality of a warrantless search of an automobile in motion. First, the "ready mobility" of automobiles, and the consequent utility thereof in the transport of contraband, makes it impracticable for police officers to secure a warrant prior to stopping and searching an automobile.[3] Second, there is a lesser expectation of privacy with respect to an automobile as compared to a dwelling or an office;[4] and third, related to the first two bases, is the "pervasive regulation of vehicles capable of traveling on the public highways." On this point, the Supreme Court of the United States (SCOTUS) noted that "automobiles x x x are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements."[5] As such, American jurisprudence on automobile searches and seizures amply illustrates how the automobile exception is rooted in the attributes of ready mobility and pervasive state regulation, which are inherent and unique to automobiles. The cases likewise recognize that perpetrators intentionally utilize

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[2] *Id.* at 440-441.

[3] *Carroll v. United States*, 267 U.S. 132 (1925).

[4] *California v. Carney*, 471 US 386, 391-393 (1985).

[5] *South Dakota v. Opperman*, 428 US 364, 368 (1976).

these unique attributes of automobiles as a means for committing or concealing crimes. These jurisprudential insights find concrete expression in the aforequoted statements in *Comprado*.

Likewise, I do not subscribe to the assertion that an anonymous tip, standing alone, constitutes probable cause sufficient to validate an automobile search. Recourse must be had once again to American jurisprudence on the matter, given that most of our jurisprudential doctrines on the matter are adopted from American precedents.

In *Lampkins v. White*, it was observed that "x x x as a general rule, an anonymous tip alone is not likely to constitute the reasonable suspicion necessary for a valid Terry stop. However, where significant aspects of the tip are corroborated by the police, a Terry stop is likely valid."[6] Thus, to constitute probable cause sufficient to make a traffic stop and automobile search, the SCOTUS has required anonymous tips to either meet certain criteria of reliability[7] or be corroborated by other police work.[8] *Alabama v. White* puts it succinctly:

> "Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized x x x." Simply put, a tip such as this one, standing alone, would not "warrant a man of reasonable caution in the belief that [a stop] was appropriate."[9]

In the case at bar, the *ponencia* has more than adequately shown that the anonymous tip relied upon by the police when they arrested appellant Sapla is utterly unreliable. Standing alone, it cannot, therefore, validate the automobile search and subsequent arrest of Sapla.

For the following reasons, I concur with the *ponencia*.

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[6] 682 N.E.2d 1268 (1997), citing *Alabama v. White*, 496 U.S. 325, 329-30 (1990).

[7] *Navarette v. California*, 134 S.Ct. 1683 (2014); *Florida v. JL*, 529 US 266 (2000).

[8] *Alabama v. White, supra*; *Illinois v. Gates*, 462 U.S. 213 (1983).

[9] *Id.* at 329. Citations omitted.

DISSENTING OPINION

LAZARO-JAVIER, *J.*:

This case involves a **police operation** that **netted** a **sack of almost four (4) kilos of marijuana**. The **Majority** acquit appellant based on what essentially is the **distrust** in the **reasonableness** of the police officers' **on-the-spot** judgment call. It is my hope that the decision reached in this case does **not** dishearten the **legitimate enthusiasm** of our police forces in **law enforcement**.

The Majority set aside appellant's conviction for transportation of dangerous drugs in violation of Section 5, Article II of Republic Act 9165 (RA 9165) on ground that the apprehending officers violated appellant's constitutional right against unreasonable searches and seizures; hence, the drugs seized from him were inadmissible in evidence.

With due respect, I cannot concur in the decision to acquit appellant of the charge of transporting **almost four (4) kilos** of **marijuana** through a public jeepney as the lower courts' rulings were fully consistent with valid and binding jurisprudence.

First, the *ponencia* prefaces with this question:

> Can the police conduct a warrantless **intrusive search of a vehicle** on the **sole basis** of an **unverified tip** relayed by an anonymous informant?

In the first place, the police officers here **did not conduct** an **intrusive** search of the passenger jeepney. The object of their surveillance and search was **targeted to a very specific individual**.

Secondly, the police officers **did not rely** on an **unverified** tip. The tip **was verified** by a **subsequent tip describing in detail** the person who was **actually riding** the passenger jeepney and the **sack** he was **actually carrying**. The **tip was also verified** by the **exact match of the tip with the description**

of the passenger whom the police officers were targeting and actually approached.

Thirdly, the police officers were **not just relying on the "tip."** They were **acting as well** on the bases of **the exact match as stated *and* their professional experience as regards the route** plied by the passenger jeepney. It is **not as if** the police officers were guarding the premises of a religious institution where the transportation or even possession of marijuana would most likely be improbable. The police officers were situated along the **silk road of marijuana transportation** that **the police officers could not have lightly ignored**. Further, the police officers relied upon **their personal knowledge** of what they were then **perceiving** to be a **suspicious bulky sack** and the **actual contents thereof** through a **visual and minimally intrusive observation thereof** *after appellant's act of opening this sack*. Appellant did **not even** protest that he was carrying only camote crops or cauliflower or broccoli or smoked meat, had this been the case.

Fourthly, there was **urgency** in conducting the search **because** appellant was **then a passenger** in a passenger jeepney **en route to another province**. The **same exceptional urgency** involved in the warrantless search of a motor vehicle **carries over** to the search of a **targeted passenger** and a **targeted baggage** of the passenger in the moving vehicle. It is **not feasible to obtain** a search warrant in the situation presented to the police officers in the present case, **especially** where the passenger jeepney is **in the process** of **crossing boundaries of court jurisdictions**.

Clearly, the police officers **did not just rely upon** one (1) suspicious circumstance and certainly **not just upon** the "tip." This is **not a case** where a *"mere passenger in a jeepney who did not exhibit any act that would give police officers reasonable suspicion to believe that he had drugs in his possession. x x x There was no evidence to show that the police had basis or personal knowledge that would reasonably allow them to infer anything suspicious."* A tip is not sufficient to constitute probable cause **ONLY** in the absence

of any other circumstance that will arouse suspicion. **But** that is **not** the situation here.

Second, I do not agree that "our constitutional order does not adopt a stance of neutrality," especially this statement "the law is *heavily* in favor of the accused,"[1] which then cites the presumption of innocence.

To begin with, the reference to the presumption of innocence is inappropriate.

We do not deal here with the calibration of evidence on the merits of the accusation against appellant. The right to be presumed innocent and the concomitant burden of the prosecution to prove guilt beyond a reasonable doubt do not therefore come into play.

The burden of the prosecution was only to prove the search to be reasonable — the standard of proof is simply one of probable cause. Probable cause requires a fair probability that contraband or evidence of a crime will be found — whether a fair-minded evaluator would have reason to find it more likely than not that a fact (or ultimate fact) is true, which is quantified as a fifty-one percent (51%) certainty standard (using whole numbers as the increment of measurement).[2] What probable cause entails was described sharply in this manner:

> The Court of Appeals held that the DEA agents seized respondent when they grabbed him by the arm and moved him back onto the sidewalk. 831 F.2d at 1416. The Government does not challenge that conclusion, and we assume — without deciding — that a stop occurred here. Our decision, then, turns on whether the agents had a reasonable suspicion that respondent was engaged in wrongdoing when they encountered him on the sidewalk. In *Terry v. Ohio*, 392 U.S. 1, 392 U.S. 30 (1968), we held that the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity "may be afoot," even if the officer lacks probable cause.

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[1] Italics added.

[2] *United States v. Sokolow*, 490 US 1 (1989).

The officer, of course, must be able to articulate something more than an "inchoate and unparticularized suspicion or hunch." *Id.* at 27. The Fourth Amendment **requires "some minimal level of objective justification" for making the stop**. *INS v. Delgado*, 466 U.S. 210, 466 U.S. 217 (1984). **That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.** We have held that **probable cause means "a fair probability that contraband or evidence of a crime will be found,"** *Illinois v. Gates*, 462 U.S. 213, 462 U.S. 238 (1983), and the level of suspicion required for a Terry stop is obviously less demanding than that for probable cause, see *United States v. Montoya de Hernandez*, 473 U.S. 531, 473 U.S. 541, 473 U.S. 544 (1985).

The concept of reasonable suspicion, like probable cause, is not "readily, or even usefully, reduced to a neat set of legal rules." Gates, *supra*, at 462 U.S. 232. We think the Court of Appeals' effort to refine and elaborate the requirements of "reasonable suspicion" in this case creates unnecessary difficulty in dealing with one of the relatively simple concepts embodied in the Fourth Amendment. **In evaluating the validity of a stop such as this, we must consider "the totality of the circumstances — the whole picture."** *United States v. Cortez*, 449 U.S. 411, 449 U.S. 417 (1981). As we said in Cortez:

"**The process does not deal with hard certainties, but with probabilities.** Long before the law of probabilities was articulated as such, **practical people formulated certain common sense conclusions about human behavior**; jurors as **factfinders are permitted to do the same — and so are law enforcement officers**."[3]

Further, the statement does disservice to years of jurisprudence that, while recognizing the *Bill of Rights* to be a check on government power, has taken stock of the varying interests that require balancing if not accommodation. **Effective law enforcement** is a **legitimate interest** that is **not less favored by the law**.

Certainly, the Court *cannot quantify* the legal rights of one (1) subset of our community to be *heavily favored* when the Court has not established a weighing scale by which to measure its validity, accuracy, and reliability.

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[3] *Id.*

The statement **chills** our law enforcers from doing their job in good faith of enforcing the law and keeping peace and order, and **emboldens** criminally-disposed persons to commit crimes as they please, because ***in any event*** the law would lend these criminal enterprises the veneer of protection that law-abiding citizens do not have. We cannot nonchalantly refuse to see the totality of circumstances, and choose to close our eyes to the whole picture and the common sense conclusions about human behavior.

Third, the case law research of the ***ponencia*** is quite impressive. Yet, it seems to have missed on a golden opportunity to refine the ***motor vehicle exemption*** to the warrant requirement.

We all agree that the *motor vehicle exemption* emanated from outside jurisprudence, particularly the United States. But as early as 1991, at least in that jurisdiction, the *motor vehicle exemption* has undergone refinements that our own jurisprudence has adopted implicitly if not expressly.

In ***California v. Acevedo***, 500 U.S. 565 (1991),[4] the United States Supreme Court considered the ***motor vehicle exemption*** to the warrant requirement of its Fourth Amendment and **its application to the search of a closed container within the motor vehicle**.

Acevedo is **keenly relevant to our present case** because the police targeted **not exactly** the **passenger jeepney** in which our transporter of four (4) kilos of marijuana **but the transporter** and ***more particularly the sack*** *in which the four (4) kilos of marijuana was being stored for transportation.*

Acevedo ruled that the *motor vehicle exemption* extends to containers carried by passengers inside a moving vehicle, **even if** there is ***no probable cause to search the motor vehicle itself*** and the ***probable cause*** *and the* ***interest*** *of the police officers has been* ***piqued only by the circumstances of the***

[4] https://supreme.justia.com/cases/federal/us/500/565/.

passenger and the container he or she is carrying and transporting. As held in ***Acevedo***:

> [W]e now hold that **the Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle**. . . .
>
> The interpretation of **the Carroll doctrine** set forth in Ross **now applies to all searches of containers found in an automobile**. In other words, **the police may search without a warrant if their search is supported by probable cause**. The Court in Ross put it this way:
>
> "The **scope of a warrantless search of an automobile** . . . is **not defined by the nature of the container in which the contraband is secreted**. Rather, it is **defined by the object of the search** and **the places in which there is probable cause to believe that it may be found**."
>
> . . . . . .
>
> Until today, **this Court has drawn a curious line between** the *search of an automobile that coincidentally turns up a container* **and** the *search of a container that coincidentally turns up in an automobile*. The protections of the Fourth Amendment must not turn on such coincidences. We therefore interpret Carroll as providing **one rule to govern all automobile searches**. The **police may search an automobile** *and* the **containers within it** where they **have probable cause to believe** contraband or evidence is contained.

Indeed, the distinction between **probable cause as to the motor vehicle** and **probable cause as to the specific person and his or her specific container** actually endangers the privacy interest that the right against unreasonable searches and seizures protects. ***Acevedo*** succinctly explains:

> **The line between probable cause to search a vehicle and probable cause to search a package in that vehicle is not always clear, and separate rules that govern the two objects to be searched may enable the police to broaden their power to make warrantless searches and disserve privacy interests.** We noted this in Ross in the context of a search of an entire vehicle. Recognizing that, under Carroll, the "entire vehicle itself . . . could be searched without a warrant," **we concluded that "prohibiting police from opening immediately a container in which the object of the search is most likely to be found,**

and instead forcing them first to comb the entire vehicle, would actually exacerbate the intrusion on privacy interests."

At the moment when officers stop an automobile, it may be less than clear whether they suspect with a high degree of certainty that the vehicle contains drugs in a bag or simply contains drugs. **If the police know that they may open a bag only if they are actually searching the entire car, they may search more extensively than they otherwise would in order to establish the general probable cause required by Ross.**

Such a situation is not far-fetched. . . . We cannot see the benefit of a rule that requires law enforcement officers to conduct a more intrusive search in order to justify a less intrusive.

In greater detail, ***Acevedo*** ruled thus:

The facts in this case closely resemble the facts in Ross. In Ross, the police had probable cause to believe that drugs were stored in the trunk of a particular car. See 456 U.S. at 456 U.S. 800. Here, the California Court of Appeal concluded that the police had **probable cause to believe that respondent was carrying marijuana in a bag** in his car's trunk. Furthermore, for what it is worth, in Ross, as here, **the drugs in the trunk were contained in a brown paper bag**.

This Court in Ross rejected Chadwick's distinction between containers and cars. It concluded that **the expectation of privacy in one's vehicle is equal to one's expectation of privacy in the container**, and noted that **"the privacy interests in a car's trunk or glove compartment may be no less than those in a movable container."** 456 U.S. at 456 U.S. 823. It **also recognized that it was arguable that the same exigent circumstances that permit a warrantless search of an automobile would justify the warrantless search of a movable container.** *Id.* at 456 U.S. 809. **In deference to the rule of Chadwick and Sanders, however, the Court put that question to one side.** *Id.* at 456 U.S. 809-810. It concluded that the time and expense of the warrant process would be misdirected if the police could search every cubic inch of an automobile until they discovered a paper sack, at which point the Fourth Amendment required them to take the sack to a magistrate for permission to look inside. **We now must decide the question deferred in Ross: whether the Fourth Amendment requires the police to obtain a warrant to open the sack in a movable vehicle simply because they lack probable cause to search the entire car. We conclude that it does not.**

IV

Dissenters in Ross asked why the suitcase in Sanders was "more private, less difficult for police to seize and store, or in any other relevant respect more properly subject to the warrant requirement, than a container that police discover in a probable cause search of an entire automobile?"

We now agree that a **container found after a general search of the automobile** and a **container found in a car after a limited search for the container** are **equally easy** for the police to store and **for the suspect to hide or destroy**. In fact, **we see no principled distinction in terms of either the privacy expectation or the exigent circumstances between the paper bag found by the police in Ross** and **the paper bag found by the police here**. Furthermore, **by attempting to distinguish between a container for which the police are specifically searching** and **a container which they come across in a car**, **we** have provided only minimal protection for privacy, and **have impeded effective law enforcement**.

. . . . . .

To the extent that the Chadwick-Sanders rule protects privacy, its protection is minimal. Law enforcement officers may seize a container and hold it until they obtain a search warrant. "Since the police, by hypothesis, have probable cause to seize the property, we can assume that a warrant will be routinely forthcoming in the overwhelming majority of cases."

And the police often will be able to search containers without a warrant, despite the Chadwick-Sanders rule, as a search incident to a lawful arrest. In *New York v. Belton*, 453 U.S. 454 (1981), the Court said: "[W]e hold that, when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." "It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment."

Under Belton, **the same probable cause to believe that a container holds drugs will allow the police to arrest the person transporting the container and search it**.

Finally, the search of a paper bag intrudes far less on individual privacy than does the incursion sanctioned long ago in Carroll. In

that case, prohibition agents slashed the upholstery of the automobile. This Court nonetheless found their search to be reasonable under the Fourth Amendment. **If destroying the interior of an automobile is not unreasonable, we cannot conclude that looking inside a closed container is.** In light of the minimal protection to privacy afforded by the Chadwick-Sanders rule, and our serious doubt whether that rule substantially serves privacy interests, **we now hold that the Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle**.

V

The Chadwick-Sanders rule not only has failed to protect privacy, but it has also confused courts and police officers and impeded effective law enforcement. The conflict between the Carroll doctrine cases and the Chadwick-Sanders line has been criticized in academic commentary. . . .

Although we have recognized firmly that the doctrine of *stare decisis* serves profoundly important purposes in our legal system, this Court has overruled a prior case on the comparatively rare occasion when it has bred confusion or been a derelict or led to anomalous results. . . . We conclude that it is **better to adopt one clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers** set forth in Sanders.

VI

The interpretation of the Carroll doctrine set forth in Ross **now applies to all searches of containers found in an automobile**. In other words, **the police may search without a warrant if their search is supported by probable cause**. The Court in Ross put it this way:

"**The scope of a warrantless search of an automobile** . . . is **not defined by the nature of the container** in which the contraband is secreted. **Rather, it is defined by the object of the search** and **the places in which there is probable cause to believe that it may be found.**"

"Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab."

We reaffirm that principle. In the case before us, **the police had probable cause to believe that the paper bag** in the automobile's trunk

contained marijuana. **That probable cause now allows a warrantless search of the paper bag.** The facts in the record reveal that the police did not have probable cause to believe that contraband was hidden in any other part of the automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment.

Our holding today neither extends the Carroll doctrine nor broadens the scope of the permissible automobile search delineated in Carroll, Chambers, and Ross. It remains a "cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions.'"

We held in Ross: "The exception recognized in Carroll is unquestionably one that is specifically established and well delineated."

Until today, this Court has drawn a curious line between the search of an automobile that coincidentally turns up a container and the search of a container that coincidentally turns up in an automobile. The protections of the Fourth Amendment must not turn on such coincidences. We therefore interpret Carroll as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.

The judgment of the California Court of Appeal is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Fourth, the ***Acevedo*** doctrine has been **adopted** in our jurisprudence, *consciously or unconsciously as a matter of common sense*, under the **rubric** of a valid warrantless search of a moving **public utility vehicle**.

Saluday v. People,[5] discussed below in greater detail, is one (1) such pinpoint example confirming the validity of the ruling and reasoning in ***Acevedo***.

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[5] *Saluday v. People*, G.R. No. 215305, April 3, 2018.

There is no dispute that the **search of a moving vehicle** is a jurisprudentially recognized **exception** to the rule that a search to be valid must be pursuant to a court-issued warrant.

The *ponencia*, however, insists that there was **no valid search of a moving vehicle** in this case, citing the following discussion in ***People v. Comprado***:[6]

> **The search in this case, however, could not be classified as a search of a moving vehicle.** In this particular type of search, **the vehicle is the target and not a specific person**. **Further**, in search of a moving vehicle, **the vehicle was intentionally used as a means to transport** illegal items. It is worthy to note that the information relayed to the police officers was that a passenger of that particular bus was carrying marijuana such that when the police officers boarded the bus, **they searched the bag of the person matching the description given by their informant and not the cargo or contents of the said bus**. Moreover, in this case, it just so happened that the alleged drug courier was a bus passenger. To extend to such breadth the scope of searches on moving vehicles would open the floodgates to unbridled warrantless searches which can be conducted by the mere expedient of waiting for the target person to ride a motor vehicle, setting up a checkpoint along the route of that vehicle, and then stopping such vehicle when it arrives at the checkpoint in order to search the target person.[7]

This **restrictive definition** of a search of a moving vehicle is found in **no other** judicial precedent and in fact, ***Comprado*** cites none. ***Comprado*** abides by a reasoning that **has long been rejected** from where we have obtained our *motor vehicle exemption*.

Our **prevailing jurisprudence** is, to be sure, **contrary to** what ***Comprado*** implies — which is that, as held in ***Comprado***, if **the confidential tip describes with particularity the person** and **the baggage to be searched**, aside from giving a description of the vehicle, then **the search conducted is no longer a search of a moving vehicle but a search of a particular**

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[6] G.R. No. 213225, April 4, 2018.

[7] *Id.*

person and his or her baggage, and that unless an accused is proved to have "intentionally used" the vehicle to transport illegal drugs, the *motor vehicle exemption* would not apply.

I **cannot subscribe** to this narrow definition laid down in ***Comprado*** as it **ignores** well-settled jurisprudence.

To be sure, the only case cited by ***Comprado*** in relation to searches of moving vehicles, ***People v. Libnao***,[8] **in fact enumerates** the **varied types of situations** that are considered **valid searches of moving vehicles**, ***including*** those involving **persons "targeted" based on a description** given by an informant/agent, to wit:

> In earlier decisions, we held that there was probable cause in the following instances: (a) where the distinctive odor of marijuana emanated from the plastic bag carried by the accused;[9] (b) where an informer positively identified the accused who was observed to be acting suspiciously; (c) where the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would transport a quantity of marijuana;[10] (d) where Narcom agents had received information that a Caucasian coming from Sagada, Mountain Province had in his possession prohibited drugs and when the Narcom agents confronted the accused Caucasian because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so; (f) where the moving vehicle was stopped and searched on the basis of intelligence information and clandestine reports by a deep penetration agent or spy — one who participated in the drug smuggling activities of the syndicate to which the accused belong — that said accused were bringing prohibited drugs into the country;[11] (g) where the arresting officers had received a confidential information that the accused, whose identity as a drug distributor

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[8] 443 Phil. 506 (2003).

[9] Referring to *People v. Claudio*, 243 Phil. 795 (1988), wherein a policeman accosted a fellow passenger on a public bus who was acting suspiciously.

[10] See *People v. Maspil, Jr.*, 266 Phil. 815 (1990).

[11] See *People v. Lo Ho Wing*, 271 Phil. 120 (1991).

was established in a previous test-buy operation, would be boarding MV *Dona Virginia* and probably carrying *shabu* with him;[12] (h) where police officers received an information that the accused, who was carrying a suspicious-looking gray luggage bag, would transport marijuana in a bag to Manila;[13] and (i) where the appearance of the accused and the color of the bag he was carrying fitted the description given by a civilian asset.[14]

An **example of a warrantless search on a moving vehicle based on details given by an informant** can be found in ***People v. Mariacos***.[15] What should be emphasized is that the ruling in ***Comprado*** handed down by the Court's Third Division **did not expressly reverse** previous doctrine on warrantless searches of moving vehicles since a Division of this Court has no power to do so.

I see **no compelling reason** for the Court *En Banc* to adopt the impractical restrictions imposed in ***Comprado***.

Does the Court mean to require a search warrant **if a specifically described person and baggage** reasonably suspected to be carrying illegal drugs does so **on a moving vehicle**?

But this **artificial distinction has long been discarded** in the United States, where we took our *motor vehicle exemption*.

How exactly is the prosecution supposed to prove that a public or private vehicle was intentionally chosen to transport dangerous drugs **if the mere apprehension of the accused** possessing dangerous drugs *in flagrante*, on such moving vehicle does not suffice?

We cannot perpetuate a rule that has long lost its vitality.

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[12] See *People v. Saycon y Baquiran*, 306 Phil. 359 (1994).

[13] Referring to *People v. Balingan y Bobbonan*, 311 Phil. 290 (1995).

[14] See *People v. Valdez*, 363 Phil. 481 (1990).

[15] 635 Phil. 315 (2010).

To stress, ***Acevedo*** provides a stirring counterpoint to a rule that the *ponencia* seeks to memorialize:

> **Although we have recognized firmly that the doctrine of *stare decisis* serves profoundly important purposes in our legal system, this Court has overruled a prior case on the comparatively rare occasion when it has bred confusion or been a derelict or led to anomalous results**. . . . We conclude that it is **better to adopt one clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers** set forth in Sanders.

Fifth, jurisprudence likewise recognizes the validity of warrantless searches and arrests **based on a tip from a confidential informant** as a **legitimate** basis for a police officer's determination of probable cause.

Notably, here, this tip is **not just** a **whimsical tip** but ***objectified*** by these circumstances:

(i) the police officers' long experience in dealing with marijuana coming from this route in northern Luzon;

(ii) the fact that appellant was a passenger on board a *moving* public jeepney crossing provincial boundaries; and

(iii) photographs of the bricks of marijuana show that they were of such size and bulk that they were readily the most conspicuous items in the blue sack, and therefore, no "probing" of the sack's contents would have even been necessary.

It is conceded that although searches of moving vehicles may be done without warrant, police officers do not have unlimited discretion in the conduct of such searches. As we held in ***People v. Tuazon***:[16]

> Nevertheless, the exception from securing a search warrant when it comes to moving vehicles does not give the police authorities unbridled discretion to conduct a warrantless search of an automobile. To do so would render the aforementioned constitutional stipulations inutile and expose the citizenry to indiscriminate police distrust which

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[16] 558 Phil. 759 (2007).

could amount to outright harassment. Surely, the policy consideration behind the exemption of search of moving vehicles does not encompass such arbitrariness on the part of the police authorities. In recognition of the possible abuse, jurisprudence dictates that at all times, **it is required that probable cause exist in order to justify the warrantless search of a vehicle**. (Emphasis supplied.)

While the *ponencia* was able to cite jurisprudence to the effect that tipped information is insufficient and police officers must have personal knowledge of facts giving them probable cause to conduct a search, the Court also **cannot simply disregard long standing jurisprudence** holding that **probable cause may be based on reliable, confidential information** received by police.

In ***People v. Bagista***,[17] we ruled that the officers involved had probable cause to stop and search all vehicles coming from the north at Acop, Tublay, Benguet **in view of the confidential information** they had received that a woman having the same appearance as that of accused would be bringing marijuana from up north. They likewise had probable cause to search accused's belongings since she fit the description provided by the informant.

We have also upheld the warrantless search in ***People v. Valdez***[18] where a police officer was informed by a civilian asset that a thin Ilocano person with a green bag was about to transport marijuana on a public bus from Banaue, Ifugao. That the search targeted a specifically described individual was even the basis for the reasonableness of the search, *viz.*:

Said information was received by SPO1 Mariano the very same morning he was waiting for a ride in Banaue to report for work in Lagawe, the capital town of Ifugao province. Thus, faced with such on-the-spot information, the law enforcer had to respond quickly to the call of duty. Obviously, there was not enough time to secure a search warrant considering the time involved in the process. In fact,

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[17] 288 Phil. 828 (1992).

[18] *Supra* note 9.

in view of the urgency of the case, SPO1 Mariano together with the civilian "asset" proceeded immediately to Hingyon, Ifugao to pursue the drug trafficker. In Hingyon, he flagged down buses bound for Baguio City and Manila, and looked for the person described by the informant. It must be noted that the target of the pursuit was just the "thin Ilocano person with a green bag" and no other. And so, when SPO1 Mariano inspected the bus bound for Manila, he just singled out the passenger with the green bag. Evidently, there was definite information of the identity of the person engaged in transporting prohibited drugs at a particular time and place. SPO1 Mariano had already an inkling of the identity of the person he was looking for. As a matter of fact, no search at all was conducted on the baggages of other passengers. Hence, appellant's claim that the arresting officer was only fishing for evidence of a crime has no factual basis.

In that case, we deemed the accused caught *in flagrante* since he was carrying marijuana at the time of his arrest.

In ***People v. Mariacos***,[19] we justified the warrantless search of a jeepney in this wise:

It is well to remember that on October 26, 2005, the night before appellant's arrest, the police received information that marijuana was to be transported from Barangay Balbalayang, and had set up a checkpoint around the area to intercept the suspects. At dawn of October 27, 2005, PO2 Pallayoc met the secret agent from the Barangay Intelligence Network, who informed him that a baggage of marijuana was loaded on a passenger *jeepney* about to leave for the *poblacion*. Thus, PO2 Pallayoc had probable cause to search the packages allegedly containing illegal drugs.

Meanwhile, in ***People v. Quebral***,[20] where police officers acted on an informer's report that two (2) men and a woman on board an owner type jeep with a specific plate number would deliver *shabu* at a gas station, we explained:

As the lower court aptly put it in this case, **the law enforcers already had an inkling of the personal circumstances of the persons**

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[19] 635 Phil. 315 (2010).

[20] 621 Phil. 226 (2009).

they were looking for and the criminal act they were about to commit. That these circumstances played out in their presence supplied probable cause for the search. The police acted on reasonable ground of suspicion or belief supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that a crime has been committed or is about to be committed. Since the seized *shabu* resulted from a valid search, it is admissible in evidence against the accused. (Emphasis supplied.)

The citations may go on and on.[21] From the foregoing cases, it is clear that police officers, **acting on a tip from an informant**, may **lawfully** apprehend drug offenders.

This doctrine has not been abandoned.

The United States cases cited in the *ponencia*, ***Aguilar v. Texas***,[22] ***U.S. v. Ventresca***,[23] and ***Illinois v. Gates***[24] are not on all fours with this case.

To begin with, these United States cases involved probable cause for issuance of a search warrant by a court **while here** we are discussing the search of a moving vehicle, an accepted exception to the need to secure a court-issued search warrant.

For another, ***Aguilar*** and ***Ventresca*** involved the search of a house while ***Illinois*** involved the search of a house and a private vehicle purportedly regularly used to transport illegal drugs. Thus, in ***Aguilar*** and ***Illinois***, police officers would have had time to investigate further the veracity of the tip received perhaps through a surveillance or a test buy. ***Ventresca*** did not even involve an anonymous tip but concerned an investigator's affidavit which was used as basis for the issuance of a search warrant but was assailed as being partly hearsay for some of

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[21] *Macad v. People*, G.R. No. 227366, August 01, 2018; *Veridiano v. People*, G.R. No. 200370, June 07, 2017; *People v. Macalaba*, 443 Phil. 565 (2003); *Caballes v. People*, 424 Phil. 263 (2002).

[22] 378 US 108 (1964).

[23] 380 US 102 (1965).

[24] 462 US 213 (1983).

the information therein was gathered by fellow investigators. ***Ventresca*** is hardly even relevant here at all.

Still, a careful reading of ***Illinois*** demonstrates that United States jurisprudence does not prohibit law enforcement officers from relying on anonymous tips, even when they may constitute hearsay. ***Illinois*** even expressly abandoned the rigid two (2)-pronged test under ***Aguilar*** requiring that "(1) the informant's 'basis of knowledge' be revealed and (2) sufficient facts to establish either the informant's 'veracity' or the 'reliability' of the informant's report must be provided."[25] Instead, it held that "[w]hile a conscientious assessment of the basis for crediting such tips is required by the Fourth Amendment, a standard that leaves virtually no place for anonymous citizen informants is not."[26]

To be sure, ***Illinois*** in proposing the "totality of circumstances test" merely recognized that corroboration of details of an informant's tip by prior independent police work bolstered the veracity of the tip but it was not requisite to a finding of probable cause. ***Illinois*** also amply discussed the evidentiary value of on-site verification of the accuracy of the anonymous information received by the police, to wit:

> The corroboration of the letter's predictions that the Gateses' car would be in Florida, that Lance Gates would fly to Florida in the next day or so, and that he would drive the car north toward Bloomingdale all indicated, albeit not with certainty, that the informant's other assertions also were true. "[B]ecause an informant is right about some things, he is more probably right about other facts"[27] x x x including the claim regarding the Gateses' illegal activity.[28]

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[25] *Ponencia*, p. 12.

[26] 462 US 213, 238.

[27] Citing *Spinelli v. United States*, 393 US 410, 427 (1969).

[28] 462 US 213, 244.

Relating this principle to **the present case**, the **anonymous tip** received by the police officers **turned out to be accurate** as their on-site investigation showed. *There was a passenger jeepney with plate number AYA 270 bound for Roxas, Isabela that passed through their checkpoint. There was a man on board fitting the description in the anonymous tip who had a blue sack. That blue sack indeed contained illegal drugs*, a **large and hard to ignore quantity** of it. All of these facts **came to the personal knowledge of the arresting officers upon investigation of the tip**.

In ***Illinois***, the United States Supreme Court aptly observed:

> This totality-of-the-circumstances approach is far more consistent with our prior treatment of probable cause than is any rigid demand that specific "tests" be satisfied by every informant's tip. Perhaps the central teaching of our decisions bearing on the probable cause standard is that it is a "practical, nontechnical conception."
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> **In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.** Our observation in *United States v. Cortez*, regarding **"particularized suspicion,"** is also applicable to the probable cause standard:
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> > **"The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as factfinders are permitted to do the same — and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement."**

As these comments illustrate, probable cause is a **fluid concept** — turning on the assessment of probabilities in particular factual contexts — **not readily, or even usefully, reduced to a neat set of legal rules**. Informants' tips doubtless come in many shapes and sizes from many different types of persons. As we said in *Adams v. Williams*:

> "Informants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability."
>
> Rigid legal rules are ill-suited to an area of such diversity. **"One simple rule will not cover every situation."**[29] (Emphasis supplied; citations omitted.)

The ***ponencia*** acknowledges that jurisprudence on this matter is divergent but has now set **in stone that a confidential tip is insufficient to establish probable cause** to conduct a warrantless search. It holds that **despite the detailed nature of a tip**, it **must be accompanied by other circumstances** that come to the arresting officers' **personal knowledge**, such as the observation that the person might be a drug user as in ***People v. Manalili***[30] or was otherwise acting suspiciously as in ***People v. Tangliben***[31] and the other cases cited in the *ponencia*.

The *ponencia's* reasoning, **however**, is based on the **assumption** that *drug couriers are all drug users* or would *all act suspiciously* while in the act of committing the crime of possession of illegal drugs.

We have *long recognized* that **people may act differently in the same situation**.[32] This is true not only in the case of victims of a crime but also of perpetrators.

Indeed, as early as the case of ***People v. Saycon***,[33] the Court observed that "unlike in the case of crimes like, *e.g.*, homicide, murder, physical injuries, robbery or rape which by their nature involve physical, optically perceptible, overt acts, ***the offense of possessing or delivering or transporting some prohibited***

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[29] 62 US 213, 230.

[30] 345 Phil. 632 (1997).

[31] G.R. No. 63630, April 6, 1990.

[32] *People v. Cabel y Iwag*, 347 Phil. 82 (1997).

[33] 306 Phil. 359 (1994).

or regulated drug is customarily carried out without any external signs or indicia visible to police officers and the rest of the outside world."

Thus, in evaluating the evidence against the accused, **the Court must account for this fact**.

Sixth, since appellant **consented** to the warrantless search, he **cannot** claim that it is invalid.

Time and again, the Court has ruled the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived and a person may voluntarily consent to have government officials conduct a search or seizure that would otherwise be barred by the Constitution.[34] Hence, in the oft-cited ***People v. Montilla***, where the accused spontaneously performed affirmative acts of volition by himself opening his bag without being forced or intimidated to do so, such acts should properly be construed as a clear waiver of his right.[35] ***Montilla*** is still good law and had been most recently cited in the 2018 case of ***Saluday v. People***.[36]

The ruling in ***Montilla*** is applicable here since appellant **freely and readily acceded** to the police officers' request for him to open the blue sack that he also **voluntarily acknowledged** was his.

The *ponencia* relies heavily on our pronouncement in ***People v. Cogaed*** that mere silence or passive acquiescence given under intimidating or coercive circumstances **does not constitute** a valid waiver of the constitutional right against unreasonable searches.[37]

We must, however, **distinguish** the present case from ***Cogaed*** where the police officers themselves testified that *the accused therein seemed frightened* during the search.

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[34] *People v. O'Cochlain*, G.R. No. 229071, December 10, 2018.

[35] *People v. Montilla y Gatdula*, 349 Phil. 640 (1998).

[36] G.R. No. 215305, April 3, 2018.

[37] 740 Phil. 212 (2014).

Here, there is **absolutely no indication** in the records that appellant was intimidated or moved by fear in his act of opening the sack and thereby displaying the four (4) bricks of marijuana to the apprehending officers' view.

By appellant's own account, there were **only two (2) policemen** manning the checkpoint and who conducted the search of the jeepney.[38] Throughout his testimony which spanned **several hearing dates**, appellant **never even mentioned** whether these policemen were **armed** nor did he claim that he was **threatened** by them.

PO3 Mabiasan's testimony that when appellant was asked to open his sack, it was only after a while that he voluntarily opened it **does not** necessarily indicate appellant acted under duress or fear.[39] Appellant's hesitation could have just been **hesitation easily indicative of guilt**. In any event, it is **best left to the trial court to decipher such factual details** as it was **the one that had the opportunity to observe** the witnesses during their testimony.

Seventh, I **do not agree** with the *ponencia*'s finding that the police conducted a probing, highly intrusive search on appellant.

In truth, it is the rule espoused by the *ponencia* and *Comprado* that endangers the people's right to privacy. The rationale in ***Acevedo***, extensively quoted above, affirms this conclusion.

People v. Manago,[40] ***Valmonte v. de Villa***,[41] and ***Caballes v. Court of Appeals***[42] where the "visual and minimally intrusive" standard was applied, all involved searches of private vehicles

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[38] TSN dated November 9, 2015, p. 121.

[39] *Ponencia*, p. 29.

[40] 793 Phil. 505 (2016).

[41] 264 Phil. 265 (1990).

[42] 424 Phil. 263 (2002).

conducted at routine military or police checkpoint. It stands to reason that only a visual and minimally intrusive search would be permissible at routine checkpoints as any number of vehicles and persons would pass through them and in all likelihood, these vehicles or persons would not be involved in criminal activity.

Interestingly, the *ponencia* cites ***Saluday v. People***[43] as another example of a "visual and minimally intrusive" search by focusing on the fact that the authorities merely lifted the bag containing the illegal firearms but it ignores the extensive discussion in the same case on the validity of law enforcement officers' inspections of persons and the opening of their belongings in instances when they have reduced expectations of privacy, particularly in public places, such as airports, seaports, bus terminals, malls, and even on board public transportation that is in transit. In connection with inspections of public buses and their passengers, ***Saluday*** had this to say:

> Further, in the conduct of bus searches, the Court lays down the following guidelines. **Prior to entry**, passengers and their bags and luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.
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> While in transit, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First*, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard. *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine

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[43] *Saluday v. People*, G.R. No. 215305, April 3, 2018.

inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third*, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.[44] (Emphasis in the original; underscoring supplied.)

Verily, ***Saluday*** considers the opening and inspection of a **passenger's bag/belongings** by authorities in a public place or on board public transportation as a **reasonable and minimally intrusive search**.

Here, appellant, a **passenger on board a public jeepney, voluntarily opened** his blue sack at the request of police officers who had previously received information that such blue sack most likely contained illegal drugs.

As soon as appellant opened the sack, the two (2) police officers, without any need to do more, **immediately saw** the four (4) large bricks of marijuana inside. Not only did the testimonies of the two (2) police officers coincide on these material points but also their testimonies were corroborated by the physical evidence.

Photographs of the bricks of marijuana show that they were of such size and bulk that they were readily the most conspicuous items in the blue sack. No "probing" of the sack's contents would have even been necessary.

Significantly, too, appellant **did not plead, much less prove**, that these police officers had **some ill motive** for testifying against him.

Eighth, the *ponencia* now relies on the exclusionary rule or the *fruit of the poisonous tree* doctrine as a basis to acquit accused-appellant. Suffice it to state, since it is my view there was a valid warrantless search of a moving vehicle in this case,

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[44] *Id.*

I likewise hold that the prosecution's evidence is admissible against appellant and fully supports the lower courts' finding of guilt.

A final word. I whole-heartedly agree with the doctrine in drugs cases that the **presumption of regularity** accorded to acts undertaken by police officers in the pursuit of their official duties **cannot be used** to negate the constitutional presumption of innocence.[45]

The Court, however, **should not go so far as to presume** at the outset that our law enforcement officers are negligent or in bad faith. It **chills** our law enforcers from their important mission to preserve peace and order and destroy the menace of illegal drugs. Equally foreboding, it **goes against** our duty to judge cases with **cold neutrality**.

Neither do I believe that the Court should **undeservedly place a premium** on the quantity of past precedents that have applied a certain principle, especially when a **mechanical application of this principle** would **not only defeat** the ends of justice **but also resurrect and worse perpetuate** a ruling and rationale that others whose interest in the right to privacy has been firm have long discarded.

We **must not evade our duty** to revisit previously established doctrine, abandon or, perhaps, **at least carve out exceptions or reconcile contradictory rulings** when warranted.

For the foregoing reasons, I vote to **AFFIRM** the Court of Appeals' Decision dated April 24, 2018 in CA-G.R. CR-HC No. 09296 and to uphold the trial court's judgment of conviction, but with the modification that appellant be sentenced to life imprisonment instead of *reclusion perpetua* in line with the nomenclature used in RA 9165 and to pay a fine of ₱1,000,000.00 as warranted under prevailing jurisprudence.

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[45] See for example, *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019.

DISSENTING OPINION

LOPEZ, *J.*:

Not all searches and seizures are prohibited. Those which are reasonable are not forbidden. A reasonable search is not to be determined by any fixed formula but is to be resolved according to the facts of each case.[1]

The *ponencia* reversed the conviction of the accused for the crime of illegal transportation of dangerous drugs on the ground that the contraband was obtained in violation of the right against unreasonable searches. It pointed out that the police conducted a warrantless intrusive search of a vehicle based solely on an unverified tip from an anonymous informant. Also, there was no consented warrantless search but a mere passive conformity within a coercive and intimidating environment.

For proper reference, there is a need to revisit the facts of the case.

On January 10, 2014 at around 11:30 a.m., the police received a phone call from a concerned citizen that a person will be transporting marijuana out of Kalinga province. At 1:00 p.m., the police received a text message that the transporter of marijuana is a male person wearing a collared white shirt with green stripes, red ball cap and is carrying a blue sack on board a passenger jeepney with plate number AYA 270 bound for Roxas, Isabela. A checkpoint was then established. After 20 minutes, the identified jeepney arrived and was flagged down. The police saw the accused who matched the description with a blue sack in front of him. The police asked about the sack and the accused admitted its ownership. Thereafter, the police requested the accused to open the sack. The accused opened

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[1] *Valmonte v. De Villa*, G.R. No. 83988, September 29, 1989, citing *U.S. v. Robinwitz*, N.Y., 70 S. Crt. 430, 339 U.S. 56, 94 L. Ed. 653; *Harries v. U.S.*, Okl., 67 S. Ct. 1098 & 331 U.S. 145, 94 L. Ed. 1871; and *Martin v. U.S.*, C.A. Va., 183 F2d 436; 66, 79 C.J.S., 835-836.

it which yielded four bricks of dried marijuana leaves with a total weight of 3,953.111 grams.

In these circumstances, I believed that what transpired is a reasonable search of the vehicle and not a warrantless search. Obviously, the law enforcers did not have sufficient time to obtain a search warrant. They only have less than two hours between the receipt of the information and the arrival of the passenger jeepney. However, this does not necessarily mean that the authorities have no choice but to conduct a warrantless search. In *Saluday v. People*,[2] we distinguished a reasonable search from a warrantless search and described them as mutually exclusive, thus:

> To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. **A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application**. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. **In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with**. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle. (Emphases Supplied).

Moreover, we clarified that the constitutional guarantee under Section 2, Article III of the Constitution[3] is not a blanket prohibition.

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[2] G.R. No. 215305, April 3, 2018.

[3] The 1987 Constitution, Article III, Section 2 provides that [t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. Notably, this right has been included in the Philippine Constitution since 1899 through the Malolos Constitution and has been incorporated in the various organic laws

Rather, it operates against "*unreasonable*" searches and seizures only. Thus, the general rule is that no search can be made without a valid warrant subject to certain legal and judicial exceptions.[4] Otherwise, any evidence obtained is inadmissible in any proceeding.[5] On the other hand, the recognized exceptions do not apply when the search is "*reasonable*" simply because there is nothing to exempt.

In *Saluday*, this Court expounded as to what qualifies as a reasonable search. We cited foreign[6] as well as

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governing the Philippines during the American colonization, the 1935 Constitution, and the 1973 Constitution.

[4] The exceptions include: (1) search incidental to a lawful arrest; (2) search of moving vehicles; (3) seizure in plain view; (4) customs searches; (5) consented warrantless search; (6) stop and frisk; and (7) exigent and emergency circumstances. In *Valmonte v. De Villa*, 258 Phil. 838 (1989), the Supreme Court held that not all searches are prohibited. Those which are reasonable are not forbidden. See also *Esquillo v. People*, G.R. No. 182010, August 25, 2010; *People v. Nuevas*, 545 Phil. 356 (2007); *People v. Aruta*, 351 Phil. 868 (1998).

[5] The 1987 Constitution, Article III, Section 2 (3) provides an exclusionary rule which instructs that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding. See *Comerciante v. People*, G.R. No. 205926, July 22, 2015, citing *Ambre v. People*, 692 Phil. 681 (2012).

[6] In the seminal case of *Katz v. United States*, 389 U.S. 347 (1967), the U.S. Supreme Court held that the electronic surveillance of a phone conversation without a warrant violated the Fourth Amendment. According to the U.S. Supreme Court, what the Fourth Amendment protects are people, not places such that what a person knowingly exposes to the public, even in his or her own home or office, is not a subject of Fourth Amendment protection in much the same way that what he or she seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. Further, Justice John Harlan laid down in his concurring opinion the two-part test that would trigger the application of the Fourth Amendment. First, a person exhibited an actual (subjective) expectation of privacy. Second, the expectation is one that society is prepared to recognize as reasonable (objective).

local[7] jurisprudence and explained that the prohibition of unreasonable search and seizure ultimately stems from a person's right to privacy. Hence, only when the State intrudes into a person's expectation of privacy, which society regards as reasonable, is the Fourth Amendment[8] triggered. Conversely, where a person does not have an expectation of privacy or one's expectation of privacy is not reasonable to society, the alleged State intrusion is not a "*search*" within the protection of the Fourth Amendment. More importantly, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case. In *Saluday*, we ruled that the bus inspection constitutes a reasonable search, *viz.*:

In view of the foregoing, the bus inspection conducted by Task Force Davao at a military checkpoint constitutes a reasonable search. Bus No. 66 of Davao Metro Shuttle was a vehicle of public transportation where passengers have a reduced expectation of privacy. Further, SCAA Buco merely lifted petitioner's bag. This visual and minimally intrusive inspection was even less than the standard x-ray and physical inspections done at the airport and seaport terminals where passengers may further be required to open their bags and luggages. **Considering the reasonableness of the bus search, Section 2, Article III of the Constitution finds no application, thereby precluding the necessity for a warrant.** (Emphases Supplied)

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[7] In *People v. Johnson*, 401 Phil. 734 (2000), the Court declared airport searches as outside the protection of the search and seizure clause due to the lack of an expectation of privacy that society will regard as reasonable. In *Dela Cruz v. People*, 776 Phil. 653 (2016), the Court described seaport searches as reasonable searches on the ground that the safety of the traveling public overrides a person's right to privacy. In *People v. Breis*, 766 Phil. 785 (2015), the Court also justified a bus search owing to the reduced expectation of privacy of the riding public.

[8] It is a part of the Bill of Rights in the United States Constitution which provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In that case, we likewise formulated guidelines in conducting reasonable searches of public transport buses and any moving vehicle that similarly accepts passengers at the terminal and along its route, to wit:

> Further, in the conduct of bus searches, the Court lays down the following guidelines. Prior to entry, passengers and their bags and luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.
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> **While in transit, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First*, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard.** *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third*, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.
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> In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First*, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second*, neither

can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. *Third*, as to the purpose of the search, it must be confined to ensuring public safety. *Fourth*, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.

The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their terminals, just like passenger ships and seaports, are in that category.

Aside from public transport buses, any moving vehicle that similarly accepts passengers at the terminal and along its route is likewise covered by these guidelines. **Hence, whenever compliant with these guidelines, a routine inspection at the terminal or of the vehicle itself while in transit constitutes a reasonable search**. Otherwise, the intrusion becomes unreasonable, thereby triggering the constitutional guarantee under Section 2, Article III of the Constitution. (Emphases Supplied)

Applying these guidelines, it becomes clearer that what happened is a reasonable search. *First*, **the accused is on board a passenger jeepney or a vehicle of public transportation where passengers have a reduced expectation of privacy**. *Second*, **the authorities properly set up a checkpoint**. The guidelines in *Saluday* are explicit that upon receipt of information that a passenger is carrying contraband, the law enforcers are authorized to stop the vehicle *en route* to allow for an inspection of the person and his or her effects. *Third*, **the police did not perform an intrusive search of the jeepney but merely inquired by asking about the ownership of the blue sack which the accused admitted**. As Such, Section 2, Article III of the Constitution finds no application in the reasonable search conducted in this case. Corollarily, there is no need to discuss whether the law enforcers have probable cause to search the vehicle. The requirement of probable cause is necessary in applications for search warrant and warrantless searches but not to a reasonable search.

Otherwise, to require probable cause before the authorities could conduct a search, no matter how reasonable, would cripple law enforcement resulting in non-action and dereliction of duty. It must be emphasized that police officers are duty bound to respond to any information involving illegal activities. But the involution of intelligence materials obliges them to be discerning and vigilant in scintillating truthful information from the false ones.

In *People v. Montilla*,[9] experience shows that although information gathered and passed on by assets to law enforcers are vague and piecemeal, and not as neatly and completely packaged as one would expect from a professional spymaster, such tip-offs are sometimes successful. If the courts of justice are to be of understanding assistance to our law enforcement agencies, it is necessary to adopt a realistic appreciation of the physical and tactical problems, instead of critically viewing them from the placid and clinical environment of judicial chambers.

Here, it can hardly be said that search was conducted based solely on an unverified tip from an anonymous informant. The information given exactly matched the descriptions of the vehicle and passenger to be searched. More especially, the blue sack which is apparent to the eye arouses reasonable suspicion as to its content. On that point, the police officers are left with no choice because letting a suspect pass without further investigation is a euphemism of allowing a crime to run. To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances,[10] even exploiting public utility vehicles to boost their nefarious activities.

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[9] G.R. No. 123872, January 30, 1998.

[10] *People v. Malasugui*, G.R. No. L-44335, July 30, 1936, citing *United States v. Snyder* (278 Fed., 650).

Nonetheless, even assuming that what occurred is a warrantless search, there is still no violation of the accused's constitutional right. In *Valmonte v. De Villa*,[11] the general allegation to the effect that the petitioner had been stopped and searched without a search warrant by the military manning the checkpoints is insufficient to determine whether there was a violation of the right against unlawful search and seizure. Moreover, the inherent right of the state to protect its existence and promote public welfare should prevail over an individual's right against a warrantless search which is however *reasonably* conducted. Besides, warrantless searches and seizures at checkpoints are quite similar to searches and seizures accompanying warrantless arrests during the commission of a crime, or immediately thereafter.[12]

There is no need to discuss on whether the accused acceded to the search. A consented search is an exception to a warrantless search. To reiterate, this exception does not apply in a reasonable search simply because there is nothing to exempt. At any rate, the accused performed affirmative acts of volition without being forced and intimidated to do so. In this case, the police asked the passengers about the sack and the accused admitted its ownership. Thereafter, the police requested the accused to open the sack. The accused voluntarily opened it which yielded four bricks of Marijuana. These facts are similar in *Montilla* where the appellant consented to the search. In that case, when the officers approached appellant and introduced themselves as policemen, they asked him about the contents of his luggage, and after he replied that they contained personal effects, the officers asked him to open the traveling bag. Appellant readily acceded, presumably or in all likelihood resigned to the fact that the law had caught up with his criminal activities.

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[11] G.R. No. 83988, September 29, 1989.

[12] *Valmonte v. De Villa*, G.R. No. 83988, May 24, 1990.

Finally, while the *ponencia* aptly stated that the right against an unreasonable search should not be sacrificed for expediency's sake, its premise that there is an unreasonable seizure in this case is unfounded. To invalidate a mere request to open the sack on the ground that it created a coercive and intimidating environment is taking the provisions of Section 2, Article III of the Constitution too far in favor of the accused. To reiterate, the constitutional guarantee protects only against an unreasonable search. It does not cover a reasonable search, nor is it intended to discourage honest police work.

FOR THESE REASONS, I vote to **DENY** the appeal.

THIRD DIVISION

[G.R. No. 192692. June 17, 2020]

REYNALDO DELA CRUZ and CATALINO C. FELIPE, *petitioners, vs.* **LEOPOLDO V. PARUMOG, GUARDIAN ANGEL ETERNAL GARDEN, and MUNICIPALITY OF GUIMBA, NUEVA ECIJA, represented by HON. POCHOLO M. DIZON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; INJUNCTION; INJUNCTIVE WRIT; REQUISITES. — In an action for injunction, the plaintiff has to show that there is a right *in esse* that must be protected; and the act against which the injunction is directed to constitutes a violation of such right. Furthermore, injunctive writs cannot be granted at the slightest sign of an alleged injury. x x x Jurisprudence has laid down four essential requisites for the issuance of an injunctive writ: (1) That the petitioner applicant

must have a clear and unmistakable right; (2) That there is a material and substantial invasion of such right; (3) That there is an urgent and permanent necessity for the writ to prevent serious damage; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

2. ID.; ID.; ID.; ID.; A COMPLAINT FOR INJUNCTION SHALL BE DISMISSED WHEN THE PETITIONERS FAIL TO PROVE THAT THEIR CIRCUMSTANCES WARRANT THE GRANT OF SUCH EXTRAORDINARY REMEDY. — As for the first requisite, jurisprudence affirms the existence of the constitutional rights to health, healthful ecology, and due process, which are enforceable without need of legislation. However, as for the second requisite, *i.e.*, the existence of a material and substantial invasion of such right, the complaint miserably fails. The records clearly show that the ultimate act complained of and sought to be enjoined by petitioners — the construction of the Guardian Angel Eternal Garden — has not happened yet. It must be reiterated that neither Resolution No. 33-04 nor Ordinance No. 4-04 serves as a final approval of Parumog's proposal and there is nothing in the record to show that Parumog's proposal to build the Guardian Angel Eternal Garden has been given final clearance and approval by the Sangguniang Bayan of Guimba in accordance with HLURB Resolution No. 681-00. Without final approval from the Guimba LGU, Parumog's proposal cannot proceed; hence, there cannot be a material and substantial invasion of petitioners' rights, for the realization of the very act alleged to be an invasion of such rights remains contingent upon the submission of the final memorial park plan and the approval thereof by the Guimba LGU. x x x Likewise, the fourth requisite, *i.e.*, the lack of another ordinary, speedy, and adequate remedy to prevent the infliction of irreparable injury has not been satisfied as well. At the risk of being repetitive, it must be reiterated that, under HLURB Resolution No. 681-00, Parumog must submit a preliminary development plan, which must be approved by the LGU. Once the preliminary development plan has been approved, Parumog must then submit a final memorial park plan which must likewise be approved by the LGU. There is no indication in the records that the Guimba LGU has already approved any preliminary development plan or final memorial park plan submitted by Parumog. x x x [P]etitioners may still air their health and ecological concerns over the project before

the DENR, DAR or the DPWH, since Parumog still has to obtain permits from these agencies if his memorial park project is to proceed. While, it may be said that the petitioners' grievances have already been heard by the Giumba LGU, there is no showing that they have to completely exhausted their remedies with the pertinent agencies of national government. Verily, records show that Parumog has been summoned to appear before the DENR-EMB because of a complaint filed against him by Justice Narciso Nario. There is nothing preventing petitioners from airing similar complaints before the DENR-EMB or other concerned agencies enumerated in the HLURB Resolution No. 681-00.

APPEARANCES OF COUNSEL

Napoleon Uy Galit & Associates Law Offices for petitioners.
Nimfa E. Silvestre-Pineda for respondents.

D E C I S I O N

GAERLAN, *J.*:

The Case

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court against the February 26, 2010 Decision[1] and the June 25, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 88238, which reversed the Decision of the Regional Trial Court (RTC) Branch 31 of Guimba, Nueva Ecija, in a case for injunction.

Antecedents

Respondent Leopoldo V. Parumog (Parumog) sought to build the Guardian Angel Eternal Garden memorial park on a parcel

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[1] *Rollo*, pp. 179-193; penned by Associate Justice Fernanda Lampas-Peralta with the concurrence of Associate Justices Marlene Gonzales-Sison and Florito S. Macalino.

[2] *Id.* at 253.

of land owned by him and located at Barangay Cavite, Guimba, Nueva Ecija. To implement his proposal, Parumog sought the required permits and clearances from respondent Municipality of Guimba Local Government Unit (Guimba LGU) and the local government unit of Barangay Cavite (Barangay LGU).[3]

However, Parumog's proposal was opposed by the owners of the lots adjoining the proposed memorial park site, including petitioners Reynaldo dela Cruz and Catalino C. Felipe, who filed a complaint for injunction with prayer for temporary restraining order (TRO), dated June 15, 2004,[4] seeking to stop the construction of the memorial park. Alongside Parumog, the Guimba LGU was also impleaded as a defendant for allowing the project through its Resolution No. 33-04, despite the alleged violations of petitioners' rights to health and a balanced ecology. The complaint was docketed as Civil Case No. 1332-G and raffled off to Branch 31 of the RTC of Guimba. On June 25, 2004, the trial court granted petitioners' prayer for a TRO.[5]

Parumog and the Guimba LGU answered that Resolution No. 33-04 was approved and issued only after the former had complied with all the requirements for the establishment of a memorial park under the pertinent regulations. Furthermore, the project was approved by the Sangguniang Barangay of Cavite, Guimba, through its Kapasyahan Blg. 02-2004. It was likewise approved by a majority of the adjoining residents[6] — petitioners included — during a consultation with personnel from the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), as shown by their signatures in a manifesto entitled "Pag-endorso at Aming Suporta sa Binabalak ni G. Leopoldo V. Parumog na Gawing Memorial Park ang Kanyang Lote sa Barangay Cavite, Guimba,

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[3] *Id.* at 180.

[4] *Id.* at 180-181.

[5] *Id.*

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

Nueva Ecija."[7] They likewise maintained that petitioners' fears of environmental pollution to be caused by the memorial park were unfounded since the park would observe the proper procedures and standards for ground burials. Parumog and the Guimba LGU further prayed for the lifting of the temporary restraining order and the dismissal of the complaint, as well as an award of exemplary damages, attorney's fees, and litigation expenses.

After due hearing and consideration of the parties' pleadings on the application for writ of preliminary injunction, the trial court found "serious legal flaws in the legality of Sangguniang Bayan Resolution No. 33-04." It therefore issued an Order, dated July 21, 2004, granting the application. Respondents filed a motion for reconsideration which was denied in an Order, dated November 5, 2004.[8] Pre-trial was then conducted, where the parties agreed on "the existence of TCT No. NT-3373 in the name of the defendant Leopoldo V. Parumog which covers the property in question."[9] The case then proceeded to trial on the merits.

The Ruling of the Trial Court

In a Decision dated September 29, 2006,[10] the trial court ruled in favor of Dela Cruz, making the injunction against the construction of the memorial park permanent.

The trial court observed that Resolution No. 33-04 merely reclassified the proposed memorial park site into commercial land. It did not have the effect of designating the land as a burial ground. The trial court further noted that Barangay Cavite was not among the designated burial areas under the local zoning ordinance of Guimba; therefore, for the construction of Parumog's proposed memorial park to proceed, the Sangguniang Bayan

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[7] *Id.*

[8] *Id.* at 183.

[9] *Id.* at 184.

[10] Penned by Presiding Judge Napoleon R. Sta. Romana. *Id.* at 295-314.

of Guimba had to amend its municipal zoning ordinance. Since Resolution No. 33-04 had no such effect, it cannot, by itself, be considered an approval of the proposed memorial park. Furthermore, a municipal board resolution cannot amend a municipal ordinance. Nevertheless, the defect was cured by the Sangguniang Bayan's passage on October 25, 2004, of Ordinance No. 4-04, which introduced the necessary amendments to the municipal zoning ordinance.

The trial court thus considered the issue of whether the enactment of said amendatory ordinance satisfied the requirements set by the municipal zoning ordinance, *i.e.*, whether the amendment was subjected to public hearing and was approved by either the Housing and Land Use Regulatory Board (HLURB) or the Sangguniang Panlalawigan (SP) of Nueva Ecija.[11] The court found that while there was sufficient evidence that public hearings were conducted, there was no proof that the amendatory ordinance was approved by the HLURB or the SP of Nueva Ecija. There being no proper amendment of the municipal zoning ordinance to include Barangay Cavite as a burial ground area, the injunction against Parumog's memorial park project was maintained by the trial court.[12]

The Ruling of the CA

Acting on the appeal filed by Parumog and the Guimba LGU, the CA reversed the trial court's decision and dismissed the complaint for injunction.

Reducing the arguments raised by the appeal to the main issue of whether Ordinance No. 4-04 was approved by the HLURB or the SP of Nueva Ecija, the appellate court found that Parumog and the Guimba LGU were able to submit a copy of Kapasyahan Blg. 181-S-2004 issued by the SP of Nueva Ecija, which categorically states that the provincial legislature approved the act of the Guimba municipal board. The said Kapasyahan reads:

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[11] *Id.* at 311.

[12] *Id.*

TANGGAPAN NG SANGGUNIANG PANLALAWIGAN

KIMIS NG KATITIKAN NG IKA-21
PANGKARANIWANG PULONG NG SANGGUNIANG
PANLALAWIGAN NA GINANAP SA
PANLALAWIGANG BULWAGANG PULUNGAN,
PANLALAWIGANG KAPITOLYO, LUNGSOD NG
PALAYAN NUONG

DISYEMBRE 06, 2004

x x x x x x x x x

KAPASIYAHAN BLG. 181-S-2004

SAPAGKAT, sa ilalim ng kodigo ng Lokal na Pamahalaan ng 1991, Kabanata 3 Pangkat 56, ay itinatadhana ang kapangyarihan ng Sannguniang [sic] Panlalawigan upang siyasatin at pag-aralan kung naaayon at napapaloob sa kapangyarihan ng mga Sangguniang Bayan/Lungsod na kanilang nasasakupan, ang mga pinagtibay na Kapasiyahan o Kautusan,

SAPAGKAT, batay sa masusing pag-aaral ng Lupon sa Kapasiyahan at Kautusan, ang mga sumusunod na Kapasiyahan at Kautusan ay naaayon at napapaloob sa mga alituntuning itinatakda ng batas:

DAHIL DITO, sa mungkahi ng Kgg. Na Kagawad Allan A. Gamilla, na pinangalawahan ng Kgg. Na Kagawad Rudy J. de Leon, napagpasiyahan ng Kapulungan ng [sic] PAGTIBAYIN at ideklarang napapaloob sa kapangyarihang taglay ng Sangguniang Bayan/ Panlungsod ang mga sumusunod na kapasiyahan:

Kap. Blg. 83-s-2004 (Ord. No. 04-s-2004), na may petsa Oktubre 25, 2004, na pinagtibay ng Sangguniang Bayan ng Guim[b]a, Nueva Ecija.[13]

Given this explicit approval by the SP, the appellate court held that "*there is no basis for the trial court to rule that 'the said amendment (referring to SB Ordinance No. 4-04 dated October 25, 2004) is not yet effected because of non*

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[13] *Id.* at 27-28, 114-115.

compliance [sic] *with the requirement of the law for the approval/authentication of the same by the HLURB or the Sangguniang Panlalawigan of Nueva Ecija.*'"[14]

The CA also held that Dela Cruz and Felipe have been precluded from claiming that they were not consulted before Resolution No. 33-04 converting Parumog's property for commercial purposes was passed, for they did not appeal from the RTC decision, and hence could not be made to benefit from the appeal filed by Parumog and the Guimba LGU.

The Issues

Dela Cruz and Felipe moved for reconsideration, which the CA denied in the assailed June 25, 2010 resolution; hence, this petition, which raises the following issues: 1) Whether or not the CA erred in barring dela Cruz and Felipe from raising the issue of non-consultation on the ground that they cannot be benefited by the appeal filed by Parumog and the Guimba LGU; 2) Whether or not the CA erred in reversing the trial court ruling on the ground of the validity and due approval of Resolution No. 33-04 and Ordinance No. 4-04; and 3) Whether or not the rights of the adjoining lot owners to health, a healthful and balanced ecology, and due process were violated.[15]

The Ruling of the Court

In an action for injunction, the plaintiff has to show that there is a right *in esse* that must be protected; and the act against which the injunction is directed to constitutes a violation of such right.[16] Furthermore, injunctive writs cannot be granted at the slightest sign of an alleged injury. In the antiquated but still leading case of *North Negros Sugar Co. v. Hidalgo*,[17] we said that:

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[14] *Id.* at 115.

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

[16] *City of Lapu-Lapu v. Phil. Economic Zone Authority,* 748 Phil. 473 (2014).

[17] 63 Phil. 664 (1936).

". . . An injunction will not be granted when good conscience does not require it, where it will operate oppressively or contrary to justice, where it is not reasonable and equitable under the circumstances of the case, or where it will tend to promote, rather than to prevent, fraud and injustice. . . ." ". . . a court of equity may interfere by injunction to restrain a party from enforcing a legal right against all equity and conscience. . . ." ". . . The comparative convenience or inconvenience of the parties from granting or withholding the injunction sought should be considered, and none should be granted if it would operate oppressively or inequitably, or contrary to the real justice of the case. This doctrine is well established."

"The power of the courts to issue injunctions should be exercised with great caution and only where the reason and necessity therefor are clearly established; and while this rule has been applied more frequently in the case of preliminary and mandatory injunctions, it applies to injunctions of all classes, and to restraining orders. . . ." (citations omitted)

"The writ of injunction will not be awarded in doubtful or new cases not coming within well-established principles of equity."[18]

x x x x x x x x x

[I]njunction, being an equitable remedy, the granting thereof is dependent upon the sound discretion of the court. It is only in clear cases of abuse of discretion on the part of the trial judge that review on appeal would be made. "There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issuing an injunction; it is the strong arm of equity, that never ought of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventing process of injunction."[19]

Jurisprudence has laid down four essential requisites for the issuance of an injunctive writ: (1) That the petitioner applicant must have a clear and unmistakable right; (2) That there is a

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[18] *Id.* at 678.

[19] *Id.* at 788.

material and substantial invasion of such right; (3) That there is an urgent and permanent necessity for the writ to prevent serious damage; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[20]

In the case at bar, the appellate court found that the trial court abused its discretion in issuing a permanent injunction against the memorial park project after finding that the Guimba LGU had passed a valid amendment to its zoning ordinance which paved the way for the construction of memorial parks in the territory of Barangay Cavite. Ordinance No. 4-04 provides:

SB ORDINANCE NO. 4-04 October 25, 2004

BE IT ORDAINED BY THE SANGGUNIANG BAYAN OF GUIMBA, NUEVA ECIJA, IN SESSION ASSEMBLED.

Section 1. Title and Authority. This ordinance shall be cited as the amendatory ordinance on the proposed location of new cemeteries in Guimba, Nueva Ecija, and is enacted pursuant to the provision of Section 46 (Amendments to the Zoning Ordinance) of Municipal Ordinance No. 15, series of 2000, otherwise known as the Local Zoning Ordinance of Guimba, Nueva Ecija.

Section 2. Proposed site of new cemetery Barangay Cavite, being within the urban area zone classification, is hereby included as proposed location of new cemeteries in Guimba, Nueva Ecija in the Development Master Plan of Guimba, Nueva Ecija (2001-2005).

Section 3. Repealing Clause. All ordinances, rules, regulations and promulgations in conflict with the provisions of this resolution are hereby repealed, reversed, amended or modified accordingly.

Section 4. Effectivity. This ordinance shall take effect upon approval by the [H]LURB or the Sangguniang Panlalawigan of Nueva Ecija.[21]

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[20] *Bicol Medical Center v. Botor,* 819 Phil. 447 (2017), citing *St. James College of Parañaque v. Equitable PCI Bank,* 641 Phil. 452, 466 (2010), *Biñan Steel Corporation v. Court of Appeals,* 439 Phil. 688, 703-704 (2002) and *Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority,* 393 Phil. 843, 859 (2000).

[21] *Rollo*, pp. 191-192.

It is clear from the quoted passage that all the ordinance does is to allow new cemeteries to be built in Barangay Cavite. There is nothing in the ordinance amounting to an approval or clearance of Parumog's proposed memorial park project, which must still comply with the applicable regulations, specifically HLURB Resolution No. 681-00, or the Amended Rules and Regulations for Memorial Parks/Cemeteries. Section 2 of said HLURB Resolution sets out the process and documentary requirements for the approval of a memorial park or cemetery project, *viz.*:

SECTION 2. Application for Approval of Memorial Park/Cemetery Plan. — Every registered owner or developer of a parcel of land who wishes to convert the same into a memorial park/cemetery shall apply with the Board or city/municipality concerned for the approval of the memorial park/ cemetery plan by filing the following:

I. Approval of the Preliminary Development Plan

For all projects located in cities or municipalities with or without a Land Use Plan and/or Zoning Ordinance, a preliminary approval shall be required. Copies of the following shall be submitted in duplicate to the city/municipality concerned.

A. Site Development Plan/Scheme to be approved should be accessible to Persons With Disabilities (PWDs) in accordance with BP 344 otherwise known as the Accessibility Law and the Magna Carta for disabled persons (RA 7277) reflecting therein the layout of streets, pathways, plots, parking areas, support facilities, signages and other features in relation to existing site condition using a scale ranging from 1:200 to 1:2,000 duly signed and sealed by a licensed environmental planner.

B. 2 sets of the following documents duly signed and sealed by a licensed geodetic engineer:

1. Vicinity map/location map at a scale of 1:10,000 with a radius of 500 meters from the project site indicating existing utilities such as main traffic arteries, drainage system and outfall, etc. and community facilities like church, school and housing areas among others.

2. Topographic Plan to include existing conditions as follows:

a. Property boundary lines, bearing and distances;

b. Streets and easements, right-of-way width and elevation on and adjacent to the project;

c. Ground elevation/contour of the site; for ground that slopes less than 2%, indicate spot elevations at all breaks in grade, along all drainage channels and at selected points not more than 30 meters apart in all directions; for ground that slopes more than 2%, indicate contours with an interval of not more than 0.5 meter for more detailed preparation of plans and construction drawings.

d. Other conditions on the land: water courses, marshes, rock outcrops, wooded areas, isolated preservable trees 0.30 meters or more in diameter, houses and other significant features;

e. Proposed public improvements: highways or other major improvements planned by public authorities for future construction on or near the project.

C. Zoning Certification issued by HLURB or city/municipality concerned.

D. Certified true copy of Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage (CNC) duly issued by the Department of Environmental and Natural Resources (DENR).

E. Certified true copy of conversion order or exemption clearance from the Department of Agrarian Reform (DAR).

F. Certified true copy of Title and Survey Plan.

Approval of the preliminary memorial park/cemetery plan shall be valid only for a period of 180 days from date of approval. A revalidation can be availed of only once after said period.

II. Approval of Final Memorial Park/Cemetery Plan

After the preliminary approval of the Memorial Park/Cemetery the owner or developer shall proceed with the preparation and submission to the city/municipality concerned in duplicate the following:

A. Final Memorial Park/Cemetery Plan consisting of the site development plan at any of the following scales: 1:200 or 1:1,000 or any scale not exceeding 1:2,000 indicating the following duly signed and sealed by a licensed environmental planner:

1. Lay-out of roads right-of-way width and gradient, easements and similar data for alleys, if any;

2. Plot boundaries, numbers, total land area and block numbers; (verified survey returns of mother title, sections and blocks including number of lots per block in each section and technical descriptions of road lots, open spaces, facilities, and blocks).

3. Site date, total land area, number of saleable plots, typical plot size, areas allocated for roads and pathways, and other facilities amenities.

B. Engineering plans duly signed and sealed by a licensed civil engineer passed on applicable Engineering Code and Design Criteria in accordance with the following:

1. Profile derived from existing topographic map duly signed and sealed by a geodetic engineer showing the vertical control, designed grade, curb elements and all information needed for construction.

2. Typical roadway sections showing relative dimensions and sloped of pavements, gutters, sidewalks, shoulders, benching and others.

3. Details of roadway showing the required thickness of pavement, sub-grade treatment and sub-base on the design analysis.

C. Storm drainage duly signed and sealed by a licensed sanitary engineer of civil engineer.

1. Profile showing the hydraulic gradients and properties of the main lines including structures in relation with the road grade line.

2. Details of drainage and miscellaneous structures such as various types of manholes, catch basins, inlets (curb, gutter and drop), culverts and channel lining.

D. Centralized or combined from storm and sewer system duly signed and sealed by licensed sanitary engineer.

E. Site grading plan duly signed and sealed by a licensed civil engineer.

Plans with the finished contour lines superimposed on the existing ground the limits of earthwork embankment slope, cut slopes, surface drainage, drainage outfalls and others.

F. Electrical plan and specifications duly signed and sealed by a licensed professional electrical engineer and duly approved by the city/municipal electrical engineer.

G. Landscaping plan indicating plant/tree species and other natural/man-made landscaping features e.g. lagoon, garden, benches, etc. duly signed and sealed by a licensed landscape architect.

H. Summary of Project Study indicating market, source/s of fund, statement of income, cash flow and work program.

I. Certified True Copy of Title or other evidence of ownership or intent to sell and authority to develop signed by the owner, Tax Declaration and current real estate tax receipt.

J. Clearances/Permits/Certifications from other agencies applicable to the Project:

1. Clearances/Permits from National Water Resources Board (NWRB)

a. Clearance stating that the memorial park/cemetery is not located on ground where the water table is not higher than 4.50 meters below the ground surface.

b. Water permit whenever a well within the project site shall be dug.

c. Permit to operate the wall.

2. Certified True Copy of Conversion Order or Exemption Clearance from the Department of Agrarian Reform (DAR) authorizing a change in use from agricultural to non-agricultural, where applicable.

3. Permit from the Department of Public Works and Highways (DPWH) when necessary *e.g.* when opening an access to a controlled traffic artery.

4. Initial and operational clearances from the Department of Health.

5. Certified True Copy of Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage (CNC) duly issued by the Department of Environment and Natural Resources (DENR).

K. Joint affidavit of owner/developer and licensed environmental planner that the memorial park/cemetery plan conforms to the standards and requirements of these rules and that development thereof shall be made in accordance with the program submitted to the Board or city/municipality concerned.

L. List of names of duly licensed professional who signed the plans and other similar documents in connection with application filed with HLURB or city/municipality concerned indicating the following information:

1. Surname;

2. First Name;

3. Middle Name;

4. In case of married women professional also their maiden name; and

5. Professional license number, date of issue and expiration of its validity;

6. Professional tax receipt and date of issue.

If the application for the project is physically feasible and the plan complies with the zoning ordinance of the city or municipality where it is situated and with these rules, the project shall be issued a development permit issued by the Board or city/municipality concerned upon payment of the prescribed processing fee and under such conditions as may be imposed by the Board or city/municipality concerned upon payment of the prescribed processing fee and under such conditions as may be imposed by the Board or city/municipality concerned. A final approval/development permit shall be valid for a period of 2 years from date of issue, however, if physical development such as clearing and grubbing, road excavation, filling and compaction, etc. is not commenced within said period, the grantee of the permit may apply for its revalidation within the next succeeding year.

If development permit expires, no development shall be allowed unless a new application for approval is filed.

While Parumog did obtain a Locational Clearance from the Guimba LGU,[22] there is no indication in the record that Parumog has complied with all the other requirements set by HLURB Resolution No. 681-00. During trial, Parumog submitted the following exhibits:

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

x x x Exhibit "1", Kapasiyahan Blg. 02-2004; Exhibit "1-A", 2nd page; Exhibit "2", Minutes, Public Hearing; Exhibit "2-A", Signatures; Exhibit "3", Certification of DTI; Exhibit "4", Certification of Brgy. Captain of Brgy. Cavite; Exhibit "4-A", Signature of Brgy. Captain; Exhibit "5", Certification of Municipal Health Officer; Exhibit "5-A", Signature; Exhibit "6" Certification of HLURB; Exhibit "6-A", Signature; Exhibit "7", Development Permit; Exhibit "7-A", Signature of Editha U. Barrameda; Exhibit "8" - Certificate Registration; Exhibit "8-A", Signature of Editha U. Barrameda; Exhibit "9", License to Sell; Exhibit "9-A", Signature; Exhibit "10", Environment Bureau Certification Indorsement; Exhibit "11", Environmental Compliance Certificate; Exhibit "11-A", Page 2; Exhibit "12", "12-A", "12-B" and "12-C", Affidavit of Signature of residents of Brgy. Cavite (public consultation); Exhibit "13", "13-A", "13-C", "13-D" and "13-E", Finding of DENR, Mines and Geo Science Bureau; Exhibit "14", Certification of Municipal Engineer; Exhibit "14-A", Signature of Municipal Engineer Jose Mateo[.]

x x x x x x x x x

Exhibit "20" – the Kapasyahan Blg. 181, s-2004 by the Sangguniang Panlalawigan ng Nueva Ecija which affirms *in toto* Kapasyahan Blg. 02-2004 of the Sangguniang Barangay of Brgy. Cavite, Guimba, Nueva Ecija by way of re-adopting the same in the Sangguniang Bayan Kapasyahan Blg. 33-04;

Exhibit "20-A" – the Certification affirming the validity of said Resolution by the Sangguniang Panlalawigan of Nueva Ecija duly signed by the Kalihim ng Sangguniang Panlalawigan Atty. Tomas F. Lahom III;

Exhibit "21" – the Local Environmental Clearance Certificate (LECC) from the office of the governor granting certification to the defendant to pursue his proposal Memorial Park Project of the Guardian Angel Eternal Garden to be operated by Engr. Leopoldo V. Parumog dated November 15, 2004 and duly signed by Hon. Tomas N. Joson III, Governor of Nueva Ecija;

Exhibit "22" and "22-A" – the Sangguniang Bayan Resolution No. 83-4 dated October 25, 2004 consisting of two (2) pages which grants to Engr. Leopoldo V. Parumog the prosecution of the project known as Guardian Angel Eternal Garden on the basis of the Resolution of Local Zoning Revenue Committee (LZRC) as additional proposed location of new cemeteries as identified in the development master plan of Guimba, Nueva Ecija;

Exhibit "23", "23-A" and "23-B" – the application for Land Use Conversion involving a parcel of land situated at Brgy. Cavite, Guimba, Nueva Ecija with an agricultural area of 2.2828 hectares and covered by TCT No. N-3372 by the proponent of the project Engr. Leopoldo V. Parumog address to the Department of Agrarian Reform, regional office at San Fernando, Pampanga which grants the conversion of the land in question from agricultural to commercial classification and that consequently defendant has been issued TCT No. N-3372 and consequently a Tax Declaration as incidental thereto which is referred herein and marked as Exhibit "24";

x x x x x x x x x

x x x Exhibit "25" of the defendants, which is an Order issued by Lormelyn E. Claudio, Regional Director of the DENR, Environmental Management Bureau, addressed to Engr. Leopoldo V. Parumog, which states as follows:

> On 27 February 2004, this Office received a complaint on the proposed memorial park project from Hon. Narciso Nario. An Investigation was conducted in response to the complaint on 09 March 2004. Findings revealed that you started development activities without an Environmental Compliance Certificate (ECC), which is in violation of Philippine Environment Impact Statement System.
>
> A Notice of Violation (NOV) was issued to the developer on 30 March 2004 A series of meetings and public consultation was conducted to discuss and resolve the complaint.
>
> After complying with requirements, an ECC was issued to the project on 1 June 2004.

However, a Temporary Restraining Order (TR) and a Preliminary Injunction was issued by Hon. Napoleon R. Sta. Romana to discontinue the construction and development of the memorial park known as the Guardian Angles [sic] Eternal Garden located at Brgy. Cavite, Guimba, Nueva Ecija.

As such, by virtue of the Writ of Preliminary Injunction issued 21 July 2004, the Environmental Compliance Certificate (ECC) with Reference Code No. 03NE 040305 140214A is hereby SUSPENDED until such time the complaint is resolved.

You are likewise enjoined to attend the Technical Conference on 05 Sep 2005 at EMB R3 Office 4/F Mel-Vi Bldg., Olongapo-Gapan Rd., City of San Fernando, Pampanga.

SO ORDERED. 15 Aug 2005.[23]

The foregoing exhibits clearly show that Parumog is still in the process of obtaining all necessary regulatory approvals and submitting his memorial park project proposal to the Guimba LGU for *preliminary* approval. It should not be disputed that the Guimba LGU has the authority to make such approval, as this is clearly provided for not only in the aforequoted Section 2 of HLURB Resolution No. 681-00, but also in Section 447 of the Local Government Code, which vests the Guimba LGU, through its Sangguniang Bayan, with the following powers:

(2) (vii) Adopt a comprehensive land use plan for the municipality: Provided, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(2) (viii) Reclassify land within the jurisdiction of the municipality, subject to the pertinent provisions of this Code;

(2) (vii) Adopt a comprehensive land use plan for the municipality: Provided, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(2) (viii) Reclassify land within the jurisdiction of the municipality, subject to the pertinent provisions of this Code;

x x x x x x x x x

(4) (ix) Regulate the establishment, operation, and maintenance of funeral parlors and the burial or cremation of the dead, subject to existing laws, rules and regulations.

The Court now goes back to the requisites for an injunctive writ, viewed in the light of the facts established in the record and the allegations of the complaint. As for the first requisite, jurisprudence affirms the existence of the constitutional rights

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[23] *Id.* at 304-306.

to health, healthful ecology, and due process, which are enforceable without need of legislation.[24] However, as for the second requisite, *i.e.*,the existence of a material and substantial invasion of such right, the complaint miserably fails. The records clearly show that the ultimate act complained of and sought to be enjoined by petitioners — the construction of the Guardian Angel Eternal Garden — has not happened yet.[25] It must be reiterated that neither Resolution No. 33-04 nor Ordinance No. 4-04 serves as a final approval of Parumog's proposal and there is nothing in the record to show that Parumog's proposal to build the Guardian Angel Eternal Garden has been given final clearance and approval by the Sangguniang Bayan of Guimba in accordance with HLURB Resolution No. 681-00. Without final approval from the Guimba LGU, Parumog's proposal cannot proceed; hence, there cannot be a material and substantial invasion of petitioners' rights, for the realization of the very act alleged to be an invasion of such rights remains contingent upon the submission of the final memorial park plan and the approval thereof by the Guimba LGU.

Furthermore, both courts *a quo* have found that petitioners actively participated in the public hearings conducted in the process of reclassifying Parumog's property as a commercial area. They have made their objections known to the Guimba LGU, which, nevertheless, went ahead and reclassified the area to allow the memorial park to be built.[26] Thus, We concur in the conclusion of both courts *a quo* that petitioners were not deprived of due process in the matter of the reclassification of Parumog's property.

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[24] On the right to health, see *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1 (2014). On the right to a healthful and balanced ecology, see *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993; *Republic v. Pagadian City Timber Co., Inc.*, 587 Phil. 42 (2008); and the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC, April 13, 2010). The existence and enforceability of the right to due process is too fundamental to require citation.

[25] *Rollo*, pp. 295-296.

[26] *Id.* at 311-314.

Likewise, the fourth requisite, *i.e.*, the lack of another ordinary, speedy, and adequate remedy to prevent the infliction of irreparable injury has not been satisfied as well. At the risk of being repetitive, it must be reiterated that, under HLURB Resolution No. 681-00, Parumog must submit a preliminary development plan, which must be approved by the LGU. Once the preliminary development plan has been approved, Parumog must then submit a final memorial park plan which must likewise be approved by the LGU. There is no indication in the records that the Guimba LGU has already approved any preliminary development plan or final memorial park plan submitted by Parumog. Among the required components of a final memorial park plan are:

J. Clearances/Permits/Certifications from other agencies applicable to the Project:

1. Clearances/Permits from National Water Resources Board (NWRB)

   a. Clearance stating that the memorial park/cemetery is not located on ground where the water table is not higher than 4.50 meters below the ground surface.

   b. Water permit whenever a well within the project site shall be dug.

   c. Permit to operate the well.

2. Certified True Copy of Conversion Order or Exemption Clearance from the Department of Agrarian Reform (DAR) authorizing a change in use from agricultural to non-agricultural, where applicable.

3. Permit from the Department of Public Works and Highways (DPWH) when necessary, *e.g.*, when opening an access to a controlled traffic artery.

4. Initial and operational clearances from the Department of Health.

5. Certified True Copy of Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage (CNC) duly issued by the Department of Environment and Natural Resources (DENR).

Clearly, petitioners may still air their health and ecological concerns over the project before the DENR, DAR or the DPWH,

since Parumog still has to obtain permits from these agencies if his memorial park project is to proceed. While, it may be said that the petitioners' grievances have already been heard by the Guimba LGU, there is no showing that they have to completely exhausted their remedies with the pertinent agencies of national government. Verily, records show that Parumog has been summoned to appear before the DENR-EMB because of a complaint filed against him by Justice Narciso Nario. There is nothing preventing petitioners from airing similar complaints before the DENR-EMB or other concerned agencies enumerated in the HLURB Resolution No. 681-00.

All told, the CA did not err in dismissing the complaint for injunction, as petitioners have failed to prove that their circumstances warrant the grant of such an extraordinary remedy.

IN VIEW OF THE FOREGOING PREMISES, the present petition is hereby **DENIED**. The February 26, 2010 Decision and the June 25, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 88238 are hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 200407. June 17, 2020]

LAND BANK OF THE PHILIPPINES, *petitioner*, *vs.* **GUALBERTO CATADMAN,** *respondent*.

SYLLABUS

1. CIVIL LAW; HUMAN RELATIONS; OBSERVATION OF HONESTY AND GOOD FAITH IN PERFORMANCE OF

DUTIES. — Article 19 of the Civil Code requires that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. This provision of law sets standards which must be observed in the exercise of one's rights as well as in the performance of its duties, to wit: to act with justice; give everyone his due; and observe honesty and good faith.

2. ID.; ID.; UNJUST ENRICHMENT. — 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."

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Batacan Montejo & Vicencio Law Firm for respondent.

D E C I S I O N

GAERLAN, *J.*:

Before this Court is a partial appeal by way of a Petition for Review on *Certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure questioning the March 18, 2011 Decision[1] and January 25, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 00131-MIN.

The factual background of the case is as follows:

On March 21, 1999, Land Bank of the Philippines (Land Bank) received the following Development Bank of the Philippines (DBP) Checks: (1) No. 1731263 in the amount of ₱8,500.00 payable to GCNK Merchandising, owned by respondent Gualberto Catadman (Catadman), to be credited to

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[1] *Rollo*, pp. 26-51; penned by Associate Justice Angelita A. Gacutan, with the concurrence of Associate Justices Rodrigo F. Lim, Jr. and Nina G. Antonio-Valenzuela.

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

his Land Bank Account No. 2562-0016-49; (2) No. 151837 in the amount of ₱100,000.00 payable to National Economic Development Authority (NEDA)-Regional Office XI and to be credited to its Land Bank Account No. 2562-001-46; and (3) No. 358896 in the amount of ₱6,502.68 payable to Benjamin S. Reyno (Reyno) and to be credited to his Land Bank Account No. 2561-0135-70. These three checks were all drawn by DBP Mati Branch and endorsed to Bajada Branch of Land Bank thru its Davao Branch.[3]

On May 26, 1999, all three checks were cleared. Two days later, however, NEDA's DBP Check No. 151837 and Reyno's DBP Check No. 358896 were erroneously credited to Catadman's account, while his DBP Check No. 1731263 was inadvertently credited twice to his account. Hence, the total amount of ₱115,062.68 was credited to his account.[4]

On June 25, 2001, Land Bank discovered the erroneous transactions, which prompted it to send a formal demand letter to Catadman for the return of the amount of ₱115,002.68 which represents the total amount credited to his account less the ₱8,500.00 which rightfully belonged to him. Catadman, however, did not heed Land Bank's letter.[5]

On October 8, 2001, Land Bank sent another demand letter to Catadman. Thereafter, there was an exchange of correspondence between them. Finally, in his February 11, 2002 letter, Catadman acknowledged that the amount was credited to his account and that he had already spent it. As a way of settlement, he promised to pay the amount of ₱2,000.00 monthly until the whole amount is returned.[6]

Catadman did as he promised. However, after paying an accumulated amount of ₱15,000.00, he stopped and refused to

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[3] *Id*. at 6, 63.

[4] *Id*. at 28.

[5] *Id*. at 8, 63.

[6] *Id*. at 54.

make further payments. The matter was referred to the legal counsel of Land Bank. Consequently, the bank sent its letter dated January 21, 2003 to Catadman demanding payment of the entire balance. Catadman failed to respond to the letter. Land Bank was thus constrained to file a case for collection of sum of money before the Municipal Trial Court in Cities (MTCC) of Davao City.[7]

The MTCC Ruling

The MTCC ruled that the obligation of Catadman to reimburse Land Bank the amount erroneously credited to his account was a natural obligation and not a civil obligation. Accordingly, the bank had no right of action to enforce such reimbursement against Catadman. It further ruled that the full reimbursement of the amount sought to be recovered by Land Bank depends upon the conscience of Catadman. It explained that if Catadman would not hearken to his conscience that he had availed of the money which did not rightfully and lawfully belong to him and would not continue to pay the balance, Land Bank must suffer its loss caused by its negligent employee. It advised Land Bank to pursue its employee for reimbursement instead.[8]

The MTCC dismissed the case in favor of Catadman in this wise:

> Conformably with all the foregoing premises, the complaint of the plaintiff is dismissed.
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> SO ORDERED.[9]

The RTC Ruling

Land Bank appealed the Decision[10] of the MTCC before the Regional Trial Court (RTC) which, in turn, reversed the

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

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

[9] *Id*. at 61.

[10] *Id*. at 53-61; penned by Judge Antonio P. Laolao, Sr.

same and ruled that Articles 19,[11] 22,[12] and 1456[13] of the Civil Code of the Philippines (Civil Code) are applicable to the case. It held that if Catadman had observed honesty and good faith as required by the said provisions, he should have returned the amount of ₱115,002.68 instead of keeping quiet about receiving the money. It also ruled that since Catadman knew that the money was not his, Article 1456 obliges him as a trustee to take care of the money which through mistake came into his hands.[14]

The dispositive portion of the RTC Decision is as follows:

> WHEREFORE, the April 2, 2004 decision of the first level court is reversed. The appellee shall pay the appellant one hundred thousand and two pesos and sixty eight centavos (₱100,002.68) plus legal interest to be computed from June 1, 2001 until fully paid and the costs of suit.
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> SO ORDERED.[15]

The CA Ruling

Not satisfied with the said judgment, Catadman filed a petition for review before the CA assailing the decision of the RTC which reversed the decision of the MTCC.

Primarily anchoring its decision on the negligence of the bank employee and the fiduciary nature of Land Bank's business,

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

[12] **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.

[13] **Art. 1456.** 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.

[14] *Rollo*, p. 64.

[15] *Id*. at 65.

the CA ruled that Land Bank must, as a consequence, bear its loss. In explaining its decision, the CA quoted the ruling in the case of *BPI Family Bank v. Franco*[16] which cited the ruling in the landmark case of *Simex International (Manila), Inc. v. CA*.[17] Particularly basing its decision on the role of the banks in the economic life of every civilized nation, the CA held that "[t]o allow Land Bank to secure a reimbursement of the subject amount would open the floodgates of public distrust in the banking industry."[18]

The appellate court also considered into account the bad faith on the part of Catadman when he appropriated the amount subject of this case.[19] Taking into consideration both the negligence of Land Bank and the bad faith of Catadman, the CA applied the ruling in a series of cases.[20] It adopted the 60-40 ratio and disposed of the case thus:

> WHEREFORE, the petition is partially GRANTED. The appealed Decision of the Regional Trial Court, Branch 15, Davao City is AFFIRMED with the following MODIFICATIONS: [a] petitioner Gualberto Nador Catadman shall pay the private respondent Land Bank of the Philippines forty percent (40%) of the sum of ₱115,062.68, which corresponds to the amount of DBP Check Nos. 1731263, 1513337 and 358896 erroneously credited to petitioner's Land Bank account, less ₱15,000.00 which petitioner had already paid to private respondent, with interest at 6% per annum from the time of the filing of the complaint until its full payment before the finality of judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time the judgment became

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[16] 563 Phil. 495, 508-509 (2007).

[17] 262 Phil. 387 (1990).

[18] *Rollo*, p. 44.

[19] *Id*. at 49.

[20] *Id*. at 49-50; *c.f. Central Bank of the Philippines v. Citytrust Banking Corporation*, 597 Phil. 609 (2009); *Bank of America NT and SA v. Philippine Racing Club*, 611 Phil. 687 (2009); *The Consolidated Bank and Trust Corporation v. Court of Appeals*, 457 Phil. 688 (2003); *Philippine Bank of Commerce, now absorbed by Philippine Commercial International Bank v. Court of Appeals*, 336 Phil. 667 (1997).

final and executory until fully satisfied; [b] the remaining 60% of ₱115,062.68 shall be borne by private respondent Land Bank of the Philippines. Accordingly, the case is ordered remanded to the RTC, Branch 15, Davao City only for the purpose of fixing the exact computation of petitioner Gualberto Nador Catadman's liability.

SO ORDERED.[21]

A motion for reconsideration of the CA Decision was filed by Catadman seeking for its reversal. Land Bank filed its comment/opposition to the said motion and its own motion for reconsideration.

Finding that all the parties' arguments were a mere rehash of the arguments contained in their previous pleadings, the CA denied both motions of reconsideration.[22]

Issues

I.

The Honorable Court of Appeals erred in not affirming *in toto* the January 26, 2005 Decision of the Regional Trial Court, Branch 15, Davao City, which reversed and set aside the September 7, 2004 Decision of the Municipal Trial Court in Cities, Branch 6, Davao City.

II.

The Honorable Court of Appeals erred in not finding the petitioner liable for the full amount mistakenly credited despite concluding that the latter was unjustly enriched at the expense of Land Bank and acted in bad faith.[23]

The Court's Ruling

Land Bank, in its petition before this Court, questions the application by the CA of the pronouncement of this Court in

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[21] *Id*.

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

[23] *Id*. at 12.

the case of *BPI Family Bank v. Franco*[24] which cited the case of *Simex International (Manila), Inc. v. CA*.[25] It avers that the doctrine in *Simex* and *BPI Family Bank* was erroneously applied in favor of Catadman despite the dissimilarity between the factual circumstances of the mentioned cases and that of the present case.

This Court agrees.

Based on the established facts of the case, Catadman, as a depositor, did not suffer any financial loss or damage when his account was credited with an additional ₱115,002.68. It was the bank which suffered the loss albeit it was primarily caused by the negligent act of its employee. Truth be told, however, that Catadman was unjustly enriched when he chose to not return and just appropriated to himself the ₱115,002.68 knowing fully well that the same does not belong to him.

Unlike Catadman, *Franco*, the depositor in the case of *BPI Family Bank*, directly suffered the financial loss when his bank froze his accounts and dishonored his checks without any right to do so. It merely based its decision on suspicion that the funds in Franco's account were proceeds of the multi-million peso scam he was allegedly involved in. Similarly, *Simex* suffered humiliation and financial loss due to Traders Royal Bank's negligence. The checks issued by Simex were all dishonored by the bank despite having sufficient funds in its account to clear the same.

Verily, this Court recognized that *Franco* and *Simex* suffered injury because of their bank's negligence that caused the dishonor of the checks they had respectively issued. Their banks' blunder caused them not just a little embarrassment as depositors but also financial loss and perhaps even civil and criminal litigation.[26] It must also be emphasized that *Franco* and *Simex* were both not at fault in dealing with their banks.

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[24] *Supra* note 16.

[25] *Supra* note 17.

[26] 262 Phil. 396 (1990).

Here, Land Bank had caused no loss or damage to Catadman. In truth, Catadman is undeniably at fault when he appropriated the ₱115,002.68 even knowing fully well that it did not belong to him.

Being so, the doctrine in the cases of *Simex* and *BPI Family Bank* cannot be utilized by Catadman to protect himself as the cases are not on all fours. He shall not be permitted to consciously twist the jurisprudence for his protection, to unduly benefit therefrom, and to unjustly enrich himself at the expense of Land Bank. As correctly stated by the CA, Catadman shall not be allowed to hide behind the cloak of Land Bank's negligence in order to evade his obligation to return the amount of the subject checks. To sustain Catadman's argument would be to countenance a clear case of unjust enrichment.[27] To agree with his arguments would result in an absurd situation where a dishonest man is rewarded for keeping his silence about receiving money he does not own and choosing to appropriate the same for himself.

Catadman, in his letter dated February 1, 2002, admitted that he had spent the whole amount credited to his account and promised to pay the amount of ₱2,000.00 monthly until the amount is fully settled. True to his word, he paid monthly. However, for reasons only known to him, Catadman stopped further payments. When the balance of the amount was demanded from him, he refused to settle. These facts make the dishonesty and bad faith on the part of Catadman more than evident. Further, the bank employee's negligence will not change the fact that the money Catadman received through his account does not belong to him.

Article 19 of the Civil Code requires that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. This provision of law sets standards which must be observed in the exercise of one's rights as well as in the

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[27] *Rollo*, p. 48.

performance of its duties, to wit: to act with justice; give everyone his due; and observe honesty and good faith.[28]

Moreover, under Article 22 of the Civil Code, "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." 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."[29]

The principle of unjust enrichment has two conditions. First, a person must have been benefited without a real or valid basis or justification. Second, the benefit was derived at another person's expense or damage.[30]

In this case, Catadman received the amount of ₱115,002.68 through his bank account when the same was erroneously credited with the amount. Notwithstanding the knowledge that the money was not his, he spent the same and kept his silence about it at the expense of Land Bank.

Pursuant to Article 22 of the Civil Code, Catadman must unconditionally return the ₱115,002.68 to Land Bank, less the ₱15,000.00 he has already paid. Contrary to his claim, the doctrine on the fiduciary nature of banking institutions in the cases of *Simex* and *BPI Family Bank* does not preclude Land Bank from recovering the money from him. The ruling of this Court would have been different if it were NEDA and Reyno who filed a complaint against Land Bank.

Finally, this Court reprimands Land Bank for its negligence. This shall serve as a reminder to Land Bank that the law imposes on banks high standards in view of the fiduciary nature of

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[28] *Dr. Alano v. Magud-Logmao*, 731 Phil. 407, 432 (2014).

[29] *Loria v. Muñoz*, 745 Phil. 506, 517 (2014).

[30] *Id.*; *Locsin II v. Mekeni Food Corporation*, 722 Phil. 886, 900 (2013).

banking. Section 2 of Republic Act (R.A.) No. 8791,[31] declares that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance."[32]

The bank is under obligation to treat the accounts of all its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.[33] This fiduciary relationship means that the bank's obligation to observe "high standards of integrity and performance" is deemed written into every deposit agreement between a bank and its depositor.[34] The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family.[35] Likewise, Section 2 of R.A. No. 8791 prescribes the statutory diligence required from banks — that banks must observe "high standards of integrity and performance" in servicing their depositors.[36]

WHEREFORE, the petition for review is **GRANTED**. The Court of Appeals' Decision dated March 18, 2011 and Resolution dated January 25, 2012 in CA-G.R. SP No. 001131-MIN are hereby **REVERSED** and **SET ASIDE**. Respondent Gualberto Catadman shall pay petitioner Land Bank of the Philippines the amount of ₱100,002.68 in actual damages, with interest of twelve percent (12%) interest *per annum* from the filing of the complaint until June 30, 2013, and six percent (6%) interest *per annum* from July 1, 2013 until full payment.[37]

SO ORDERED.

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

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[31] THE GENERAL BANKING LAW OF 2000.

[32] *The Consolidated Bank and Trust Corporation v. CA*, 457 Phil. 688, 705 (2003).

[33] *Id.* at 706.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Nacar v. Gallery Frames*, 716 Phil. 267, 278-280 (2013).

SECOND DIVISION

[G.R. No. 212942. June 17, 2020]

BENITO ESTRELLA *y* GILI, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; SHOULD COVER ONLY QUESTIONS OF LAW AS THE SUPREME COURT IS NOT A TRIER OF FACTS. — [T]he Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. Petitions for review on *certiorari* under Rule 45 should cover only questions of law as the Court is not a trier of facts. The Court accords finality the factual findings of trial courts, especially when, as in the case at bench, such findings are affirmed by the appellate court. This factual determination of the trial court deserves great weight and shall not be disturbed on appeal. Although the rules do admit exceptions, not one of them is applicable in the instant case. Thus, the Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings before the RTC.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT WHICH INVOLVE THE CREDIBILITY OF WITNESSES ARE GENERALLY ACCORDED WITH RESPECT, IF NOT FINALITY BY THE APPELLATE COURT. — The well-settled rule in this jurisdiction is that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect. Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed

their deportment and mode of testifying during the trial. The task of taking on the issue of credibility is a function properly lodged with the trial court. Thus, generally, the Court will not recalibrate evidence that had been analyzed and ruled upon by trial court. After a judicious perusal of the records of the instant appeal, the Court finds no compelling reason to depart from the RTC's and CA's factual findings.

3. CRIMINAL LAW; PRESIDENTIAL DECREE 1612 (THE ANTI-FENCING LAW); ELEMENTS; THE LAW ON FENCING DOES NOT REQUIRE THE ACCUSED TO HAVE PARTICIPATED IN THE CRIMINAL DESIGN TO COMMIT, OR TO HAVE BEEN IN ANY WISE INVOLVED IN THE COMMISSION OF, THE CRIME OF ROBBERY OR THEFT. — Under Section 2 of PD 1612, Fencing is defined as the *act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.* The law on Fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of, the crime of robbery or theft. The essential elements of the offense are: 1. A crime of robbery or theft has been committed; 2. The accused, who is not a principal or accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime; 3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery of theft; and 4. There is on the part of the accused, intent to gain for himself or for another.

4. ID.; ID.; FENCING IS A *MALUM PROHIBITUM*, AND MERE POSSESSION BY THE ACCUSED OF ANY ITEM OR ANYTHING OF VALUE WHICH HAS BEEN THE SUBJECT OF ROBBERY OR THEFT CREATES A *PRIMA FACIE* PRESUMPTION OF FENCING. — [T]he Court rules that the RTC and the CA committed no error in finding the petitioner's intent to gain. There is no question that the pails of Skydrol

Hydraulic Fluid were found in possession of petitioner. The positive identification by PO3 Bolido and Yao that the petitioner was caught in possession of the subject pails of skydrol, and the pieces of evidence pointing to PAL as the owner of these pails of hydraulic fluid gave rise to a presumption of Fencing under the law. x x x Fencing is a *malum prohibitum*, and PD 1612 creates a *prima facie* presumption of Fencing from evidence of possession by the accused of any good, article, item, object or anything of value, which has been the subject of robbery or theft.

5. ID.; ACTS *MALA IN SE* AND ACTS *MALA PROHIBITA*, DISTINGUISHED. — Criminal law has long divided crimes into acts wrong in themselves called "acts *mala in se*," and acts which would not be wrong but for the fact that positive law forbids them, called "acts *mala prohibita*." This distinction is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts *mala in se*, the intent governs, but in acts *mala prohibita*, the only inquiry is, has the law been violated? When an act is illegal, the intent of the offender is immaterial.

6. REMEDIAL LAW; EVIDENCE; DENIAL OR FRAME-UP; CANNOT PREVAIL AGAINST THE POSITIVE TESTIMONY OF THE PROSECUTION WITNESSES. — [I]t is a prevailing doctrine that a defense of denial or frame-up cannot prevail against the positive testimony of the prosecution witnesses. Petitioner's defense of denial which is unsupported and unsubstantiated by clear and convincing evidence is viewed as negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over the convincing and straightforward testimonies of PO3 Bolido and Yao.

7. CRIMINAL LAW; PRESIDENTIAL DECREE 1612 (THE ANTI-FENCING LAW); PENALTY; IF THE SPECIAL PENAL LAW ADOPTS THE NOMENCLATURE OF THE PENALTIES UNDER THE REVISED PENAL CODE (RPC), THE ASCERTAINMENT OF THE INDETERMINATE SENTENCE WILL BE BASED ON THE RULES DEFINED UNDER THE RPC.— Under Section 3(a) of PD 1612, the penalty for Fencing is *prision mayor* in its maximum period if the value of the property exceeds ₱22,000.00, adding one year for each additional ₱10,000.00 x x x. While the offense of Fencing is defined and penalized by a special penal

> law, the penalty provided therein is taken from the nomenclature in the Revised Penal Code (RPC). x x x Evidently, if the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules defined under the RPC. Since the value of the three pails of Skydrol is ₱27,000.00 the penalty to be imposed is *prision mayor* in its maximum period which penalty ranges from ten (10) years and one (1) day to twelve (12) years. Applying the foregoing and considering that there are neither mitigating nor aggravating circumstances present in the case at bench, the penalty of *prision mayor* in its maximum period shall be imposed in its medium period which is ten (10) years, eight (8) months and one (1) day to eleven (11) years and four (4) months. Thus, the Court finds it proper to sentence the petitioner to suffer the penalty of imprisonment for an indeterminate period of ten (10) years, eight (8) months and one (1) day *of prision mayor*, as minimum, to eleven (11) years and four (4) months of *prision mayor*, as maximum.

APPEARANCES OF COUNSEL

Malate, Madrigal and Mercado Law Firm for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated November 20, 2013 and the Resolution[3] dated June 3, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 33958 which affirmed the Decision[4] dated

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[1] *Rollo*, pp. 71-127.

[2] *Id.* at 6-40; penned by Associate Justice Amy C. Lazaro-Javier (now a Member of the Court) with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring.

[3] *Id.* at 42.

[4] *Id.* at 168-192; penned by Presiding Judge Pedro De Leon Gutierrez.

February 15, 2010 of Branch 119, Regional Trial Court (RTC), Pasay City convicting Benito Estrella *y* Gili (petitioner) for violating Presidential Decree No. (PD) 1612, otherwise known as the "Anti-Fencing Law."

The facts are as follows:

An Information[5] dated June 29, 1999 charged petitioner with the following:

> "That on or about June 22, 1999 at Pasay City, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there willfully, unlawfully and feloniously acquire, possess, sell and dispose of three (3) pails of Skydrol LD 4 hydraulic fluid bearing manufacturer lot number IAI/Y2.4/300/98USA/M-4122, valued at approximately ₱27,000.00 knowing or should have known to him that said Skydrol LD 4 hydraulic fluid was stolen or otherwise derived from the proceeds of the crime of robbery or theft in violation of Section 2 of Presidential Decree No. 1612, to the damage and prejudice of the owner, Philippine Airlines.
>
> CONTRARY TO LAW."[6]

Upon arraignment, petitioner pleaded not guilty. Trial on the merits ensued.

The prosecution presented two witnesses, namely: (1) Elvis Yao (Yao), Vice President for Fuel Management of Philippine Airlines (PAL); and (2) Police Officer III Raul Bolido (PO3 Bolido).

Records show that PAL is an importer of the fast fluid system, Skydrol Hydraulic Fluid (Skydrol), from its manufacturer Solutia, Inc. (Solutia) based in the United States.[7] According to PAL, Skydrol is not available in the local market per Solutia's letter/certification[8] dated June 17, 1999.

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[5] *Id.* at 195-196.

[6] *Id.* at 195.

[7] *Id.* at 291.

[8] Records, p. 304.

In 1998, PAL's Maintenance and Engineering Management Information noticed that its acquisition and use of Skydrol remained unusually high notwithstanding the downsizing of its operations. PAL had downsized its fleet from 52-21 because of financial crisis; still, there was a noted high usage of Skydrol. Upon investigation, Yao found that Aerojam Supply and Trading (Aerojam), a sole proprietorship owned by petitioner and his wife, Melinda, was selling five gallons of Skydrol to Air Philippines at a low price. He initially doubted the information since PAL was the sole proprietor of Skydrol in five-gallon pails. Nonetheless, he requested the police to conduct surveillance operation on Aerojam.[9]

On June 19 and 22, 1999, the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG) conducted a surveillance operation.[10] Prior thereto, PAL gave the police operatives a sample of Skydrol, the manufacturer's lot number, and a report of its delivery to Air Philippines.[11] They received an information that the subject item was to be delivered in the premises of the Air Philippines on board a jeep. On June 19, 1999, the team spotted an owner type jeep at Villamor Airbase. PO3 Bolido took photographs[12] of the jeep and its driver, who turned out to be petitioner.[13] The photographs showed petitioner stopping at Air Philippines and alighting from the jeep.[14] On June 22, 1999, the police operatives apprehended petitioner, who was about to deliver three pails[15] of Skydrol to Air Philippines. When asked to present documents for the merchandise he was carrying, petitioner could not produce any. He pointed to a certain Jupel as having custody of the documents,

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[9] *Rollo*, pp. 291-292.

[10] *Id.* at 10.

[11] Records, pp. 309-310.

[12] *Id.* at 298-299.

[13] *Id.* at 290.

[14] *Id.*

[15] *Id.* at 305-308.

but the latter did not appear.[16] Later, Yao confirmed that the pails of Skydrol found in petitioner's possession were part of PAL's stock.

Petitioner, on the other hand, testified that he is a salesman who sells aircraft spare parts, lubricants, accessories, and chemicals related to aviation. He has been running Aerojam for almost 23 years and he transacted with several private aircraft owners and airline companies including Cebu Pacific, Air Philippines, Grand Air, and Asian Spirit. On June 22, 1999, at around 9:00 a.m., a certain Janet asked him to visit Air Philippines because they needed aircraft spare parts and accessories. However, because of prior commitment, he was unable to go there. After two hours, at about 11:00 a.m., Janet called again and informed him that they needed the requested items immediately. Before going to the hangar, at 4:00 p.m., he had to go through the security guards of Air Philippines and the soldiers of the Air Force. He told them that he was going to pick up a list of requirements from Air Philippines office and that he was not bringing any supplies. As he walked towards the hangar, he was accosted by three PNP-CIDG personnel. He then learned that PAL had a complaint against him involving the three pails of Skydrol he allegedly stole from PAL.[17]

Later, the police officers brought him to Camp Crame where he was photographed and processed for fingerprinting. Contrary to Yao's allegation, he asserted that PAL was not the only airline using Skydrol in the country considering that other airlines are also using the same hydraulic fluid.[18] Accordingly, he got his supply of Skydrol from International Business Aviation, Inc. (IBAI) but the company had already closed.[19] He bought 20 pails of Skydrol from IBAI from ₱8,000.00 to ₱9,000.00 and sold them for ₱10,000.00 each.[20]

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[16] *Rollo*, p. 11.

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

[18] *Id.* at 13-14. See Certification from Asian Spirit, Records, p. 417.

[19] *Id.* at 14.

[20] *Id.* at 15.

Alvin Ygona, Sales and Marketing Manager of Global Air Tech, likewise testified for petitioner. He narrated that he used to work as the Philippine representative of Avial, Inc. from 1997 to 1999 and was assigned in its Singapore branch up to 2004. Avial, Inc. is a global distributor of chemical raw materials of aircraft parts, including Skydrol. According to him, the lot numbers on the pails were not specifically assigned to or owned by a particular airline since several customers received the same lot number. As to the manufacturer's lot number, it was the same except for the date or year when it was manufactured. He affirmed that Solutia had many branches in the Asia Pacific region, and many local companies acted as its brokers to distribute or sell their aircraft products like Skydrol.[21]

The RTC found petitioner guilty beyond reasonable doubt of the crime of Fencing under PD 1612, to wit:

> WHEREFORE, finding accused BENITO ESTRELLA *y* GILI guilty beyond reasonable doubt of violation of Presidential Decree No. 1612, he is hereby sentenced to suffer a prison term of ten (10) years and one (1) day of *prision mayor* in its maximum period as minimum to ten (10) years and eight (8) months of *prision mayor* in its maximum period as maximum.
>
> SO ORDERED.[22]

Aggrieved, petitioner appealed the case to the CA.

On November 20, 2013, the CA rendered the assailed Decision upholding the findings of the RTC. It held that petitioner knew or should have known that the three Skydrol pails were from an illegal source.[23] Moreover his inexplicable possession of the valuable items can only be interpreted to mean that he intended to profit from them.[24]

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

[22] *Id.* at 192.

[23] *Id.* at 36.

[24] *Id.* at 37.

Petitioner filed a Motion for Reconsideration,[25] but the CA denied it in the assailed Resolution and ruled that the arguments raised had already been considered and thoroughly discussed in the assailed Decision.

Hence, the petition.

Petitioner raised the following grounds:

I

IT FAILED TO FIND AND CONCLUDE THAT THE PRIVATE COMPLAINANT CONCOCTED DOCUMENTARY EVIDENCE, ON SEVERAL OCCASIONS, TO ESTABLISH ITS CASE AGAINST PETITIONER;

II

IT DID NOT RULE IN ACCORDANCE WITH PREVAILING LAWS AND JURISPRUDENCE WHEN IT RULED THAT THE PROSECUTION WAS ABLE TO PROVE PETITIONER'S GUILT BEYOND REASONABLE DOUBT[.][26]

In its Comment,[27] public respondent raised the following arguments:

I.

EVIDENCE PRESENTED PROVES PETITIONER'S VIOLATION OF P.D. NO. 1612.

II.

PETITIONER'S DEFENSES OF DENIAL AND FRAME-UP ARE BASELESS.

III.

ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI*.[28]

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[25] *Id.* at 219-225.

[26] *Id.* at 88.

[27] *Id.* at 291-303.

[28] *Id.* at 296.

The Court's Ruling

The petition is without merit.

The basic issue for the Court's consideration is whether the CA erred in sustaining the conviction of petitioner. The principal issue to resolve is whether the elements of the crime of Fencing were established by the prosecution.

At the outset, it must be emphasized that the Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[29] Petitions for review on *certiorari* under Rule 45 should cover only questions of law as the Court is not a trier of facts.[30] The Court accords finality the factual findings of trial courts, especially when, as in the case at bench, such findings are affirmed by the appellate court. This factual determination of the trial court deserves great weight and shall not be disturbed on appeal.[31] Although the rules do admit exceptions,[32] not one of them is applicable in the instant case. Thus, the Court is not duty-bound to analyze and weigh all

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[29] RULES OF COURT, Rule 45, Section 1.

[30] *Heirs of Mariano v. City of Naga*, G.R. No. 197743, March 12, 2018, 858 SCRA 179, 201. Citations omitted.

[31] *St. Mary's Farm, Inc. v. Prima Real Properties, Inc.*, 582 Phil. 673, 679 (2008).

[32] As provided in *Medina v. Asistio*, 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. Citations omitted.

over again the evidence already considered in the proceedings before the RTC.

A cursory reading of the petition reveals that petitioner presents factual issues, such as: (1) whether PAL merely concocted or falsified documentary evidence against him;[33] (2) whether he was forced to sign documents at Camp Crame;[34] and (3) whether he and his wife were harassed during investigation defeating the authenticity of documents he signed at Camp Crame.[35] The factual matters are not within the province of the Court to look into, save only in exceptional circumstances which are not present here. The Court gives credence to the factual evaluation made by the RTC and affirmed by the CA.

The well-settled rule in this jurisdiction is that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect. Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings.[36] The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial.[37] The task of taking on the issue of credibility is a function properly lodged with the trial court. Thus, generally, the Court will not recalibrate evidence that had been analyzed and ruled upon by the trial court. After a judicious perusal of the records of the instant appeal, the Court finds no compelling

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[33] *Rollo*, pp. 89-93.

[34] *Id.* at 101.

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

[36] *People v. Aspa, Jr.*, G.R. No. 229507, August 6, 2018, citing *People v. De Guzman*, 564 Phil. 282, 290 (2007).

[37] *Id.*, citing *People v. Villamin*, 625 Phil. 698, 713 (2010).

reason to depart from the RTC's and CA's factual findings. Nevertheless, to clear any cloud of doubt on the correctness of the assailed ruling, the Court shall examine the records of the case and find out if petitioner failed to show that the lower courts committed error in appreciating the pieces of evidence presented by the parties.

After a judicious perusal of the records of the instant petition, the Court finds no compelling reason to depart from the RTC's and CA's factual findings as there is no indication that the lower courts overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the RTC was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence due deference should be accorded to them. The Court affirms the conviction of the petitioner.

Here, the RTC and the CA ruled that the prosecution was able to discharge the burden of proving beyond reasonable doubt all the elements of Fencing.

Under Section 2 of PD 1612, Fencing is defined as the *act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft*.[38]

The law on Fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of, the crime of robbery or theft.[39] The essential elements of the offense are:

1. A crime of robbery or theft has been committed;

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[38] *Tan v. People*, 372 Phil. 93, 102 (1999), citing *Dizon-Pamintuan v. People*, 304 Phil. 219, 228-229 (1994) and *People v. Judge De Guzman*, 297 Phil. 993, 997-998 (1993).

[39] *Id.*, citing *People v. Judge De Guzman*, 297 Phil. 993, 998 (1993).

2. The accused, who is not a principal or accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime;

3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and

4. There is on the part of the accused, intent to gain for himself or for another.

The RTC and CA correctly found that the prosecution was able to establish beyond reasonable doubt all the elements of the offense of Fencing considering the following:

First, the occurrence of theft was duly established by the prosecution. Yao categorically testified that despite the downsizing of PAL's operation in 1998 or reduction of Aircraft, there was still unusual upward movement of PAL's Skydrol consumption.[40] Thus, it was concluded that someone was stealing Skydrol from PAL which prompted its management to conduct an investigation and seek the assistance of the PNP-CIDG.

Second, the petitioner was caught in possession and in the process of disposing pails of Skydrol to Air Philippines. PO3 Bolido testified in detail how he and his team caught the petitioner in possession of three pails of Skydrol, *viz.*:

Q. Having arrived at the Air Philippines Mr. Witness can you tell this Court where your group position their, yourself?
A. We position ourself outside our vehicle, who was parked along other several vehicle.

Q. Aside from the member of the CIDG Mr. Witness could you please tell us if you have another companions during this surveillance operation?
A. Yes, Sir.

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[40] See TSN, February 7, 2002, pp. 7-9.

Q. Could you please identify these individuals?
A. The four (4) police operatives are there, led by Police Inspector Rudy Cababal, PO3 Joel Abraham, PO2 Ronilo Bermudo, and myself.

Q. And how about on the part of the private complainant?
A. Mr. Elvis Yao, Sir.

Q. You said you proceeded to the hangar of the Air Philippines at 3:00 o'clock in the afternoon of June 22, 1999, could you please tell us whether you witness any unusual incident?
A. Yes, Sir, around 4:00 o'clock in the afternoon I saw a man carrying a pail [of] hydraulic fluid then he put it down and then he left and then return it with another pails of hydraulic fluid, all in all he brought three pails, Sir.

Q. Now were you able to identify the person who brought these three (3) pails of Skydroll Hydraulic Fluid?
A. Yes, Sir, he is Benito Estrella.

Q. And what relation does this Benito Estrella have to the accused in this case?
A. He is the same person, Sir.

Q. Now could you please tell us how far were you from the accused when you saw him, who bring down the three (3) Skydroll Hydraulic Fluid?
A. Five (5) to seven (7) meters, Sir.

Q. And could you please tell us what if any did you do upon seeing the accused who bring these three (3) pails of Skydroll Hydraulic Fluid?
A. I move closely to the items then I read the name of the pails, so I confirmed that these is the items we were looking for, Sir.

Q. Who else if any Mr. Witness were able to confirm that these were the same item hydraulic fluid that you were looking for?
A. I called up Mr. Yao through radio that there is a man carrying a pail of Skydroll then he arrived and confirmed, took examined the pail and confirmed that it was indeed the Skydroll Hydraulic Fluid they owned.

Q. So having convinced yourself Mr. Witness, that these was the same item you were looking for, what action if any did you take?
A. When I approached Mr. Estrella we identify ourself as police officers and asked him if he had any document to prove ownership of that item.

Q. Now, what if any, was the response of the accused Benito Estrella?
A. He cannot answer but he said he will call to cellphone and talked to a certain Jupel, Sir.

Q. So what happened next Mr. Witness?
A. He told to us that the goods were came from a certain Jupel, so I adviced him to call Jupel and bring the documents of the items.

Q. And did the accused call this Jupel?
A. Yes, Sir and he reply that he will bring these documents, Sir.

Q. So having received these information from the accused what action your unit take regarding the matter?
A. We adviced him to go with us to Camp Crame and wait for Jupel and the pertinent documents, Sir.

Q. And did the accused proceed to Camp Crame as you have requested?
A. Yes, Sir.

Q. Could you please tell us now what took place at Camp Crame?
A. We waited for Jupel but he did not arrived, Sir.

Q. And since this Jupel whom the accused had represented having this possession the document showing the ownerships of the goods did not arrived, what did you do?
A. I informed Benito Estrella that we are now recommending the filing of the criminal charge against him.[41]

From the above testimony, it can be gleaned that petitioner failed to produce Jupel, the alleged source, and the legal documents supporting the ownership of the confiscated pails

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[41] TSN, May 29, 2000, pp. 13-18.

of Skydrol which clearly suggest that the pails of fluid proceed from the crime of theft. With this, the PNP-CIDG recommended the filing of the crime of Fencing against him. PO3 Bolido's statements on how petitioner was found handling the three pails of Skydrol were corroborated by Yao's testimony. Yao likewise explained that only PAL and no one else owned the Skydrol, which was exclusively supplied by Solutia:

Q. Now, aside from submitting the formal complaint with the Philippine National Police to what extent were you involved in the investigation particularly the surveillance of Aerojam?
A. I am the one who coordinated with the police and supplied the information that will assist the police in their information.

Q. You mentioned about surveillance operation of the activities of Aerojam, what was the result of this surveillance operation?
A. It resulted to the apprehension of Mr. Benito Estrella who was caught carrying three (3) SKYDROL Hydraulic Fluid in five (5) gallon pail to Air Philippines.

Q. And again when you mentioned the name Benito Estrella to whom are you referring to?
A. The accused, Sir.

Q. Now, do you recall Mr. Witness, where you were on 22 June, 1999 at the time that the accused was apprehended?
A. I was in the Air Philippines compound last June 22, 1999.

Q. And why were you at the compound of Air Philippines?
A. When Mr. Estrella was caught with the three (3) pails Hydraulic Fluid, I was asked by the police to identify whether those belongs to Philippine Airlines.

Q. Now if the three (3) pails of SKYDROL Fluid found in the possession of the accused would be shown to you, would you be able to identify them?
A. Yes, Sir.

x x x x x x x x x

[Priv.] Pros. Cruz:
Q. Looking at these three (3) pails of cans bearing the label SKYDROL Id 4, what relation if any do these three (3) pail

cans to the three (3) pails of SKYDROL found in the possession of the accused?

A. These are the actual items caught in the possession of Mr. Estrella.

Q. Now, do you recall, Mr. Witness, if you ever took photographs of these SKYDROL, these three (3) pails of SKYDROL?

A. Yes, Sir.

x x x x x x x x x

Priv. Pros. Cruz:

Q. Okay, I invite your attention again Mr. Witness to the pails of SKYDROL, it was marked as Exhibit "G", could you look at this can, Mr. Witness, could you tell us, Mr. Witness, what was your basis in concluding that this SKYDROL pail marked as Exhibit "G" was owned by Philippine Airlines.

A. Yes, Sir, because there is a label specifying SKYDROL and there is a Manufacturing Lot number assigned to Philippine Airlines and I got with me documents to prove the ownership of Philippine Airlines for these items.

Q. Now, you mentioned Manufacturer Lot number, could you please point the manufacturer lot number?

A. The manufacturer lot number is indicated or printed to the lower side of the pail, here it is.

Priv. Pros. Cruz:

Witness pointing to numbers engraved on the lower portion of the pail marked as Exhibit "G". May we request that this portion be bracketed and marked as Exhibit "G-1".

(Interpreter marking the same)

Priv. Pros. Cruz:

May we ask the witness to identify the other portion. How about in the pail marked as Exhibit "H" and Exhibit "I" point to the Court the portion which bears the manufacturer lot number of Philippine Airlines?

(Witness pointing to the pail while the Interpreter marking the same)

Priv. Pros. Cruz:

Q. Any other tackle that you consider, Mr. Witness, in concluding that these pails of SKYDROL, marked as Exhibit "G, H and I" belongs to the Philippine Airlines?

A. Yes, Sir, there is a label here indicating the brand name of SKYDROL and there is a Customer Lot number printed in the label but it was intentionally torn, but there is still a Manufacturer Lot number indicated at the bottom side of the pail and it is certified by the manufacturer.

Q. Okay, let's go one by one, you mentioned that the label was intentionally torn, would you please tell us the significance of that?

A. Since in the aviation business traceability is very important, both parts or aircraft parts and materials should be traceable, because it is requirements and same as this lubricants, the customer lot number would confirm that it is owned by Philippine Airlines.

Q. Now, you mentioned that there is a Certification from the manufacturer that is assigned in the Philippine Airlines, do you have this Certification?

A. Yes, Sir, I have this Certificate.

Priv. Pros. Cruz:

Witness showing to this representation or handing to this representation a document captioned as Certificate of Analysis under the letterhead of SOLUTIA. May we request that the same be marked as Exhibit "L".
(Interpreter marking the document)

Q. Could you go over this Certificate of Analysis and explain to this Court, how you could tie-up this certificate to be particular lot number assigned to Philippine Airlines?

A. I got with me other documents that will confirm ownership of Philippine Airlines, I got with me the Bill of Lading that it was assigned to Philippine Airlines and we have Sales Invoice that these were sold to Philippine Airlines and indicating the Customer Purchase Order that would tally in the Customer Order number in the Certificate of Analysis and Move Ticket that this items were still in our warehouse.[42]

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[42] TSN, February 7, 2002, pp. 12-19.

Through the manufacturer lot number indicated in the three pails of Skydrol confiscated from the petitioner's possession, and the supporting documents such as the sales invoice with customer purchase order number embodying the specific pails of hydraulic fluid sold to PAL, the ownership of the three pails hydraulic fluid was proven to belong to PAL and not to any other airline. Yao's claim that PAL owned the three pails of Skydrol confiscated from petitioner and bearing Lot Number QK31003 and Manufacturer Lot Number IAI/Y2.4/300/98USA/M-4122 was supported by Solutia's Letter/Certification[43] dated June 17, 1999; thus:

This is to confirm that we, Solutia, has sold Skydrol LD-4 in Philippines for the period June 1999 and prior as follow:

- Only Philippine Airlines, Inc. is purchasing Skydrol LD-4 in the five (5) gallon per pail packing size;
- Only Philippine Airlines, Inc. is importing Skydrol LD-4 in the five (5) gallon per pail packing to the Philippines;
- Access Industrial in the Philippines is importing Skydrol LD-4 in quart only, not the five (5) gallon per pail package, as the period said;
- *Solutia has never authorized Aerojam Supplies and Trading as Solutia Skydrol LD-4 stocklist and reseller in the Philippines*;
- *Solutia has sold Skydrol LD-4 in five (5) gallon pail with assigned Lot Number QK31001 under Manufacturer's Lot Number IAI/Y2.4/300/98USA/M-4122 to Philippine Airlines, Inc.* (Italics supplied.)

From the aforecited statements, the manufacturer/supplier of Skydrol itself certified that it never authorized Aerojam to sell the subject hydraulic fluids and these were sold only to PAL and not to any other airline. There is also evidence showing how PAL acquired the subject pails of hydraulic fluid. Solutia's Certificate of Analysis[44] reveals that Lot Number QK31001

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[43] Records, p. 304.

[44] *Id.* at 310.

was shipped out on January 19, 1999. The Bill of Lading[45] for 288 pieces of Skydrol five-gallon pails shows that they were shipped to PAL on January 27, 1999. Likewise, the corresponding invoice also shows that PAL was billed ₱62,784.00 for 1,440 gallons of Skydrol fluid shipped on January 27, 1999. Undoubtedly, the prosecution had proven that PAL owned the subject three Skydrol pails of hydraulic fluid confiscated from the petitioner.

Third, for failing to prove ownership of the Skydrol confiscated from him, petitioner should have known that the three Skydrol pails were derived from an illegal source. Petitioner failed to present his alleged supplier, a certain "Jupel" and the pertinent documents proving that their transaction was legal.

As to the last element of Fencing, the Court rules that the RTC and the CA committed no error in finding the petitioner's intent to gain. There is no question that the pails of Skydrol Hydraulic Fluid were found in possession of petitioner. The positive identification by PO3 Bolido and Yao that the petitioner was caught in possession of the subject pails of skydrol, and the pieces of evidence pointing to PAL as the owner of these pails of hydraulic fluid gave rise to a presumption of Fencing under the law. Section 5 of PD 1612 states:

> SECTION 5. *Presumption of Fencing*. — Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

Notably, Fencing is a *malum prohibitum*, and PD 1612 creates a *prima facie* presumption of Fencing from evidence of possession by the accused of any good, article, item, object or anything of value, which has been the subject of robbery or theft.[46]

Criminal law has long divided crimes into acts wrong in themselves called "acts *mala in se*," and acts which would not

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[45] *Id.* at 311.

[46] *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, 860 SCRA 86, 101, citing *Ong v. People*, 708 Phil. 565, 574 (2013).

be wrong but for the fact that positive law forbids them, called "acts *mala prohibita*."[47] This distinction is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts *mala in se*, the intent governs, but in acts *mala prohibita*, the only inquiry is, has the law been violated? When an act is illegal, the intent of the offender is immaterial.[48]

In the case, it is incumbent upon petitioner to overthrow this presumption by sufficient and convincing evidence, but he failed to do so. All that petitioner could offer, by way of rebuttal, was a mere denial and his incredible defense of frame-up.

The petitioner's defense of denial and frame-up remained uncorroborated. He failed to present his wife who was supposedly very much aware of the circumstances surrounding his alleged frame-up. Such failure casts serious doubt on his defense of frame-up. For if the circumstance under which he was arrested were so illegal and downright unjust, he would have presented all available evidence he could muster to protest the injustice done to him. Moreso, it can be noted that petitioner did not file a single complaint for frame-up against the PNP-CIDG team. Likewise, the petitioner failed to present an evidence of any ill motive on the part of the PNP-CIDG and Yao in conducting the successful operation and later, testifying against him. His inaction belies the claim of frame-up.

Finally, it is a prevailing doctrine that a defense of denial or frame-up cannot prevail against the positive testimony of the prosecution witnesses.[49] Petitioner's defense of denial which is unsupported and unsubstantiated by clear and convincing evidence is viewed as negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over the convincing and straightforward testimonies of PO3 Bolido and Yao.

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[47] *Dungo v. People*, 762 Phil. 630-685 (2015).

[48] *Id.*, citing *Tan v. Ballena*, 579 Phil. 503, 527-528 (2008).

[49] *People v. Yagao*, G.R. No. 216725, February 18, 2019.

As to the penalty imposed by the RTC, the Court modifies it. Under Section 3 (a) of PD 1612, the penalty for Fencing is *prision mayor* in its maximum period if the value of the property exceeds ₱22,000.00, adding one year for each additional ₱10,000.00, thus:

> SECTION 3. *Penalties*. — Any person guilty of fencing shall be punished as hereunder indicated:
>
> a) The penalty of *prision mayor*, if the value of the property involved is more than 12,000 pesos but not exceeding 22,000 pesos; if the value of such property exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, the penalty shall be termed *reclusion temporal* and the accessory penalty pertaining thereto provided in the Revised Penal Code shall also be imposed.

While the offense of Fencing is defined and penalized by a special penal law, the penalty provided therein is taken from the nomenclature in the Revised Penal Code (RPC). In *Peralta v. People*,[50] the Court judiciously discussed the proper treatment of penalties found in special penal laws *vis-à-vis* Act No. 4103,[51] *viz.*:

> Meanwhile, Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon* that the situation is different where although the offense is defined in a special law, the penalty therefore is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.[52]

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[50] 817 Phil. 554 (2017).

[51] The Indeterminate Sentence Law.

[52] *Supra* note 50 at 567-568. Citations omitted.

Evidently, if the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules defined under the RPC. Since the value of the three pails of Skydrol is ₱27,000.00 the penalty to be imposed is *prision mayor* in its maximum period which penalty ranges from ten (10) years and one (1) day to twelve (12) years.

Applying the foregoing and considering that there are neither mitigating nor aggravating circumstances present in the case at bench, the penalty of *prision mayor* in its maximum period shall be imposed in its medium period which is ten (10) years, eight (8) months and one (1) day to eleven (11) years and four (4) months. Thus, the Court finds it proper to sentence the petitioner to suffer the penalty of imprisonment for an indeterminate period of ten (10) years, eight (8) months and one (1) day of *prision mayor*, as minimum, to eleven (11) years and four (4) months of *prision mayor*, as maximum.

At this point the Court notes the recent enactment of Republic Act No. (RA) 10951[53] which adjusted the values of the property and damage on which various penalties are based, taking into consideration the present value of money as compared to its value way back in 1932 when the RPC was enacted. RA 10951 substantially amended the penalties prescribed for Theft under Article 309 of the RPC without concomitant adjustment for the offense of Fencing under PD 1612.

The Court is not unaware that the recent development would then result on instances where a Fence, which is theoretically a mere accessory to the crime of Robbery/Theft, will be punished more severely than the principal of such latter crimes. However, as can be clearly gleaned in RA 10951, the adjustment is applicable only to the crimes defined under the RPC and not under special penal laws such as PD 1612. The Court remains

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[53] An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code," as amended.

mindful of the fact that the determination of penalties is a policy matter that belongs to the legislative branch of the government which is beyond the ambit of judicial powers. Thus, this Court cannot adjust the penalty to be imposed against the petitioner based on RA 10951 considering that the offense of Fencing is defined under PD 1612, a special penal law.

The Court already furnished the Houses of Congress, as well as the President of the Philippines, through the Department of Justice, copies of the case of *Cahulogan v. People*[54] in order to alert them of the incongruence of penalties with the hope of arriving at the proper solution to this predicament.

WHEREFORE, the petition is **DENIED**. The Decision dated November 20, 2013 and the Resolution dated June 3, 2014 of the Court of Appeals in CA-G.R. CR No. 33958 finding petitioner Benito Estrella *y* Gili **GUILTY** beyond reasonable doubt of the offense of Fencing are **AFFIRMED** with **MODIFICATION** in that petitioner is sentenced to suffer the penalty of imprisonment for the indeterminate period of ten (10) years, eight (8) months and one (1) day of *prision mayor*, as minimum, to eleven (11) years and four (4) months of *prision mayor*, as maximum.

SO ORDERED.

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

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[54] *Supra* note 46.

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 213736. June 17, 2020]

ALFREDO F. SY and RODOLFO F. SY, *petitioners*, *vs.* **CHINA BANKING CORPORATION,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXTRAJUDICIAL FORECLOSURE SALES; *EX PARTE* WRIT OF POSSESSION; THE COURT GENERALLY POSSESSES NO DISCRETION TO DENY AN APPLICATION FOR WRIT OF POSSESSION IF THE JUDGMENT DEBTOR FAILED TO REDEEM THE FORECLOSED PROPERTY WITHIN THE LEGAL REDEMPTION PERIOD AND HENCE, OWNERSHIP IS CONSOLIDATED TO THE PURCHASER. — [T]he *ex parte* application for writ of possession is a non-litigious summary proceeding without need of posting a bond, except when possession is being sought during the redemption period. It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. Therefore, the general rule is that the court possesses no discretion to deny an application for writ of possession if the judgment debtor failed to redeem the foreclosed property within the legal redemption period and hence, ownership is consolidated to the purchaser in the extrajudicial foreclosure sale. The purchaser's possessory right is a legal outgrowth of his or her consolidated ownership — or right of ownership over the foreclosed property — and shall accordingly be recognized by the court through the grant of possessory writ in favor of the purchaser. However, this general rule is not without exception x x x.

2. ID.; ID.; ID.; ID.; ID.; THE COURT'S OBLIGATION TO ISSUE AN *EX PARTE* WRIT OF POSSESSION IN FAVOR OF THE

PURCHASER CEASES TO BE MINISTERIAL WHERE A THIRD PARTY IS CLAIMING THE PROPERTY ADVERSELY TO THAT OF THE JUDGMENT DEBTOR/MORTGAGOR, AND WHERE SUCH THIRD PARTY IS A STRANGER TO THE FORECLOSURE PROCEEDINGS WHEREFROM THE *EX PARTE* WRIT OF POSSESSION IS APPLIED FOR. — The exception is found in Section 33, Rule 39 of the Rules of Court x x x. Pursuant to Section 6 of Act No. 3135, the application of Section 33, Rule 39 of the Rules of Court has been extended to extra-judicial foreclosure sales x x x. [T]he court's obligation to issue an *ex parte* writ of possession in favor of the purchaser, in an extra-judicial foreclosure sale, ceases to be ministerial in those exceptional cases where a third party is claiming the property adversely to that of the judgment debtor/mortgagor, and where such third party is a stranger to the foreclosure proceedings wherefrom the *ex parte* writ of possession was applied for. Understandably, the third party adversely possessing the foreclosed property cannot be dispossessed by a mere *ex parte* possessory writ in favor of the purchaser, because to do so would be tantamount to a summary ejectment of the third party — in violation of the latter's right to due process. Besides, the purchaser's possessory right in an extra-judicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not as against persons whose right of possession is adverse to the latter.

3. **MERCANTILE LAW; BANKING INSTITUTIONS; BANKS ARE EXPECTED TO EXERCISE MORE CARE AND PRUDENCE THAN PRIVATE INDIVIDUALS IN THEIR DEALINGS, EVEN THOSE INVOLVING REGISTERED LANDS BECAUSE THEIR BUSINESS IS BEING IMPRESSED WITH PUBLIC INTEREST. —** China Bank, as a banking institution must be reminded of the oft-repeated principle that a purchaser or mortgagee cannot close its eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands.

APPEARANCES OF COUNSEL

Montes-Nera Law Office for petitioners.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari* with Prayer for Issuance of Temporary Restraining Order and/or Preliminary Injunction[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated September 18, 2013 and the Resolution[3] dated July 1, 2014 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 05994 filed by Alfredo F. Sy (Alfredo) and Rodolfo F. Sy (Rodolfo; collectively, petitioners) against China Banking Corporation (China Bank).

This case involves Lot No. 4740 (subject property), which is located in Linao-Lipata, Minglanilla, Cebu City with an area of 8,371 square meters. It is covered by Transfer Certificate of Title (TCT) No. 5235[4] in the name of Bernandina Fernandez (Bernandina), married to Sy Thian Un. The spouses had eight children, namely: Petra, Priscilo, Elena, Rogelio, Dulcee, Alfredo, Manuel, and Rodolfo.[5]

On July 18, 1969, Bernandina simulated a Deed of Absolute Sale[6] over the subject property in favor of her son, Priscilo, to enable the latter to start a livestock-poultry business. Because

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[1] *Rollo*, pp. 16-42.

[2] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Renato C. Francisco, concurring; *id.* at 44-58.

[3] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Carmelita Salandanan-Manahan, concurring; *id.* at 60-63.

[4] *Id.* at 64.

[5] *Id.* at 19-20.

[6] *Id.* at 65.

of this, Priscilo caused the issuance of TCT No. 21283[7] over the subject property in his name. Subsequently, Priscilo mortgaged the subject property to the Development Bank of the Philippines (DBP) but he was not able to pay the indebtedness, hence, the subject property was foreclosed. Priscilo then migrated to the United States and executed a Special Power of Attorney[8] (SPA) authorizing his sister, Elena, to redeem the subject property in favor of their younger brothers, herein petitioners, who are the actual occupants of the subject property. However, after redeeming the subject property, Elena allegedly forged the signatures of Priscilo and the latter's wife, and, through the forged signatures, she executed a Deed of Waiver and Relinquishment of Rights[9] dated November 22, 1993 and a Deed of Donation[10] dated February 21, 1994 in favor of her children, Eleazar Jr. and Elaine Adlawan. As a result, TCT No. T-83948[11] was issued in the names of Eleazar Jr. and Elaine.[12]

Thereafter, Eleazar Jr. and Elaine (mortgagors) mortgaged the property to China Bank as security for their loan which amounted to ₱3,700,000.00. Due to their inability to pay, China Bank foreclosed the property and in the public auction dated September 28, 1988, China Bank was declared the highest bidder for the amount of ₱4,200,000.00. The mortgagors failed to redeem the subject property within the one-year redemption period. Accordingly, China Bank consolidated its title over the subject property and on December 16, 1999, TCT No. 111058[13] was issued in its name.[14]

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[7] *Id.* at 72.

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

[9] *Id.* at 75.

[10] *Id.* at 76-77.

[11] *Id.* at 80.

[12] *Id.* at 20.

[13] *Id.* at 81-82.

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

On December 11, 2000, China Bank filed before the Regional Trial Court (RTC), of Cebu City, Branch 15, a Petition for the Issuance of a Writ of Possession.[15] On December 30, 2000, the RTC issued the Writ of Possession[16] and corresponding Notice to Vacate[17] dated January 5, 2001 in China Bank's favor.[18]

Aggrieved, petitioners filed a motion before the RTC for the dissolution of the Writ of Possession on the ground that they were the actual possessors of the subject property. Petitioners further alleged that the mortgagors of the property fraudulently caused the title to be transferred to their names through falsification of public documents.[19] The RTC granted petitioners' motion and issued an Order[20] dissolving the Writ of Possession. China Bank appealed but it was dismissed through a Resolution[21] dated October 23, 2003 for failure to pay the required docket fees. China Bank's motion for reconsideration was likewise denied on November 21, 2002.[22]

Meanwhile, on August 21, 1998, petitioners filed an action for recovery of ownership, possession and partition docketed as Civil Case No. CEB-22570 as well as criminal cases for Estafa through Falsification of Public Documents against the mortgagors under I.S. Nos. 99-13219-13220.[23]

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[15] *Id.* at 83-88.

[16] *Id.* at 89.

[17] *Id.* at 90.

[18] *Id.* at 21.

[19] *Id.* at 91-95.

[20] Penned by Presiding Judge Fortunato M. De Gracia Jr.; *id.* at 97-98.

[21] Penned by Associate Justice Salvador J. Valdez, Jr. with Associate Justices Josefina Guevara-Salonga and Arturo D. Brion, former member of this Court, concurring; *id.* at 102.

[22] *Id.* at 103.

[23] *Id.* at 21.

On the other hand, insistent of its claim, China Bank filed before the RTC a second petition for issuance of a Writ of Possession[24] on January 22, 2009. The same was granted by the RTC on January 4, 2010, and a new Writ of Possession was issued in favor of China Bank.[25] The second Writ of Possession did not mention the previous Writ of Possession which was dissolved and the China Bank, in its second application, did not also mention the fact that the first Writ of Possession was dissolved and that the dissolution has become final.

Petitioners again opposed China Bank's second Writ of Possession through an Omnibus Motion,[26] but this time the RTC denied petitioners' Omnibus Motion through an Order[27] dated April 7, 2010, which is being assailed in this petition for review on *certiorari*.

In denying petitioners' Omnibus Motion, the RTC ruled that possession of the subject property is an absolute right of the purchaser in a foreclosure proceeding, and that upon consolidation of the purchaser's title, the issuance of the writ of possession becomes a ministerial duty of the court.[28] Further, the RTC held that an application for the writ of possession is *ex parte* in nature.[29] The RTC also noted that in the Sheriff's Report, there was an attached Undertaking signed by petitioners stating that they recognized the superior right of China Bank to possess the subject property such that they requested for a non-extendible period of seven (7) days to extend their stay in the property purely for humanitarian reasons.[30] Lastly, the RTC determined

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[24] *Id.* at 104-110.

[25] *Id.* at 111.

[26] *Id.* at 112-118.

[27] Penned by Presiding Judge Sylvia G. Aguirre Paderanga; *id.* at 119-124.

[28] *Id.* at 121.

[29] *Id.* at 122.

[30] *Id.* at 122-123.

that petitioners who hold the subject property adversely to the defaulted mortgagors are given by the law other remedies like *terceria*, to determine whether the Sheriff had rightly or wrongly taken hold of the foreclosed property that does not belong to the judgment debtor, or an independent action to vindicate their claim of ownership or possession over the foreclosed property.[31]

Petitioners moved for reconsideration of the RTC's Order but the same was denied through an Order[32] dated May 25, 2011. Undaunted, they filed a Petition for *Certiorari*[33] under Rule 65 of the Rules of Court to the Court of Appeals (CA).

On September 18, 2013, the CA rendered its Decision[34] denying the petition. Preliminarily, the CA discussed that the remedy of *certiorari* used by petitioners in questioning the RTC's orders was improper because the issuance of the Writ of Possession was ministerial in nature, which does not involve any discretion.[35] Secondly, the CA held that the initial dissolution of the first Writ of Possession issued by the RTC was not binding and did not bar China Bank from praying for another writ of possession.[36] The CA determined that *res judicata* is not applicable in this case because an *ex parte* petition for the issuance of a possessory writ is not a litigious judicial process under the Rules of Court.[37] Lastly, the CA gave probative value to the Undertaking signed by petitioners because the latter failed to present contrary evidence thereto.[38]

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[31] *Id.* at 123.

[32] Penned by Presiding Judge Sylvia G. Aguirre-Paderanga; *id.* at 131-133.

[33] *Id.* at 134-149.

[34] *Supra* note 2.

[35] *Rollo*, p. 52.

[36] *Id.* at 54.

[37] *Id.* at 55.

[38] *Id.* at 57.

On reconsideration, the CA maintained its ruling against petitioners in its Resolution[39] dated July 1, 2014.

Petitioners now seek this Court's review in this Petition for Review on *Certiorari*[40] that China Bank counters in its Comment.[41]

Issue

The issue in this case is whether the issuance of the Writ of Possession, in favor of China Bank and against petitioners, was proper.

Ruling of the Court

The petition is meritorious.

China Bank argues that it is the RTC's ministerial duty to issue the Writ of Possession in its favor after title over the property has been consolidated in its name. It maintains that an application for the issuance of a writ of possession is *ex parte* in nature, and that there is even no need to notify the adverse party of the application.

Indeed, the *ex parte* application for writ of possession is a non-litigious summary proceeding without need of posting a bond, except when possession is being sought during the redemption period. It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title.[42]

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[39] *Id.* at 60-63.

[40] *Id.* at 16-42.

[41] *Id.* at 224-230.

[42] *Spouses Gallent, Sr. v. Velasquez*, 784 Phil. 44, 60 (2016).

Therefore, the general rule is that the court possesses no discretion to deny an application for writ of possession if the judgment debtor failed to redeem the foreclosed property within the legal redemption period and hence, ownership is consolidated to the purchaser in the extrajudicial foreclosure sale. The purchaser's possessory right is a legal outgrowth of his or her consolidated ownership — or right of ownership over the foreclosed property — and shall accordingly be recognized by the court through the grant of possessory writ in favor of the purchaser.

However, this general rule is not without exception, and We are convinced that the exception, rather than the general rule, shall apply in this case.

The exception is found in Section 33, Rule 39 of the Rules of Court, *viz.*:

> Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* —
>
> x x x x x x x x x
>
> Upon the **expiration of the right of redemption**, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The **possession of the property shall be given to the purchaser or last redemptioner** by the same officer **unless a third party is actually holding the property adversely to the judgment obligor**."[43] (Italics, emphasis, and underscoring supplied)

Pursuant to Section 6 of Act No. 3135,[44] the application of Section 33, Rule 39 of the Rules of Court has been extended to extra-judicial foreclosure sales, such as the one involved in this case, thus:

> Sec. 6. In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors

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[43] 1997 RULES OF CIVIL PROCEDURE, Rule 39, Sec. 33.

[44] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the **provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure**, in so far as these are not inconsistent with the provisions of this Act. (Emphasis supplied)

Foregoing considered, the court's obligation to issue an *ex parte* writ of possession in favor of the purchaser, in an extra-judicial foreclosure sale, ceases to be ministerial in those exceptional cases where a third party is claiming the property adversely to that of the judgment debtor/mortgagor, and where such third party is a stranger to the foreclosure proceedings wherefrom the *ex parte* writ of possession was applied for. Understandably, the third party adversely possessing the foreclosed property cannot be dispossessed by a mere *ex parte* possessory writ in favor of the purchaser, because to do so would be tantamount to a summary ejectment of the third party — in violation of the latter's right to due process.[45] Besides, the purchaser's possessory right in an extra-judicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not as against persons whose right of possession is adverse to the latter.[46]

In *Okabe v. Saturnino (Okabe),*[47] the property bought by the purchaser in a foreclosure sale is being claimed and possessed by a third party adverse to the defaulting mortgagor. Outlining the procedure to be followed, We ruled in *Okabe* that a hearing must be conducted to determine whether possession over the foreclosed property is still with the defaulting mortgagor or if it is already with the third party adversely holding the same

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[45] *Philippine National Bank v. Court of Appeals*, 424 Phil. 757, 770 (2002).

[46] *Bank of the Philippine Islands v. Icot*, 618 Phil. 320, 331 (2009).

[47] 742 Phil. 1 (2014).

against the defaulting mortgagor. We held that if the foreclosed property is in the possession of the defaulting mortgagor, a writ of possession could thus be issued. Otherwise, if the foreclosed property is being possessed by the third party, the purchaser cannot obtain a writ of possession *ex parte*, however, it is within the purchaser's right to obtain possession over the foreclosed property through the summary action of ejectment.

In this case, petitioners are sourcing their possessory and ownership rights over the subject property from the title of their mother, Bernandina. However, the title to the subject property was transferred through a simulated deed of absolute sale executed by Bernandina in favor of Priscilo, who mortgaged the subject property to DBP and who constituted Elena as his agent to redeem the subject property supposedly in favor of petitioners. However, through Elena's forgery of the Deed of Donation and Deed of Waiver and Relinquishment of Rights, she was able to transfer the title to the names of Eleazar Jr. and Elaine, the herein defaulting mortgagors who thereafter mortgaged the subject property in favor of China Bank. Petitioners assert that they are the real owners of the subject property who are entitled to possession thereof. To back up their assertion, petitioners presented a certification[48] from a document examiner of the Philippine National Police Crime Laboratory, which shows that the signatures of Priscilo and his wife in the Deed of Donation and Deed of Waiver and Relinquishment of Rights were indeed forged.

Moreover, petitioners have filed an independent civil action for recovery of ownership, possession and partition involving the subject property before another RTC on August 21, 1998. The fact that petitioners are the actual possessors of the property under claim of ownership raises a disputable presumption of ownership in their favor. Hence, the true owner must resort to judicial process for the recovery of the property.[49]

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[48] *Rollo*, at p. 28.

[49] See *Bon-Mar Realty and Sport Corporation v. Spouses Nicanor and Esther de Guzman*, 592 Phil. 712 (2008).

The record shows that China Bank already instituted a forcible entry case against petitioners on August 3, 2012, which was however dismissed on the merits for lack of cause of action and for violation of the rule against forum shopping.[50] The forcible entry case was filed after the writ of possession granted in favor of China Bank. The said application for the writ of possession was implemented by Sheriff Jessie A. Belarmino. Upon the implementation thereof, petitioners were forced to leave the subject property, but later on they returned and repossessed it.[51] The dismissal of the forcible entry case by the Municipal Trial Court (MTC) which was subsequently affirmed by the RTC[52] was grounded on the fact that China Bank has no prior physical possession over the subject property. In the forcible entry case, the MTC found that contrary to the claim of China Bank, petitioners have prior physical possession over the subject property before the writ of possession was issued to China Bank pursuant to the consolidation of its title as the highest bidder in the auction sale. Hence, the first requisite for forcible entry case to prosper is not present.[53]

It is relevant to add that the writ of possession granted in favor of China Bank was the result of a second application for the writ of possession instituted by it. The first application was initially granted but then dissolved upon opposition from petitioners. The dissolution of the first writ of possession was appealed by China Bank but it was dismissed by the CA. There was even no mention of the dissolution of the first writ of possession in the second application by China Bank. We cannot countenance such action undertaken by China Bank. The fact that the first writ of possession was dissolved and such dissolution has become final, China Bank should have made use of other judicial remedies at its disposal to vindicate its claim of possession

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[50] *Rollo*, p. 191.

[51] *Id.* at 189.

[52] *Id.* at 196.

[53] *Id.* at 190.

and ownership over the subject property. It was improper for China Bank to wait for another nine years from the filing of the first application for a writ of possession to institute another application with the same contents and arguments as the first. The institution of the second application for the writ of possession makes a mockery of the judicial process. China Bank seems to be soliciting a much friendly forum as to get what it prays for considering that it waited for so long and after the judge who dissolved the first writ of possession retired before instituting the second application for the writ of possession.

Lastly, China Bank, as a banking institution must be reminded of the oft-repeated principle that a purchaser or mortgagee cannot close its eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands.[54]

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated September 18, 2013 and the Resolution dated July 1, 2014 of the Court of Appeals in CA-G.R. CEB SP No. 05994 are hereby **REVERSED** and **SET ASIDE**. The Writ of Possession dated January 4, 2010 addressed to Sheriff Generoso Regalado is hereby **RECALLED** and **DISSOLVED**.

SO ORDERED.

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

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[54] *Consolidated Rural Bank v. Court of Appeals*, 489 Phil. 320, 337-338 (2005).

FIRST DIVISION

[G.R. No. 217970. June 17, 2020]

NIPPON EXPRESS PHILIPPINES CORPORATION, *petitioner, vs.* **MARIE JEAN DAGUISO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE COURT DOES NOT REVIEW QUESTIONS OF FACT BUT ONLY QUESTIONS OF LAW; WHEN THE FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE APPELLATE COURT ARE IN CONFLICT, THE COURT WILL REVIEW THE RECORDS TO DETERMINE WHICH FINDING SHOULD BE UPHELD AS BEING MORE IN CONFORMITY WITH THE EVIDENTIARY FACTS. —** As a rule, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Court does not review questions of fact but only questions of law. Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which the labor officials' findings rest. Hence, where the factual findings of the Labor Arbiter and the NLRC conform and are confirmed by the Court of Appeals, the same are accorded respect and finality, and are binding upon this Court. It is only when the factual findings of the NLRC and the appellate court are in conflict that this Court will review the records to determine which finding should be upheld as being more in conformity with the evidentiary facts. Where the Court of Appeals affirms the findings of the labor agencies on review and there is no showing whatsoever that said findings are patently erroneous, this Court is bound by the said findings.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REINSTATEMENT; DOCTRINE OF STRAINED RELATIONS; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT AS A MATTER OF RIGHT; BUT WHERE REINSTATEMENT IS NOT FEASIBLE, EXPEDIENT OR PRACTICAL, AS WHERE REINSTATEMENT WOULD ONLY EXACERBATE THE TENSION AND STRAINED RELATIONS BETWEEN THE**

PARTIES, OR WHERE THE RELATIONSHIP BETWEEN THE EMPLOYER AND EMPLOYEE HAS BEEN UNDULY STRAINED BY REASON OF THEIR IRRECONCILABLE DIFFERENCES, PARTICULARLY WHERE THE ILLEGALLY DISMISSED EMPLOYEE HELD A MANAGERIAL OR KEY POSITION IN THE COMPANY, IT WOULD BE MORE PRUDENT TO ORDER PAYMENT OF SEPARATION PAY INSTEAD OF REINSTATEMENT. — The full protection of labor and the security of tenure of workers are guaranteed under Section 3, Article XIII of the Constitution x x x. The Labor Code assures the security of tenure of workers, particularly the reinstatement of an illegally dismissed employee x x x. This is reflected in the Omnibus Rules Implementing the Labor Code, Book VI, Rule 1 x x x. Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right. Over the years, however, the case law developed that where reinstatement is not feasible, expedient or practical, as where reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement. The doctrine of strained relations, however, should not be used recklessly, applied loosely and/or indiscriminately, or be based on impression alone; otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation.

3. **ID.; ID.; ID.; ID.; ID.; AS REINSTATEMENT IS THE RULE, FOR THE EXCEPTION OF STRAINED RELATIONS TO APPLY, IT SHOULD BE PROVED THAT THE EMPLOYEE CONCERNED OCCUPIES A POSITION WHERE HE/SHE ENJOYS THE TRUST AND CONFIDENCE OF HIS EMPLOYER; AND THAT IT IS LIKELY THAT IF REINSTATED, AN ATMOSPHERE OF ANTIPATHY AND ANTAGONISM WOULD BE GENERATED AS TO ADVERSELY AFFECT THE EFFICIENCY AND PRODUCTIVITY OF THE EMPLOYEE CONCERNED; STRAINED RELATIONS MUST BE DEMONSTRATED AS A FACT, ADEQUATELY SUPPORTED BY EVIDENCE ON RECORD. —** As reinstatement

is the rule, for the exception of strained relations to apply, it should be proved that the employee concerned occupies a position where he/she enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned. Strained relations must be of such nature or degree as to preclude reinstatement. Moreover, strained relations must be demonstrated as a fact, adequately supported by evidence on record. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relations must be supplemented by the rule that the existence of strained relations is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause. In this case, the Labor Arbiter ordered the payment of separation pay in lieu of reinstatement, but he did not discuss the reason why Daguiso should not be reinstated. The NLRC affirmed the decision of the Labor Arbiter and grounded the non-reinstatement of Daguiso on strained relations between the parties.

4. ID.; ID.; ID.; ID.; ID.; THE FILING OF A COMPLAINT DOES NOT NECESSARILY TRANSLATE TO STRAINED RELATIONS BETWEEN THE PARTIES, AS NO STRAINED RELATIONS SHOULD ARISE FROM A VALID AND LEGAL ACT ASSERTING ONE'S RIGHT; ALTHOUGH LITIGATION MAY ENGENDER A CERTAIN DEGREE OF HOSTILITY, THE UNDERSTANDABLE STRAIN IN THE PARTIES' RELATION WOULD NOT NECESSARILY RULE OUT REINSTATEMENT WHICH WOULD, OTHERWISE, BECOME THE RULE, RATHER THE EXCEPTION, IN ILLEGAL DISMISSAL CASES. — We have held that the filing of a complaint does not necessarily translate to strained relations between the parties. Such filing of a complaint includes the prayer of the complainant, and in this case, the prayer of Daguiso that De Vera be held solidarily liable, which is for the labor tribunals and the courts to resolve. As a rule, no strained relations should arise from a valid and legal act asserting one's right. Although litigation may engender a certain degree of hostility, the understandable strain in the parties' relation would not necessarily rule out reinstatement which would, otherwise, become the rule, rather

the exception, in illegal dismissal cases. Moreover, because Daguiso did not deny that a shouting match transpired between her and Aguirre, the NLRC concluded that Daguiso's continuance in her employment could not foster a harmonious workplace. However, The NLRC's conclusion disregarded one important detail: the origin of the altercation was the fact that De Vera bypassed Daguiso in the dissemination of information by Aguirre, Daguiso's subordinate. Thus, the Court of Appeals correctly stated that the said bases of the NLRC are insufficient to deny Daguiso's reinstatement.

5. ID.; ID.; ID.; ID.; ID.; THE DOCTRINE OF STRAINED RELATIONS SHOULD NOT BE APPLIED INDISCRIMINATELY TO CAUSE THE NON-REINSTATEMENT OF A SUPERVISORY EMPLOYEE WHO IS DISMISSED WITHOUT JUST CAUSE AND WITHOUT DUE PROCESS BY THE EMPLOYER DUE TO AN ALTERCATION CAUSED BY ITS SENIOR OFFICER WHO BYPASSED THE DISMISSED EMPLOYEE; REINSTATEMENT OF THE RESPONDENT, PROPER. — [D]aguiso's non-reinstatement cannot be justified based on her position as Corporate Human Resource Supervisor, which is said to be a position of trust as Daguiso handled the daily time records of employees, and her employer has allegedly lost confidence in her. First, it must be emphasized that Daguiso was dismissed without just cause and without due process as ruled by the Labor Arbiter. NEPC did not appeal the decision of the Labor Arbiter, which implies its acquiescence to the Labor Arbiter's findings. Second, NEPC failed to prove with substantial evidence that Daguiso committed an act in the performance of her duties which justifies its loss of confidence in her to merit the NLRC's reasoning that "it would be unjust to compel respondents-appellees to maintain in their employ complainant-appellant [Daguiso] in whom they have already lost their trust and confidence. "Third, x x x to deny Daguiso reinstatement due to "strained relations" between her and Senior Manager De Vera would be an injustice to Daguiso, the one bypassed by De Vera. NEPC failed to present competent evidence as basis for concluding that its relationship with Daguiso has reached a point where it is best severed. In fact, Daguiso asks to be reinstated. The doctrine of strained relations should not be applied indiscriminately to cause the non-reinstatement of a supervisory employee who is dismissed

without just cause and without due process by the employer due to an altercation caused by its senior officer who bypassed the dismissed employee. An employee's occupation is his/her means of livelihood, which is a precious economic right; hence, it should not just be taken away from the employee by applying the exception of "strained relations" that is not justified. The State guarantees security of tenure to workers; thus, all efforts must be exerted to protect a worker from unjust deprivation of his/her job. x x x. In fine, the Court of Appeals correctly ordered the immediate reinstatement of respondent Daguiso to her previous position without loss of seniority rights and payment of her full backwages, inclusive of allowances, and other benefits computed from the time her compensation was withheld from her up to the time of her actual reinstatement.

APPEARANCES OF COUNSEL

Ocampo & Manalo Law Firm for petitioner.
Clarence Lee B. Evangelista for respondent.

D E C I S I O N

PERALTA, *C.J.*:

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, assailing the Decision[1] dated January 5, 2015 and the Resolution[2] dated April 20, 2015 of the Court of Appeals, which nullified and set aside the Resolutions dated December 28, 2012[3] and February 6, 2013[4] of the National Labor Relations Commission (*NLRC*) insofar as it awarded separation pay to respondent Marie Jean Daguiso due to strained relations with petitioner Nippon Express Philippines Corporation

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[1] *Rollo*, pp. 41-57; penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justices Rodil V. Zalameda (now an Associate Justice of the Supreme Court) and Maria Elisa Sempio Diy.

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

[3] *Id*. at 138-143.

[4] *Id*. at 167-168.

(*NEPC*), and ordered petitioner to immediately reinstate respondent.

The facts are as follows:

Petitioner NEPC is a domestic corporation located in Parañaque City, Metro Manila. On September 26, 2005, NEPC hired respondent Daguiso as Corporate Human Resource Specialist. She was later promoted to the position of Corporate Human Resource Supervisor with a monthly salary of ₱30,384.90 and an allowance of ₱3,000.00 per month.[5]

On June 1, 2012, at about 8:22 a.m., Human Resource Specialist Diane Aguirre, who was a subordinate of Daguiso, sent the department heads an electronic mail (*e-mail*), informing them that "all attendance monitoring and other DTR concern shall be directed to Ms. Honeylet Suaiso x x x effective June 01, 2012." Daguiso asked Aguirre why she sent the said e-mail implementing the new assignment of Suaiso without furnishing her and Suaiso a copy thereof. Aguirre replied that Senior Manager Yolanda G. De Vera ordered her to send the e-mail. Daguiso allegedly lost her temper and shouted at Aguirre, and it led to a shouting match between the two. The commotion stopped when NEPC's General Manager Yoshitomo Omori went out of his office and intervened.[6]

At around 10:00 a.m. of the same day, Daguiso sent an e-mail to Senior Manager De Vera, apologizing for what happened between her and Aguirre, thus:

Good morning.

My apology for being IGNORANT in your direct instruction (according to her this morning) to Ms. Diana C. Aguirre, HR Specialist (which so happen (sic) to be my immediate subordinate) informing the department heads that 'all attendance monitoring and other DTR concern shall be directed to Ms. Honeylet Suaiso effective June 01, 2012.' This was the main reason of the conflict that happened this morning.

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

[6] *Id*. at 42.

Ms. Honeylet Suaiso and myself were not aware on the email below and when Ms. Honeylet received emails from the department heads she asked Ms. Aguirre about it (sic) she said she sent an email and it was your instruction. That's the time they began exchanging words explaining their own opinions (sic) regarding your direction of exchanging tasks. As their immediate superior, I interrupted them trying to explain to Ms. Aguirre that we did not received (sic) a copy of her email.

During our meeting last May 29, 2012, I made it clear to Ms. Suaiso and Ms. Aguirre that you and myself MUST be copied (sic) in all their communications internal and external because the complain/concern of Ms. Sherlie Sabelita (Cebu-HR/Fin. Manager) was due to the private email of Ms. Aguirre to her staff, Ms. Joan Marie Pancho.

I am not demanding the management to inform me of all the transactions/instructions of the management or company. What I am asking only is that if that transactions/informations affects (sic) me and my section (compben/attendance), I believe as their immediate superior I have the right to know before it is being implemented.

For management (sic) proper action.[7]

At the time of the incident, Senior Manager De Vera was on a business trip in Subic, Zambales. She ordered Executive Assistant Eunice P. Nerez to send an e-mail to all employees of NEPC in her behalf and instructed them to stop discussing the conflict between Daguiso and Aguirre through e-mail and instead focus on their duties and responsibilities.[8] Thus, Nerez sent this e-mail:

Dear All,

Good afternoon po!

I am replying in behalf of Mam Yolly. In connection to the concern above and the previous subject *Subordinate Concern (Ms. Aguirre)*, please be advised that Mam Yolly indicated to STOP THIS E-MAIL DISCUSSION because of the CUT-OFF. Please prioritize all your duties and respo[n]sibilities which are vital for your routinary work schedules.

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

[8] *Id*. at 43.

There are more important tasks that are needed to accomplish and; these matters will augment the widening gap and detest (sic) within your section.

As of the moment, Mam Yolly is still on her official business trip. Nevertheless, she will discuss with these matters as soon as she arrives in the office later.

Mam Yolly would appreciate if you would adhere and respect her request.

Your consideration and your regard for these concerns are greatly needed in this certain circumstance.

From,

Eunice P. Nerez
Executive Assistant
OPGM-GAAD[9]

Thereafter, Daguiso sent an e-mail to Nerez, to wit:

Your message have been noted Ma'am Eunice.

I am assuring the management that the tasks and responsibilities as indicated in our employment contracts and discussed in our PMS (performance management system) is being handled without delay and no major irregularities. I replied to your message in my breaktime, so that the I (sic) am not wasting the company's time.

We are giving due respect to the management and the company that supports us and our family in terms of salary but this petty matters (as you mentioned/categorize though), needs legal & proper action. We can not solve this kind of issue/concern if we kept on avoiding them.

My due respect to the management especially to Sir Yoshinori Kikuchi and Yoshitomo Omori.[10]

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[9] *Id*. at 71.

[10] *Id*. at 73.

At around 5:00 p.m. of the same day, Senior Manager De Vera called Daguiso for a meeting and informed her of NEPC's decision to terminate her employment. De Vera instructed her to turn over her accountabilities to the Head of Security, James Oliver, and handed to Daguiso a termination letter,[11] which reads:

TO: MARIE JEAN A. DAGUISO
FROM: YOSHITOMO OMORI

RE: *Notice of Termination Due to Infractions of Company Policy on Conduct and Discipline*

DATE: 01 JUNE 2012

We write to inform you that you have committed repeated infractions that are in violation of the Company's Policy on Conduct and Discipline, specifically:

a) Par. B, 1.1 Discourtesy towards other and/or use of indecent language;

b) Par. B, 1.7 Use of coercion, intimidation or assault (whether verbal [or physical]) regardless of purpose; and

c) Par. B, 1.8 Refusal to carry out official instructions – whether verbal or written by any NEPC officer.

In view of the foregoing, and after due consideration and review of your personnel records, we are constrained to terminate your employment on the ground of your repeated commission of Grave Offenses as defined under our Company's Policy on Conduct and Discipline and "Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work" (Article 282 (a) of the Labor Code). Said termination shall be effective at the close of business hours on June 01, 2012.

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[11] *Id.* at 43.

You are thus required to surrender any records or documents in your possession that is considered company property.

Very truly yours,

(Signed)
YOSHITOMO OMORI
General Manager

Approved by:

(Signed)

YOSHINORI KIKUCHI
President

Received by:

(No signature[12])
(*Name of Employee*)
Date: _____[13]

On June 4, 2012, Daguiso filed a complaint[14] for illegal dismissal against NEPC and its officers: President Yoshinori Kikuchi, General Manager Yoshitomo Omori and Senior Manager Yolanda G. De Vera.

In her Position Paper,[15] Daguiso stated that she was illegally terminated from her employment because she was dismissed without just cause and without due process. She was not served a written notice to explain and no formal hearing was conducted where she could defend herself against the accusations levelled against her and thereafter receive a written notice of the decision of management. Senior Manager De Vera just called her for

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[12] James Oliver noted at the side of the letter that Daguiso refused to sign.

[13] CA *rollo*, p. 153.

[14] *Id*. at 58.

[15] *Id*. at 59-66.

a sudden meeting on June 1, 2012 and told her that her employment was terminated effective 5:00 p.m. of that day. Daguiso said that the violation of her rights caused her mental anguish and wounded feelings. She prayed for reinstatement, and payment of backwages, 13th month pay and other monetary benefits from the time of her illegal dismissal until the finality of this decision, as well as nominal, moral and exemplary damages.

In their Position Paper,[16] NEPC countered that Daguiso's dismissal was for a just cause and it merely exercised its management prerogative in dismissing Daguiso due to serious misconduct and willful disobedience. NEPC alleged that Daguiso has been a constant source of discord and disruption in the workplace. NEPC often received complaints about Daguiso's combative behavior towards her co-employees. Nevertheless, NEPC merely reprimanded Daguiso until she was involved in a shouting match with Aguirre on June 1, 2012; and Daguiso disregarded Senior Manager De Vera's order to cease the e-mail discussion regarding the incident, as she still sent an e-mail to Nerez. NEPC contended that an employee's "attitude problem," as manifested by Daguiso's failure to get along with her co-employees and being a constant source of disagreement between employees, is a valid analogous just cause to terminate Daguiso's employment. Moreover, Daguiso's repeated infractions against company policies allegedly amount to serious misconduct under Section 282 (a) of the Labor Code. Daguiso also allegedly violated NEPC's Policy on Conduct and Discipline, namely: (a) discourtesy towards others and/or use of indecent language; (b) use of coercion, intimidation or assault regardless of purpose; and (c) refusal to carry out official instructions, whether verbal or written, by any of NEPC's officers. The aforementioned violations are considered grave offenses under NEPC's policies. NEPC contended that because Daguiso had a negative attitude and committed serious misconduct in the workplace, it had a just cause to terminate her.

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[16] *Id*. at 88-114.

Further, NEPC contended that Daguiso was terminated with due process. It asserted that the notice of termination given to Daguiso was sufficient compliance with the requirements of due process because a formal hearing is not necessary when the employee already admitted his/her responsibility for the act he/she was accused of;[17] and all that is needed is to inform the employee of the findings of the management.[18] NEPC argued that in an analogous manner, there was no need for Daguiso to admit her guilt because she was caught in the act of instigating and engaging in a shouting match with Aguirre and she also immediately sent an e-mail after the incident, which sought to undermine the management's authority. Thus, NEPC asserted that there was no need for a hearing to determine Daguiso's liability; all that was left was for management to decide and inform her of their decision on the said incident and her past infractions.

NEPC contended that since Daguiso was terminated for a just cause and with due process, Daguiso is not entitled to reinstatement, and an award of moral and exemplary damages. Moreover, reinstatement is not feasible because strained relations already exist between her and the respondents, and Daguiso occupies a position of trust and confidence as Corporate Human Resource Supervisor; hence, reinstatement would cause further disharmonious relationship with the management and other employees.

In a Decision[19] dated September 28, 2012, the Labor Arbiter held that Daguiso was illegally dismissed and ordered NEPC to pay Daguiso full backwages, separation pay and nominal damages.

The Labor Arbiter ruled in favor of Daguiso based on these findings:

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[17] Citing *Bernardo v. NLRC*, 325 Phil. 371 (1996).

[18] Citing *China Banking Corp. v. Borromeo*, 483 Phil. 643 (2004).

[19] *Rollo*, pp. 75-91.

A reading of respondent's position paper, reply and rejoinder readily shows that their position hangs solely on their bare allegation.

Respondents contend that complainant was dismissed because of the following:

a. Discourtesy towards other and/or use of indecent language;

b. Use of coercion, intimidation or assault (whether verbal or physical) regardless of purpose; and

c. Refusal to carry out official instruction.

On the first ground, there is nothing on record that would show that complainant was discourteous. As to how she was discourteous, respondents have not shown.

The Office does not see complainant's inquiry on why old time employees are not given the same privilege (in regards the length of leave granted) to new employees as discourtesy. Even assuming that she committed some discourtesy, the same should not amount to a forfeiture of [her] employment.

This also holds true with the charge of coercion, intimidation and assault. Who did complainant coerce, intimidate or coerce? The Office does not see on record. Nor does it see how such coercion or intimidation was executed by complainant. Coercion means to compel by use of force or intimidation. Is the expression of an opinion over a subordinate considered coercion?

If respondents are referring to the alleged shouting incident where complainant, together with Mesdames Aguirre and Suaiso was allegedly involved, there is no evidence on record that there was such a shouting match. No complaint or statement was ever made that such occurred. While respondents may have alleged the same in their position paper, it is noted that the said position paper was verified by respondent De Vera who was admittedly in Subic, Pampanga at the time of the alleged incident.

Nevertheless, even assuming that there was such a shouting incident, it is not stated on record who shouted at who (sic) or what were the utterances made during the same. It is totally irresponsible for respondents to simply point at complainant as the culprit who made unsavory statements without any basis at all.

As to the claim that she refused to carry out official instruction, the same must similarly fail.

Respondents contend that when complainant e-mailed respondent De Vera despite the latter's instructions not to discuss further the matter of transferring authority to Ms. Aguirre, she (complainant) violated their instruction.

A reading of complainant's e-mail (Annex "3" of respondents' position paper), however, shows that complainant did not discuss the incident with respondent De Vera or anybody else. In said e-mail, complainant merely assured respondent De Vera that her tasks and responsibilities with the company are well handled without delay. She also clearly stated her obedience to De Vera's desire not to discuss the matter further but, nevertheless, stressed the need to resolve the problem.

Finally, the Office notes respondents' inability to prove their allegation that complainant was a constant source of discord, that she had an attitude problem being unable to get along with her co-employee and failed or refused to reform despite repeated reprimands.

First, complainant vehemently denies the foregoing. She relegates said accusations as mere fabricated lies.

Second, respondents failed to present even one memorandum issued against complainant showing that she was previously reprimanded or even warned of her alleged bad behavior or attitude. This is despite respondents' allegation that complainant was repeatedly reprimanded.

Third, it is undisputed that complainant has never been subjected to any disciplinary action by respondents.

As it appears, respondents again rely on their bare allegation. Time and again, it has been said that allegations are not evidence. At their bare state, they cannot be the basis in "axing" an employee no matter how convincing they may sound. Respondents[']allegation, being shown to be unfounded, might as well be disregarded as "barbershop talk."

Even assuming that complainant is a confidential employee. She may not be dismissed on the bare assumption that her employer has lost trust and confidence in her. There must be a valid and proven basis for the loss of confidence. Alas, the Office does not find any on record.

Lastly, the Office notes the total lack of procedural due process in the termination of complainant. She was simply called to an informal

meeting where she was told, point blank, of her dismissal. She was stripped of her pass codes and company properties and unceremoniously led out of the premises. She was not furnished a copy of the charges made against her nor was she given an opportunity to explain.[20]

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, respondent Nippon Express Philippines Inc., is hereby found guilty of illegal dismissal and is ordered to pay complainant the provisional sum of Php394,362.20 representing:

1. Full backwages computed from the date of dismissal up to finality of this decision;

2. Separation pay equivalent to one month pay for every year of service computed up to finality of this decision a fraction of six months being considered one full month; and

3. The sum of ₱50,000.00 by way of nominal damages[.]

All other claims are dismissed for lack of merit.

SO ORDERED.[21]

Dissatisfied, Daguiso appealed the decision of the Labor Arbiter before the NLRC, contending that the Labor Arbiter gravely abused his discretion in (1) not ordering her reinstatement; (2) not holding De Vera solidarily liable with NEPC for her illegal dismissal despite the fact that she was the one who directly committed the acts of illegal dismissal; and (3) not awarding her moral and exemplary damages.

NEPC did not appeal the Labor Arbiter's decision.

In a Resolution dated December 28, 2012, the NLRC affirmed the Labor Arbiter's decision.

The NLRC held that the Labor Arbiter's award of separation pay in lieu of reinstatement was appropriate. Having gone over the records of the case, the NLRC said that it could discern

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[20] *Id.* at 85-90.

[21] *Id*. at 90-91.

that there already exists an atmosphere of antagonism and antipathy between the parties, especially between Daguiso and her immediate superior De Vera. Daguiso's resentment toward De Vera is apparent as she continues to insist in her appeal that De Vera should be held solidarily liable with NEPC for her wrongful dismissal. Moreover, Daguiso did not deny that the shouting match transpired between her and Aguirre on June 1, 2012. Under such circumstances, Daguiso's continuance in her employment would not foster a harmonious workplace. Further, Daguiso is not an ordinary rank-and-file employee. The nature of her work entails a substantial amount of trust and confidence of her employer. As a Corporate Human Resource Supervisor, she handled sensitive documents such as daily time records of employees. The NLRC stated that it would be unjust to compel NEPC and its officers to maintain in their employ Daguiso in whom they have already lost their trust and confidence.

The NLRC also ruled that De Vera, as senior manager, cannot be held solidarily liable with NEPC. Officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority,[22] and bad faith or wrongdoing of the director must be established clearly and convincingly.[23] In this case, there is no clear and convincing evidence that De Vera was driven by malice or bad faith in terminating Daguiso. Although De Vera may have acted erroneously in failing to comply with the due process requirements of the law in terminating Daguiso, nevertheless, such bad judgment will not automatically make De Vera liable for Daguiso's monetary awards. In the absence of proof of malice or bad faith, De Vera's act must be deemed to be a corporate act, within the scope of her authority.

Lastly, the NLRC held that the Labor Arbiter was correct in not awarding Daguiso moral and exemplary damages. As a

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[22] Citing *Pabalan v. National Labor Relations Commission*, 263 Phil. 434 (1990).

[23] See *Carag v. National Labor Relations Commission*, 548 Phil. 581 (2007).

rule, moral and exemplary damages cannot be justified solely on the premise that an employee was terminated without just cause or due process. To be awarded moral damages, it must additionally be shown that the dismissal of the employee was attended by bad faith or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy. Exemplary damages are recoverable only where the dismissal was effected in a wanton and oppressive manner.[24] None of these circumstances were adequately established by Daguiso.

The *fallo* of the NLRC's resolution reads:

> WHEREFORE, premises considered, the appeal is DISMISSED. The 28 September 2012 Decision of the Labor Arbiter Raymund M. Celino is hereby AFFIRMED.
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> SO ORDERED.[25]

Daguiso filed a motion for reconsideration, which was denied by the NLRC in a Resolution dated February 6, 2013.

Daguiso appealed the NLRC's decision to the Court of Appeals, which stated that the main issues for resolution were: (1) whether the NLRC gravely abused its discretion in not ordering the reinstatement of Daguiso; (2) whether Daguiso should be paid moral and exemplary damages; and (3) whether De Vera can be held solidarily liable with NEPC.

The Court of Appeals found the petition partly impressed with merit. It stated that an illegally dismissed employee is entitled to backwages and reinstatement.[26] In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. Reinstatement is the rule, and for the exception of

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[24] Citing *Mayon Hotel & Restaurant v. Adana*, 497 Phil. 892 (2005); and *Acesite Corporation v. National Labor Relations Commission*, 490 Phil. 249 (2005).

[25] *Rollo*, p. 143.

[26] Citing *Golden Ace Builders, et al. v. Talde*, 634 Phil. 364 (2010).

strained relations to apply, it should be proved that it is likely that if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned.[27]

The Court of Appeals found that, in this case, the NLRC gravely abused its discretion in not ordering the reinstatement of Daguiso. As found by the Labor Arbiter and impliedly affirmed by the NLRC, there is no legal ground for the termination of Daguiso's employment. Notably, NEPC and its officers impliedly admitted the factual findings of the labor tribunals that Daguiso was illegally terminated from employment when they did not appeal the Labor Arbiter's decision to the NLRC. As Daguiso was illegally dismissed, pursuant to the mandate of Article 279[28] of the Labor Code, she should be reinstated to her position as Corporate Human Resource Supervisor.

The Court of Appeals held that the NLRC gravely abused its discretion in ruling that because of Daguiso's insistence that De Vera be held personally liable, there exists an "atmosphere of antagonism and antipathy between the parties" that would justify the granting of separation pay instead of reinstatement. The NLRC also erred in concluding that the continuance of Daguiso's employment would not foster a harmonious workplace because she was involved in a "shouting match" with Aguirre. The appellate court stressed that these are insufficient to deny reinstatement to Daguiso because the altercation between Daguiso and Aguirre transpired due to the fact that Senior

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[27] Citing *Tenazas, et al. v. R. Villegas Taxi Transport, et al.,* 731 Phil. 217 (2014).

[28] Art. 279. Security of Tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Section 34, Republic Act No. 6715, March 21, 1989)

Manager De Vera bypassed Daguiso when she directly ordered Aguirre, the immediate subordinate of Daguiso, to send an e-mail to all department heads to inform them that "all attendance monitoring and other DTR concern shall be directed to Ms. Honeylet Suaiso x x x effective June 01, 2012." Daguiso had a legitimate grievance against Aguirre and De Vera, so that to deny Daguiso reinstatement due to "strained relations" between her and De Vera would result in rewarding NEPC and its officers, and penalizing Daguiso, the one bypassed. This is injustice to Daguiso because NEPC and its officers should not be allowed to profit from their own misdeeds.[29]

The Court of Appeals also disagreed with the NLRC's ruling that Daguiso's insistence on De Vera's solidary liability with NEPC showed resentment and existence of strained relations. It found such reasoning insufficient to warrant the award of separation pay in lieu of reinstatement because no strained relations should arise from Daguiso's act of asserting that De Vera be held solidarily liable with NEPC.[30] Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation.[31] In other words, litigation may engender a certain degree of hostility, but it would not necessarily rule out reinstatement which would, otherwise, become the rule rather the exception in illegal dismissal cases.[32]

The Court of Appeals agreed with the NLRC that Daguiso is not entitled to moral and exemplary damages, and that Senior Manager De Vera cannot be held solidarily liable with NEPC for Daguiso's dismissal.

Lastly, the Court of Appeals held that the NLRC gravely abused its discretion in affirming the award of nominal damages

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[29] *Rollo*, p. 53.

[30] Citing *Tenazas, et al. v. R. Villegas Taxi Transport, et al.,* 731 Phil. 217 (2014).

[31] Citing *Gabriel v. Bilon*, 543 Phil. 710 (2007).

[32] *Id.*

despite the factual finding that Daguiso was illegally dismissed. It held that Daguiso is not entitled to nominal damages because it is awarded only by way of indemnity when the termination of the employment is based on a just or an authorized cause but without observance of due process.[33]

The dispositive portion of the decision of the Court of Appeals reads:

> WHEREFORE, the instant petition is PARTLY GRANTED. The Resolutions dated 28 December 2012 and 06 February 2013 of the National Labor Relations Commission are NULLIFIED and SET ASIDE. Respondent Nippon Express Philippines Corporation is ORDERED TO IMMEDIATELY REINSTATE MARIE JEAN A. DAGUISO to her previous position without loss of seniority rights and pay her full backwages, inclusive of allowances, and other benefits computed from the time her compensation was withheld from her up to the time of her actual reinstatement.[34]

NEPC's motion for reconsideration was denied by the Court of Appeals in a Resolution dated April 20, 2015.

Hence, NEPC filed this petition assailing the decision of the Court of Appeals and raising these issues:

I. WHETHER OR NOT FINDINGS OF FACTS OF ADMINISTRATIVE AGENCIES LIKE THE NLRC ARE ACCORDED GREAT RESPECT, IF NOT FINALITY BY THE COURTS.

II. WHETHER OR NOT PETITIONER MAY STILL ASSIGN ERRORS AND ADVANCE [ARGUMENTS] TO SUPPORT THE DECISION OF THE LABOR ARBITER ALBEIT ITS NON-FILING OF AN APPEAL TO THE NLRC.

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS CLEARLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF [JURISDICTION] IN RULING THAT THE

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[33] Citing *Agabon v. NLRC*, 485 Phil. 248 (2004).

[34] *Rollo*, p. 56.

NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT GRANTED PRIVATE RESPONDENT SEPARATION PAY INSTEAD OF A REINSTATEMENT;

IV. WHETHER OR NOT THE HONORABLE COURT OF APPEALS X X X CLEARLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO OR IN EXCESS OF JURISDICTION IN GRANTING PRIVATE RESPONDENT'S PRAYER FOR REINSTATEMENT, GIVEN THAT PRIVATE RESPONDENT'S MOTION FOR PARTIAL WRIT OF EXECUTION IN THE AMOUNT OF PHP 394,362.20, WHICH AMOUNT ALREADY INCLUDED THE AWARD OF SEPARATION PAY, IS INDUBITABLY INCONSISTENT WITH HER PRAYER FOR REINSTATEMENT.

V. WHETHER OR NOT PRIVATE RESPONDENT'S MERE ALLEGATIONS OF ERROR IN JUDGMENT IN HER PETITION FOR *CERTIORARI* THAT SHE FILED UNDER RULE 65 IS SUFFICIENT TO CAUSE REVERSAL OF THE NLRC' S RESOLUTION.[35]

Petitioner NEPC contends that the Court of Appeals erred in finding the absence of strained relations between its employees and respondent Daguiso, and in ordering the reinstatement of Daguiso, which is contrary to the decision of the NLRC. The Court of Appeals' decision contradicts the principle that factual findings of administrative agencies are accorded great respect and finality by the higher courts. NEPC also contends that the Court of Appeals erred in granting Daguiso's prayer for reinstatement, considering that she filed a Motion for Partial Writ of Execution of the total sum of ₱394,362.20 that was awarded to her by the Labor Arbiter, which includes the award of separation pay. It asserts that Daguiso's prayer to be paid her separation pay negates the finding that there should be reinstatement. NEPC prays that the decision of the Court of Appeals ordering Daguiso's reinstatement be set aside and that the NLRC's Resolution be reinstated *in toto*.

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

The Ruling of the Court

As a rule, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Court does not review questions of fact but only questions of law. Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which the labor officials' findings rest. Hence, where the factual findings of the Labor Arbiter and the NLRC conform and are confirmed by the Court of Appeals, the same are accorded respect and finality, and are binding upon this Court. It is only when the factual findings of the NLRC and the appellate court are in conflict that this Court will review the records to determine which finding should be upheld as being more in conformity with the evidentiary facts. Where the Court of Appeals affirms the findings of the labor agencies on review and there is no showing whatsoever that said findings are patently erroneous, this Court is bound by the said findings.[36]

In this case, the Court reviewed the records of the case since the findings of the Court of Appeals and the labor tribunals are contradictory in regard to the reinstatement of Daguiso. The labor tribunals did not reinstate Daguiso but ordered payment of her separation pay, as the NLRC applied the doctrine of strained relations between the parties. However, the Court of Appeals reversed the NLRC and ordered the reinstatement of Daguiso.

Thus, the main issue is whether or not the Court of Appeals erred in ordering the reinstatement of respondent Daguiso.

The Court agrees with the Court of Appeals that Daguiso should be reinstated.

The full protection of labor and the security of tenure of workers are guaranteed under Section 3, Article XIII of the Constitution:

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[36] *Falco v. Mercury Freight International, Inc., and/or Coching*, 530 Phil. 42, 46 (2006).

Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.[37]

The Labor Code assures the security of tenure of workers, particularly the reinstatement of an illegally dismissed employee, thus:

ART. 279. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Section 34, Republic Act No. 6715, March 21, 1989)

This is reflected in the Omnibus Rules Implementing the Labor Code, Book VI, Rule 1, *viz*.:

Sec. 2. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee, except for a just cause as provided in the Labor Code or when authorized by existing laws.

Sec. 3. Reinstatement. — An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to backwages.

Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of

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[37] Underscores supplied.

right. Over the years, however, the case law developed that where reinstatement is not feasible, expedient or practical, as where reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement.[38] The doctrine of strained relations, however, should not be used recklessly, applied loosely and/or indiscriminately, or be based on impression alone;[39] otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation.[40]

As reinstatement is the rule, for the exception of strained relations to apply, it should be proved that the employee concerned occupies a position where he/she enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned.[41] Strained relations must be of such nature or degree as to preclude reinstatement.[42]

Moreover, strained relations must be demonstrated as a fact, adequately supported by evidence on record.[43] Since the application of this doctrine will result in the deprivation of

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[38] *Quijano v. Mercury Drug Corp.*, 354 Phil. 112, 121-122 (1998); and *Cabigting v. San Miguel Foods, Inc.,* 620 Phil. 14, 24 (2009).

[39] *Tenazas, et al. v. R. Villegas Taxi Transport, et al.*, 731 Phil. 217, 232 (2014); and *Globe-Mackay Cable and Radio Corp. v. NLRC*, 283 Phil. 649, 661 (1992).

[40] *Cabigting v. San Miguel Foods, Inc.*, 620 Phil. 14, 25 (2009).

[41] *Id.*

[42] *Tower Industrial Sales v. Court of Appeals* (Fifteenth Division), 521 Phil. 667, 678 (2006).

[43] *Id.*

employment despite the absence of just cause, the implementation of the doctrine of strained relations must be supplemented by the rule that the existence of strained relations is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause.[44]

In this case, the Labor Arbiter ordered the payment of separation pay in lieu of reinstatement, but he did not discuss the reason why Daguiso should not be reinstated. The NLRC affirmed the decision of the Labor Arbiter and grounded the non-reinstatement of Daguiso on strained relations between the parties.

We agree with the Court of Appeals that the NLRC gravely abused its discretion in ruling against the reinstatement of Daguiso due to strained relations on these bases: (1) Daguiso's resentment toward Senior Manager De Vera was apparent when she insisted in her appeal that De Vera be held personally liable for her illegal dismissal; and (2) Daguiso did not deny that she was involved in a shouting match with her subordinate, Aguirre, which shows that Daguiso's continuance in her employment could not foster a harmonious workplace.

We have held that the filing of a complaint does not necessarily translate to strained relations between the parties. Such filing of a complaint includes the prayer of the complainant, and in this case, the prayer of Daguiso that De Vera be held solidarily liable, which is for the labor tribunals and the courts to resolve. As a rule, no strained relations should arise from a valid and legal act asserting one's right. Although litigation may engender a certain degree of hostility, the understandable strain in the parties' relation would not necessarily rule out reinstatement which would, otherwise, become the rule, rather the exception, in illegal dismissal cases.[45]

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[44] *Pentagon Steel Corporation v. Court of Appeals, et al.,* 608 Phil. 682, 699 (2009).

[45] *Tenazas, et al. v. R. Villegas Taxi Transport, et al.,* 731 Phil. 217, 233 (2014).

Moreover, because Daguiso did not deny that a shouting match transpired between her and Aguirre, the NLRC concluded that Daguiso's continuance in her employment could not foster a harmonious workplace. However, The NLRC's conclusion disregarded one important detail: the origin of the altercation was the fact that De Vera bypassed Daguiso in the dissemination of information by Aguirre, Daguiso's subordinate. Thus, the Court of Appeals correctly stated that the said bases of the NLRC are insufficient to deny Daguiso's reinstatement, *viz*.:

> It bears stressing that these are insufficient to deny reinstatement for the simple reason that the altercation between Daguiso and Aguirre transpired due to the fact that De Vera bypassed Human Resource Supervisor Daguiso when she directly ordered Human Resource Specialist Aguirre (who is the immediate subordinate of Daguiso) to send an electronic mail to all Department Heads informing them that "all attendance monitoring and other DTR concern shall be directed to Ms. Honeylet Suaiso x x x effective June 01, 2012." The misunderstanding could have been avoided had De Vera followed the normal process of informing and/or consulting Daguiso of her decision to transfer the monitoring of attendance to Suaiso. As Human Resource Supervisor, Daguiso had a right to be informed and/or consulted on matters involving the monitoring of employees' attendance. Clearly, Daguiso had a legitimate grievance against Aguirre and De Vera. Hence, to deny Daguiso of reinstatement due to the "strained relations" between her and De Vera would result in rewarding respondents and penalizing Daguiso, the one bypassed. This is injustice on the part of Daguiso because respondents should not be allowed to profit from their own misdeeds. As decided by the Supreme Court, an employer should not profit from his own misdeeds.[46]

In the same vein, Daguiso's non-reinstatement cannot be justified based on her position as Corporate Human Resource Supervisor, which is said to be a position of trust as Daguiso handled the daily time records of employees, and her employer has allegedly lost confidence in her.

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[46] *Rollo*, p. 53.

First, it must be emphazised that Daguiso was dismissed without just cause and without due process as ruled by the Labor Arbiter. NEPC did not appeal the decision of the Labor Arbiter, which implies its acquiescence to the Labor Arbiter's findings.

Second, NEPC failed to prove with substantial evidence that Daguiso committed an act in the performance of her duties which justifies its loss of confidence in her to merit the NLRC's reasoning that "it would be unjust to compel respondents-appellees to maintain in their employ complainant-appellant [Daguiso] in whom they have already lost their trust and confidence."[47]

Third, we have discussed that to deny Daguiso reinstatement due to "strained relations" between her and Senior Manager De Vera would be an injustice to Daguiso, the one bypassed by De Vera. NEPC failed to present competent evidence as basis for concluding that its relationship with Daguiso has reached a point where it is best severed. In fact, Daguiso asks to be reinstated.

The doctrine of strained relations should not be applied indiscriminately to cause the non-reinstatement of a supervisory employee who is dismissed without just cause and without due process by the employer due to an altercation caused by its senior officer who bypassed the dismissed employee. An employee's occupation is his/her means of livelihood, which is a precious economic right; hence, it should not just be taken away from the employee by applying the exception of "strained relations" that is not justified. The State guarantees security of tenure to workers; thus, all efforts must be exerted to protect a worker from unjust deprivation of his/her job.

Further, NEPC contends that the reinstatement of Daguiso is inconsistent with her motion for partial writ of execution of the total sum of ₱394,362.20, the amount computed to be due to Daguiso by the Labor Arbiter (which includes Daguiso's full backwages computed from the date of dismissal up to the

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[47] *Id.* at 141.

finality of the Labor Arbiter's decision, separation pay and nominal damages of ₱50,000.00).

The contention is without merit. The said motion[48] dated January 8, 2013 was filed by Daguiso without prejudice to her appeal before the NLRC. The Court notes that NEPC filed a motion[49] dated April 5, 2013 before the NLRC manifesting that it was willing to pay the said monetary award to amicably settle the issue and advised Daguiso to collect that amount any time, but Daguiso did not do so.

In fine, the Court of Appeals correctly ordered the immediate reinstatement of respondent Daguiso to her previous position without loss of seniority rights and payment of her full backwages, inclusive of allowances, and other benefits computed from the time her compensation was withheld from her up to the time of her actual reinstatement.

WHEREFORE, the petition is denied. The Decision of the Court of Appeals dated January 5, 2015 and its Resolution dated April 20, 2015 are hereby **AFFIRMED**.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.,* concur.

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[48] CA *rollo*, pp. 238-240.

[49] *Id*. at 242-247.

FIRST DIVISION

[G.R. No. 222416. June 17, 2020]

FIAMETTE A. RAMIL, *petitioner, vs.* **STONELEAF INC. / JOEY DE GUZMAN / MAC DONES / CRISELDA DONES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW SHOULD BE RAISED THEREIN; THE COURT SHALL ENTERTAIN A PETITION WHICH INVOLVES A RE-ASSESSMENT OF THE EVIDENCE PRESENTED, WHERE THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS HAVE DIFFERENT FINDINGS OF FACT AND CONCLUSIONS OF LAW. —** The general rule in a petition for review on *certiorari* under Rule 45 of the Rules of Court is that only questions of law should be raised. In *Republic of the Philippines v. Heirs of Eladio Santiago,* the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the LA, the NLRC and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented.

2. **ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED RESPECT AND EVEN FINALITY BY THE COURT, ESPECIALLY WHEN THESE FINDINGS ARE AFFIRMED BY THE COURT OF APPEALS. —** [T]he Court clarifies that the Court shall no longer discuss the legality of the dismissal and the propriety of the award of nominal damages of ₱5,000.00, because the labor tribunals and the CA are consistent in its findings that Ramil was dismissed for a valid cause but without due process. Thus, she is entitled to nominal damages. Factual findings of administrative agencies are generally accorded respect and even finality by the Court, especially when these findings are affirmed by the CA. Furthermore, Ramil did not appeal the LA's ruling dismissing the complaint for illegal dismissal for lack of merit.

It was Stoneleaf who filed an appeal questioning the monetary awards.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; MANAGERIAL EMPLOYEES ARE EXCLUDED FROM THE COVERAGE OF LABOR STANDARDS BENEFITS; CONDITIONS THAT MUST BE MET IN ORDER TO BE CONSIDERED A "MANAGERIAL EMPLOYEE." —** Article 82 of the Labor Code enumerates the employees excluded from the coverage of labor standards benefits. ART. 82. *Coverage*. – The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, **managerial employees,** x x x. As used herein, **"managerial employees" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.** The Omnibus Rules Implementing the Labor Code states that managerial employees and members of the managerial staff are those who meet the following conditions: (b) Managerial employees, if they meet all of the following conditions: (1) Their primary duty consists of the management of the establishment in which they are employed or of a department or sub-division thereof. (2) They customarily and regularly direct the work of two or more employees therein. (3) They have the authority to hire or fire employees of lower rank; or their suggestions and recommendations as to hiring and firing and as to the promotion or any other change of status of other employees, are given particular weight. x x x.

4. **ID.; ID.; ID.; IN DETERMINING WHETHER AN EMPLOYEE IS A MANAGERIAL EMPLOYEE/STAFF, HER ACTUAL WORK PERFORMED, AND NOT HER JOB TITLE, MUST BE CONSIDERED; PETITIONER IS NOT A MANAGERIAL EMPLOYEE, BUT A FIDUCIARY RANK-AND-FILE, AS HER TASKS DO NOT INCLUDE THE REGULAR EXERCISE OF DISCRETION, AND HER AUTHORITY IS LIMITED TO THE EXECUTION OF COMPANY PROCEDURES AND POLICIES, WITHOUT THE USE OF INDEPENDENT JUDGMENT; FIDUCIARY RANK-AND-FILE EMPLOYEE, DEFINED. —** In determining whether Ramil is a managerial employee/staff, her actual work performed, and not her job title, must be considered.

x x x. The records show that Ramil does not have the prerogative to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The scope of her assignment pertains to the daily operation of the spa by making sure that the business runs smoothly. However, her tasks do not include the regular exercise of discretion. Her authority is limited to the execution of company procedures and policies. She has plenty of administrative work, but none of it involves the use of independent judgment. Her duties are also subject to De Guzman's approval. x x x . The Court concurs with the NLRC's conclusion that Ramil is not a managerial employee, but a rank-and-file employee. Specifically, she is a fiduciary rank-and-file employee. *Wesleyan University Phils. v. Reyes* defines a fiduciary rank-and-file employee as one who in the normal and routine exercise of his/her functions regularly handle significant amounts of money or property. Cashiers, auditors, and property custodians are some of the employees in the second class.

5. ID.; ID.; ID.; PETITIONER IS ENTITLED TO SERVICE INCENTIVE LEAVE PAY, HOLIDAY PAY, AND PRO-RATED 13TH MONTH PAY, AND ATTORNEY'S FEES EQUIVALENT TO 10% OF THE MONETARY AWARD. — [R]amil regularly handles significant amounts of money or property in the normal and routine exercise of her functions. She was in charge of the facilities of the spa by making sure it is in good condition and that the items needed are in full stock all the time. She was also in charge of the sales of the spa when she took over the duties of the receptionist/cashier. In fact, Stoneleaf admitted in its Comment that she was entrusted with the finances of the spa, including the handling of cash receipts, billings statements, and the care of the spa's property. Therefore, Ramil is a fiduciary rank-and-file employee, and she is entitled to service incentive leave pay, holiday pay, and pro-rated 13th month pay. She is also entitled to attorney's fees equivalent to 10% of the monetary award, because she was compelled to file a complaint to protect her interests.

6. ID.; ID.; ID.; AN EMPLOYEE CANNOT BE CONSIDERED A CORPORATE OFFICER, ABSENT PROOF THAT HE/SHE HAS CAPITAL CONTRIBUTION TO THE CORPORATION, PARTICIPATES IN ANY CORPORATE MEETING, OR

EXERCISES FUNCTIONS RELATED TO A CORPORATE OFFICER. — The Court disagrees with Stoneleaf's argument that Ramil is a corporate officer. While the Articles of Incorporation states that she is one of the incorporators, Stoneleaf was unable to rebut Ramil's claim that she has no capital contribution to the corporation. She is merely an incorporator on paper, but not in fact. There was no proof that she participated in any corporate meeting or exercised functions related to a corporate officer. The Court observes that Stoneleaf was not able to demonstrate how Ramil recommends managerial actions that would make her a managerial employee. What is clear was Stoneleaf's admission that Ramil oversees the daily operation of the spa and supervises the employees. Stoneleaf admitted the scope of assignment given to her. [R]amil was able to overcome the burden of proving that she is a fiduciary rank-and-file employee, while Stoneleaf was unable to show evidence that she is a corporate officer.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Agcaoili Law Offices for respondents.

D E C I S I O N

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

Fiduciary rank-and-file employees are entitled to labor standards benefits under the Labor Code of the Philippines.

The Case

This petition for review on *certiorari* under Rule 45 questions the August 13, 2015 Decision[1] and January 14, 2016 Resolution of the Court of Appeals (CA) in CA-G.R. SP. No. 135062 which modified the December 26, 2013 National Labor Relations

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Franchito N. Diamante and Ramon Paul L. Hernando (now a Member of the Court), concurring, docketed as CA-G.R. SP. No. 135062; *rollo*, pp. 39-53.

Commission's (NLRC) Decision and February 25, 2014 NLRC Resolution by dismissing the monetary claims except for indemnity. The NLRC affirmed the September 26, 2013 Labor Arbiter's (LA) Decision, which dismissed the complaint for illegal dismissal but awarded monetary claims to petitioner Fiamette A. Ramil (Ramil).

The Facts

On June 7, 2009, Ramil was hired as a Spa Supervisor and Massage Therapist at respondent's establishment, Stoneleaf Spa and Wellness Center. Respondent Stoneleaf, Inc. (Stoneleaf) paid Ramil a monthly salary of ₱10,000.00 and ₱100.00 per massage service rendered. Ramil was also an incorporator/director in Stoneleaf's Articles of Incorporation.[2]

In January 2010, Ramil inquired about the payment of contributions for Social Security System (SSS), Philippine Health Insurance Corporation (Philhealth), and Pag-Ibig Fund [Pagtutulungan sa kinabukasan: Ikaw, Bangko, Industriya at Gobyerno Fund][3] (Pag-Ibig), which were necessary in processing the spa's permit. She also questioned the deduction of 12% value-added tax from her commission. As a result, she got the ire of Stoneleaf President, respondent Joseph Anthony P. De Guzman (De Guzman).[4]

On August 27, 2012, Stoneleaf's receptionist/cashier, Jingle Abarquez, (Abarquez), was on official leave, and Ramil took over her duties. In the afternoon of that day, a regular client came in for massage service. However, the service was not recorded in the computer as required by company procedure. After closing of business day, Ramil reported to De Guzman through a short messaging system (SMS) that there were only

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

[3] Republic Act No. 9679 or the Home Development Mutual Fund Law of 2009.

[4] *Id.* at 40.

three clients, when in fact there were four. The cash box contained ₱1,300.00 instead of ₱1,650.00.[5]

When Abarquez reported for work the following day, she checked the previous day's transactions. Another spa employee, Rowena Beloy (Beloy), told Abarquez about Ramil's anomalous transaction. Abarquez and Beloy reported the matter to De Guzman. Julius Tabangcora (Tabangcora), another spa employee, confirmed that he rendered a massage service to a client on August 27, 2012, but it was not reflected in the computer and the billing was not on file.[6]

De Guzman investigated the matter and discovered Ramil's dishonest act. When Ramil was confronted, she denied the allegation against her. On September 27, 2012, Stoneleaf terminated Ramil's employment due to serious misconduct, betrayal of trust, and loss of confidence.[7]

Ramil filed a complaint for illegal dismissal against Stoneleaf, De Guzman, and Maximo M. Dones[8] (Dones) before the labor tribunal. She alleged that she was not given a copy of the charge against her, and she was fired on the same day that she was notified of her dismissal. She averred that she was denied of substantial and procedural due process. She claimed to be entitled to reinstatement with backwages, last salary for September 16-30, 2012, proportionate 13th month pay, unpaid commission, labor standard benefits, moral and exemplary damages of ₱100,000.00, and 10% attorney's fees.[9]

Stoneleaf, De Guzman, and Dones contended that investigations and meetings were conducted, and sworn statements of the spa's employees were submitted. Ramil also

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[5] *Id.* at 41.

[6] *Id.*

[7] *Id.*

[8] Also referred to as Maximo M. Diones in some parts of the *rollos* and records.

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

offered her explanation in a lunch meeting with De Guzman sometime in September 2012.[10]

The Labor Arbiter's Decision

On September 26, 2013, LA Alberto B. Dolosa rendered a Decision[11] dismissing the complaint for lack of merit. The individual respondents, De Guzman and Dones, were dropped for lack of factual basis. However, the LA ordered Stoneleaf to pay Ramil the following labor standards benefits since Stoneleaf was unable to prove payment. All other claims were dismissed for lack of merit.[12]

1. Indemnity for violation of right to due process	– ₱ 5,000.00
2. Service Incentive Leave Pay (3 yrs.)	– 5,759.00
3. Holiday Pay (3 yrs.)	– 12,692.00
4. Prorated 13th Month Pay (2012)	– 7,500.00
TOTAL	₱30,951.00
5. 10% Attorney's Fees	3,095.10
GRAND TOTAL	₱34,046.10[13]

The LA ruled that Ramil was dismissed for a valid cause, that is, loss of trust and confidence for her dishonest act. Stoneleaf was able to support the dismissal through documentary evidence and found the following: (1) on August 27, 2012, a massage service on a client was not recorded in the computer; (2) Ramil instructed Abarquez to cover-up the shortage on August 27, 2012 with undeclared sales; (3) Ramil took the credit for services rendered by Dia Camilon, another spa employee; (4) Ramil sold to others the ointments that were used in the spa; (5) Ramil took home the towels in the spa; and (6) Ramil did not reflect the sales in the computer and took the money instead.[14]

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[10] *Id.* at 42.

[11] *Id.* at 191-196.

[12] *Id.* at 195-196.

[13] *Id.*

[14] *Id.* at 193-194.

However, Ramil was dismissed without due process, which entitled her to an indemnity of ₱5,000.00. The LA resolved that the alleged meeting cannot take the place of the required notice. Ramil was also entitled to attorney's fees since she was forced to litigate her case.[15]

The NLRC Decision

Stoneleaf appealed to the NLRC, which affirmed the LA's Decision in its December 26, 2013 Decision.[16] The NLRC held that Ramil was not a managerial employee/staff because her duties and responsibilities do not fall under any of the categories of Section 2(b), Rule 1, Book III of the Implementing Rules of the Labor Code. Ramil's work does not: (1) directly relate to management policies; (2) involve regular exercise of discretion and judgment; and (3) pertain to policy formulation, hiring, or firing of employees.[17]

The NLRC explained that the test of supervisory or managerial status depends on whether a person possesses authority to act in the interest of his employer, and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. Here, there is no evidence that Ramil has authority equivalent to managerial actions which uses independent judgment. It was apparent that she executed approved and established policies.[18]

The NLRC determined that although Ramil looked for suppliers for the spa, she cannot decide whether to get a particular supplier. Ramil evaluated applicants for the spa, but her evaluation was subject to De Guzman's approval. She also reported to De Guzman the number of clients served and how much sales were made for the day.[19]

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[15] *Id.* at 193, 195.

[16] *Id.* at 87-94.

[17] *Id.* at 91-93.

[18] *Id.* at 93.

[19] *Id.*

Lastly, Stoneleaf failed to refute that Ramil received ₱100.00 as commission for every massage service that she rendered. Furthermore, one of the employees stated in her sworn statement that Ramil assigned to herself clients who give tips and claimed that the client specifically requested her. This indicated that Ramil was a massage therapist or a rank-and-file employee, and not a managerial employee/staff. Thus, she was entitled to the labor standards benefits awarded by the LA.[20]

Stoneleaf moved for reconsideration, which the NLRC denied in its February 25, 2014 Resolution.[21] Unconvinced, Stoneleaf filed a petition for *certiorari* in the CA.

The CA Decision

On August 13, 2015, the CA rendered a Decision[22] partially granting the petition and modifying the NLRC Decision and Resolution by retaining only the indemnity award of ₱5,000.00 for violation of right to procedural due process.[23]

The CA resolved that Ramil was a supervisory/managerial employee based on her admission and the scope of assignments she indicated in her position paper. She exercised management prerogatives for Stoneleaf's interest.[24] Consequently, she was not entitled to 13th month pay, holiday pay, and service incentive leave pay. The CA also ruled that there was no basis for the award of attorney's fees.[25]

However, the CA sustained that she was dismissed for a valid cause but without observance of due process; thus, she was entitled to nominal damages of ₱5,000.00.[26]

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[20] *Id.* at 94.

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

[22] *Supra* note 1.

[23] *Rollo,* p. 52.

[24] *Id.* at 50.

[25] *Id.* at 52.

[26] *Id.* at 51.

Ramil moved for reconsideration, which the CA denied in its January 14, 2016 Resolution.[27] Aggrieved, Ramil filed this petition before the Court.

The Issue Presented

Whether or not the CA erred in partially granting the petition and deleting the monetary awards of service incentive leave pay, holiday pay, pro-rated 13th month pay, and attorney's fees.

The Court's Ruling

The petition is granted.

The general rule in a petition for review on *certiorari* under Rule 45 of the Rules of Court is that only questions of law should be raised. In *Republic of the Philippines v. Heirs of Eladio Santiago,*[28] the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the LA, the NLRC and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented.

Foremost, the Court clarifies that the Court shall no longer discuss the legality of the dismissal and the propriety of the award of nominal damages of ₱5,000.00, because the labor tribunals and the CA are consistent in its findings that Ramil was dismissed for a valid cause but without due process. Thus, she is entitled to nominal damages. Factual findings of administrative agencies are generally accorded respect and even finality by the Court, especially when these findings are affirmed by the CA.[29] Furthermore, Ramil did not appeal the LA's ruling dismissing the complaint for illegal dismissal for lack of merit.

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

[28] *Republic v. Heirs of Santiago,* 208 Phil. 1, 9 (2017).

[29] *Union Bank of the Philippines v. The Hon. Regional Agrarian Reform Officer*, 806 Phil. 545, 563 (2017).

It was Stoneleaf who filed an appeal questioning the monetary awards.

The main issue to be resolved is whether or not petitioner Ramil is entitled to service incentive leave pay, holiday pay, pro-rated 13th month pay, and attorney's fees. Under the Labor Code of the Philippines (Labor Code), rank-and-file employees are entitled to these monetary awards, but not managerial employees. Stoneleaf claims that Ramil is a managerial employee/staff, while the latter argues otherwise. The Court must determine to which class of employees Ramil belongs.

Article 82 of the Labor Code enumerates the employees excluded from the coverage of labor standards benefits.

> ART. 82. *Coverage*. – The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, **managerial employees**, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.
>
> As used herein, **"managerial employees" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.** (Emphasis supplied)

The Omnibus Rules Implementing the Labor Code states that managerial employees and members of the managerial staff are those who meet the following conditions:

> (b) Managerial employees, if they meet all of the following conditions:
>
> (1) Their primary duty consists of the management of the establishment in which they are employed or of a department or sub-division thereof.
>
> (2) They customarily and regularly direct the work of two or more employees therein.

(3) They have the authority to hire or fire employees of lower rank; or their suggestions and recommendations as to hiring and firing and as to the promotion or any other change of status of other employees, are given particular weight.

(c) Officers or members of a managerial staff if they perform the following duties and responsibilities:

(1) The primary duty consists of the performance of work directly related to management policies of their employer;

(2) Customarily and regularly exercise discretion and independent judgment; and

(3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute, under general supervision, special assignments and tasks; and

(4) Who do not devote more than 20 percent of their hours worked in a work week to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2) and (3) above.

In determining whether Ramil is a managerial employee/ staff, her actual work performed, and not her job title, must be considered.

In her Petition, Ramil enumerated the scope of her assignment as Spa Supervisor and Massage Therapist as follows:

- Ensure the spa is in tiptop condition
- Ensure that there are enough therapists to serve customer/s
- Ensure that the items needed in massage service is in full stock all the time in coordination with the assigned inventory clerk, making the sourcing of supplier of merchandise for the spa also part of the job
- In charge of delegating every responsibility of all the staff
- Entertains the guests and promotes the spa services
- Handles the complaints of customers
- Trains the staff on the spa services

- Evaluates the competency of applicants to petitioner De Guzman for his approval
- Enforces company policy and spa regulations[30]

The records show that Ramil does not have the prerogative to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The scope of her assignment pertains to the daily operation of the spa by making sure that the business runs smoothly. However, her tasks do not include the regular exercise of discretion. Her authority is limited to the execution of company procedures and policies. She has plenty of administrative work, but none of it involves the use of independent judgment. Her duties are also subject to De Guzman's approval.

The Court agrees with the NLRC's observations as follows:

> Applying the above criteria, complainant's duties and responsibilities do not x x x fall under any of the categories enumerated above. Complainant's work was not directly related to management policies. No circumstances were shown by respondents to reveal that complainant regularly exercised discretion and independent judgment. Neither did complainant participate in policy formulation nor in the hiring or firing of employees.
>
> It must be pointed out that the test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer, and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. Simply put, the functions of the position are not managerial in nature if they only execute approved and established policies leaving little or no discretion at all whether to implement said policies or not.
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> In the instant case, the position held by complainant and its concomitant duties failed to overcome the above mentioned test. Her assigned tasks do not at all indicate that complainant can exercise the powers equivalent to managerial actions which require independent

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[30] *Rollo*, pp. 15-16.

judgment. At the least, there is no evidence that she was vested with duties attributable to a managerial employee or to a member of the managerial staff.

What is more apparent, however, is that the functions of complainant seem to involve the execution of approved and established policies. While she may be tasked to source out suppliers of merchandise for the spa, there is no showing that she has the last say on whether to get from the supplier or not. Truly, she may evaluate the competency of applicants, but still this is subject to the approval of respondent De Guzman. Noteworthy, complainant reports to respondent De Guzman at the end of business hours to inform the latter how many clients were served by the spa and how much sales was made for the day.

Moreover, the respondents' failure to controvert the complainant's claim that she gets a commission of [₱]100.00 for every massage service rendered is a clear manifestation that complainant was one of the massage therapists of the spa. This finds support in the sworn statement of Arcega, wherein the latter attested that complainant assigns to herself clients who give tips and claim that the customer specifically asked for her. Indeed, if it were true that she is a managerial employee or a member of the managerial staff, complainant would not have been entitled to commissions for every massage rendered.[31]

The Court concurs with the NLRC's conclusion that Ramil is not a managerial employee, but a rank-and-file employee. Specifically, she is a fiduciary rank-and-file employee. *Wesleyan University Phils. v. Reyes*[32] defines a fiduciary rank-and-file employee as one who in the normal and routine exercise of his/her functions regularly handle significant amounts of money or property. Cashiers, auditors, and property custodians are some of the employees in the second class.

Here, Ramil regularly handles significant amounts of money or property in the normal and routine exercise of her functions. She was in charge of the facilities of the spa by making sure it is in good condition and that the items needed are in full

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[31] *Id.* at 92-94.

[32] 740 Phil. 297, 311 (2014).

stock all the time. She was also in charge of the sales of the spa when she took over the duties of the receptionist/cashier. In fact, Stoneleaf admitted in its Comment that she was entrusted with the finances of the spa, including the handling of cash receipts, billings statements, and the care of the spa's property. Therefore, Ramil is a fiduciary rank-and-file employee, and she is entitled to service incentive leave pay, holiday pay, and pro-rated 13th month pay. She is also entitled to attorney's fees equivalent to 10% of the monetary award, because she was compelled to file a complaint to protect her interests.

The Court disagrees with Stoneleaf's argument that Ramil is a corporate officer. While the Articles of Incorporation states that she is one of the incorporators, Stoneleaf was unable to rebut Ramil's claim that she has no capital contribution to the corporation. She is merely an incorporator on paper, but not in fact. There was no proof that she participated in any corporate meeting or exercised functions related to a corporate officer.

The Court observes that Stoneleaf was not able to demonstrate how Ramil recommends managerial actions that would make her a managerial employee. What is clear was Stoneleaf's admission that Ramil oversees the daily operation of the spa and supervises the employees. Stoneleaf admitted the scope of assignment given to her.

In sum, Ramil was able to overcome the burden of proving that she is a fiduciary rank-and-file employee, while Stoneleaf was unable to show evidence that she is a corporate officer. Ramil is entitled to service incentive leave pay, holiday pay, pro-rated 13th month pay, and attorney's fees equivalent to 10% of the monetary award. Pursuant to *Nacar v. Gallery Frames*,[33] the monetary awards are subject to 6% interest per annum from the finality of this decision until fully paid.

WHEREFORE, the petition is **GRANTED**. The Court of Appeals Decision dated August 13, 2015 and the Resolution dated January 14, 2016, docketed as CA-G.R. SP. No. 135062,

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[33] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

are **REVERSED**. The National Labor Relations Decision dated December 26, 2013 and the NLRC Resolution dated February 25, 2014 are **REINSTATED WITH MODIFICATION** by imposing an interest rate of 6% per annum on all monetary awards from the finality of this decision until full payment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 224616. June 17, 2020]

C.F. SHARP CREW MANAGEMENT, INC., NORWEGIAN CRUISE LINE LTD. and JIKIE[*] P. ILAGAN, *petitioners, vs.* **FEDERICO A. NARBONITA, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE COURT IS NOT A TRIER OF FACTS, AND THIS APPLIES WITH GREATER FORCE IN LABOR CASES INASMUCH AS THE FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES LIKE THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY ACCORDED NOT ONLY WITH RESPECT, BUT EVEN FINALITY BY THE COURT. — The petition utterly fails to convince the Court that the CA, in the case at bench, erred in the appreciation of evidence or committed

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[*] Also referred to as "Jickie" in some parts of the records.

an error in law reversible by a petition for review on *certiorari*. The instant petition effectively beseech the Court to revisit and recalibrate the evidence on record already passed upon by the labor tribunals as part of their statutory function, and ultimately, to rule on the factual issue of whether or not there is sufficient basis to hold petitioners liable to pay disability benefits owing to Narbonita under the Philippine Overseas Employment Administration's (POEA's) "Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels" deemed written in the latter's contract of employment. However, the Court has repeated many times over that it is not a trier of facts and that its jurisdiction in petitions filed under Rule 45 of the Rules of Court is limited to reviewing only errors of law, unless it can be shown that the factual findings complained of are completely devoid of support in the records or that the assailed judgment is based on a gross misapprehension of facts. The principle that this Court is a non-trier of facts applies with greater force in labor cases inasmuch as the factual findings of quasi-judicial bodies like the LA and the NLRC, especially when affirmed by the CA, are generally accorded not only with respect, but even finality by this Court. At any rate, the Court, after a careful review of the case, sees no cogent reason to disturb the common findings and conclusion of all the three tribunals below that the subject illness of Narbonita was work-related, hence, compensable.

2. **LABOR AND SOCIAL LEGISLATION; SEAFARERS; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION - STANDARD EMPLOYMENT CONTRACT (POEA-SEC); FOR DISABILITY TO BE COMPENSABLE, IT MUST BE THE RESULT OF A WORK-RELATED INJURY OR A WORK-RELATED ILLNESS, AND MUST HAVE EXISTED DURING THE TERM OF THE SEAFARER'S EMPLOYMENT CONTRACT. —** Every employment contract between a Filipino seafarer and his employer is governed, not only by their mutual agreements, but also by law specifically, the provisions of the 2000 POEA-Standard Employment Contract (POEA-SEC) for Filipino Seafarers. As such, POEA-SEC spells out the conditions for compensability and Section 20(B) thereof requires an employer to compensate his employee who suffers from work-related illness or injury during the term of his employment contract x x x. Otherwise stated, for disability to be compensable,

it (1) must be the result of a work-related injury or a work-related illness, and (2) must have existed during the term of the seafarer's employment contract. Petitioners insist on the supposed pre-existence of Narbonita's illness. According to them, the subject illness did not occur during the course of Narbonita's employment since it already existed prior to the commencement of his second deployment. However, they failed to refute the presumption of its work-relatedness or aggravation by reason of his work.

3. ID.; ID.; ID.; OSTEOARTHRITIS IS LISTED AS AN OCCUPATIONAL DISEASE, THUS, PRESUMED TO BE WORK-RELATED; WHERE A SEAFARER'S WORK GENERALLY INVOLVES CARRYING HEAVY LOADS AND THE PERFORMANCE OF OTHER STRENUOUS ACTIVITIES, IT CAN REASONABLY BE CONCLUDED THAT HIS WORK CAUSED OR AT LEAST AGGRAVATED HIS ILLNESS OF OSTEOARTHRITIS. — There is no dispute that the company-designated physician issued his Final Medical Report on November 19, 2013 with a final diagnosis of "Degenerative Osteoarthritis, knee, right." Osteoarthritis is listed as an occupational disease, thus, presumed to be work-related. Under Section 32-A(21) of the 2010 POEA-SEC, for Osteoarthritis to be considered as an occupational disease, it must have been contracted in any occupation involving: a. Joint strain from carrying heavy load, or unduly heavy physical labor, as among laborers and mechanics; b. Minor or major injuries to the joint; c. Excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities; d. Extreme temperature changes (humidity, heat and cold exposures) and; e. Faulty work posture or use of vibratory tools. Here, it cannot be gainsaid that Narbonita's work was contributory in causing or, at least, increasing the risk of contracting his illness. His work history shows that he joined NCLL in 1986. To recap, Narbonita was repatriated for the 2nd and final time on October 29, 2013, which would mean that he has been working as a seafarer for over 27 years already. Granting that Narbonita had osteoarthritic conditions prior to his February 24, 2013 embarkation, the Court agrees with the finding of the NLRC that the same does not obliterate the fact that the pain was suffered while in the course of his employment; and that Narbonita was able to show the nature of his work as Stateroom Steward, where he had to carry

suitcases, lift heavy ice chests, lift beds when cleaning rooms, collect trash, *etc*. x x x. The Court, in *Centennial Transmarine, Inc. v. Quiambao*, had the opportunity to rule on a similar case where a seafarer was diagnosed with Osteoarthritis. We held therein that since a seafarer's work generally involves carrying heavy loads and the performance of other strenuous activities, it can reasonably be concluded that his work caused or at least aggravated his illness.

4. **ID.; ID.; ID.; ID.; AN ILLNESS SHALL BE CONSIDERED AS PRE-EXISTING IF PRIOR TO THE PROCESSING OF THE POEA CONTRACT, THE ADVICE OF A MEDICAL DOCTOR ON TREATMENT WAS GIVEN FOR SUCH CONTINUING ILLNESS OR CONDITION; OR THE SEAFARER HAD BEEN DIAGNOSED AND HAS KNOWLEDGE OF SUCH ILLNESS OR CONDITION, BUT FAILED TO DISCLOSE THE SAME DURING THE PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME), AND SUCH CANNOT BE DIAGNOSED DURING THE PEME; NOT PRESENT. —** [A]ccording to the 2010 POEA-SEC, an illness shall be ***considered as pre-existing*** if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the **advice of a medical doctor on treatment** was given for such continuing illness or condition; or (b) the seafarer had been **diagnosed and has knowledge** of such illness or condition, but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME. Nothing on the records indicate that any of the aforesaid conditions are present here. What's more, the LA correctly held that petitioners are to blame for prematurely declaring Narbonita as fit to work for another sea employment while still recovering from his previous knee surgery which eventually ripened to his current osteoarthritis. The Court agrees with the LA that petitioners cannot now be allowed to look the other way and assert pre-existing condition to avoid liability. In sum, petitioners miserably failed to show any ground to warrant a disturbance of the findings and conclusions of not one, not two, but three different courts or tribunals.

5. **ID.; ID.; AWARD OF ATTORNEY'S FEES TO RESPONDENT-SEAFARER, AFFIRMED. —** Anent the claim for attorney's fees, the same was correctly granted following Article 2208 of the New Civil Code which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws, and prevailing jurisprudence.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Calalang Dy Law Office for respondent.

D E C I S I O N

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

Before this Court is a Petition for Review on *Certiorari*[1] assailing the December 2, 2015[2] and May 16, 2016[3] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 141341 which dismissed the petition for *certiorari*[4] filed by C.F. Sharp Crew Management, Inc. (CF Sharp), Norwegian Cruise Line Ltd. (NCLL), and Jikie P. Ilagan (Ilagan; collectively, petitioners) after finding no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in rendering its April 10, 2015 Resolution[5] affirming the August 29, 2014 Decision[6] of the Labor Arbiter (LA) awarding permanent and total disability benefits to respondent Federico A. Narbonita, Jr. (Narbonita).

The Facts

On February 7, 2013, petitioners hired Narbonita to work as stateroom steward on board the vessel *M/S Norwegian Star (Hotel)* for a period of nine months.[7] Narbonita boarded the

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

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Samuel H. Gaerlan (now a Member of the Court) and Ma. Luisa C. Quijano-Padilla, concurring; CA *rollo*, pp. 456-459.

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

[4] *Id.* at 3-27.

[5] NLRC LAC No. (OFW-M) 01-000010-15(4); Penned by Presiding Commissioner Gregorio O. Bilog, III, with Commissioner Alan A. Ventura, concurring, and Commissioner Erlinda T. Agus, on leave; *id.* at 47-58.

[6] NLRC NCR Case No. (M) 05-06026-14; Penned by Labor Arbiter J. Potenciano F. Napenas, Jr.; *id.* at 272-279.

[7] *Id.* at 315.

vessel on February 24, 2013 after passing the Pre-Employment Medical Examination (PEME).[8] Barely a month later on March 16, 2013, at around 9:00 p.m., Narbonita was washing and stowing ice chests when he suddenly slipped and landed on his right knee.[9] He felt excruciating pain in his right knee and upon consultation with the ship doctor, he was told that he was suffering from meniscus tear on his right knee and should undergo Magnetic Resonance Imaging (MRI).[10] On March 19, 2013, Narbonita disembarked at the Port of Belize where he was seen by a doctor and advised to return to the Philippines immediately to undergo arthroscopic surgery.[11] Consequently, Narbonita was repatriated and was confined for three days for his arthroscopic knee surgery.[12] He was cleared by the company-designated physician after a series of post-operative checkups sometime in June 2013.[13]

On August 30, 2013, Narbonita again entered into a nine-month contract of employment[14] with petitioners for the same position and on board the same vessel with an agreed basic monthly salary of US$545.00. Narbonita boarded *M/S Norwegian Star (Hotel)* on October 1, 2013 after having been declared "fit to work" in his PEME and resumed his steward duties.[15] However, on October 15, 2013, Narbonita was carrying a guest's luggage when he heard a sudden snap on his right leg that radiated excruciating pain up to his knee.[16] By the end of

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[8] *Id.* at 316.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 317.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 146.

[15] *Id.* at 318.

[16] *Id.*

the month, Narbonita was medically repatriated due to re-tear of meniscus.[17]

Upon his return to the country, Narbonita was placed under the care of the company-designated physician and was again made to undergo an MRI.[18] On November 13, 2013, the company-designated physician informed Narbonita that based on the MRI result, there was no re-tear in his right knee.[19] On even date, Narbonita submitted the MRI result to CF Sharp for proper advice and recommendation.[20] The Legal Claims Manager of CF Sharp informed Narbonita that based on the company-designated physician's evaluation, he was fit to work and offered financial assistance in the amount of US$10,000.00.[21] Narbonita rejected the offer and sought a second opinion in the person of Dr. Ambrosio Valdez (Dr. Valdez).[22] After personally examining and extensively reviewing Narbonita's medical records, Dr. Valdez declared Narbonita as permanently disabled to resume his seafarer duties.[23] Thereafter, Narbonita communicated his willingness to get a third doctor's opinion to CF Sharp.[24] Narbonita, together with a representative from CF Sharp, went to see an orthopedic doctor at the Philippine Orthopedic Center in Banawe, Quezon City, but the said physician declined to issue a medical report.[25] Aggrieved, Narbonita submitted himself to Dr. Renato P. Runas (Dr. Runas), an orthopedic surgeon, for a final disability assessment.[26] Dr. Runas issued a Medical

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[17] *Id.* at 319.

[18] *Id.* at 320.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.* at 321.

[23] See Medical Certificate dated March 7, 2014; *id.* at 163.

[24] *Supra* note 22.

[25] CA *rollo*, p. 322.

[26] *Id.*

Evaluation Report[27] finding Narbonita as permanently disabled and physically unfit to work as a seaman. On the basis thereof, Narbonita filed a complaint[28] against petitioners claiming permanent and total disability benefits.

In their Reply,[29] petitioners prayed for the dismissal of the complaint arguing mainly that Narbonita's ailment was not work-related and that the illness was a pre-existing condition, hence, did not arise during the term of his employment contract.

Ruling of the LA

The LA awarded permanent and total disability benefits to Narbonita after finding that: (1) in a Medical Report dated June 19, 2013 no less than the petitioners' company-designated physician admitted that Narbonita suffered from medial meniscus tear; and (2) after only about two months, the company-designated physician declared Narbonita as fit to work when he submitted himself for PEME for his subsequent employment contract. The LA faulted the petitioners for prematurely pronouncing Narbonita, who was then still recuperating from his knee surgery, as fit to work for another employment as a seafarer. The LA reckoned that petitioners cannot now interpose the defense of pre-existing condition in order to avoid liability to Narbonita. Further, the LA opined that since Narbonita was unable to resume his sea duties for more than 120 days from repatriation, he is therefore entitled to permanent and total disability benefits.

Thus, in the dispositive portion of its Decision dated August 29, 2014, the LA wrote:

> WHEREFORE, premises considered, judgment is hereby rendered finding [Narbonita] entitled to permanent total disability benefits in the amount of US$60,000.00 and ten percent attorney's fees.
>
> All other claims are dismissed for lack of merit.

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[27] *Id.* at 165-166.

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

[29] *Id.* at 170-185.

SO ORDERED.[30]

Ruling of the NLRC

Upon appeal, the NLRC, like the LA, found no merit in the contention of the petitioners that Narbonita's illness was not work-related considering that: (1) Narbonita's illness arose or was sustained while working on board the vessel; (2) Narbonita was repatriated and underwent arthroscopic knee surgery supervised by the company-designated physician; and (3) on his subsequent embarkation, Narbonita suffered the same injury that led to his second medical repatriation. It thus affirmed the ruling of the LA, as follows:

> WHEREFORE, the appeal filed by [petitioners] is DISMISSED. The herein assailed Decision dated August 29, 2014 of [the LA] is hereby AFFIRMED.
>
> SO ORDERED.[31]

Petitioners' Motion for Reconsideration was denied in a Resolution[32] dated June 2, 2015.

Consequently, the respondents filed a Petition for *Certiorari* before the CA. During its pendency, Narbonita sought the execution of the NLRC Resolutions dated April 10, 2015 and June 2, 2015. On August 13, 2015, petitioners, with the intent of preventing further execution proceedings, paid Narbonita the peso equivalent of US$66,000.00 which is ₱2,978,646.00 as full and complete satisfaction of the NLRC's judgment award. Such payment was subject to the condition that in case of reversal or modification of the NLRC Decision and Resolution by the CA, Narbonita shall return to petitioners whatever amount may be due and owing.[33]

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[30] *Id.* at 279.

[31] *Id.* at 58.

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

[33] See Conditional Satisfaction of Judgment, *id.* at 391-393; Affidavit of Claimant, *id.* at 394-397; Receipt of Payment, *id.* at 398.

Ruling of the CA

The CA, in the herein assailed Resolution dated December 2, 2015, dismissed the petition holding that the challenged resolutions of the NLRC was in accordance with law and prevailing jurisprudence and that no grave abuse of discretion amounting to lack or excess of jurisdiction can be imputed against the said labor tribunal, *viz.*:

> WHEREFORE, the instant petition is DISMISSED for lack of merit. With costs.
>
> SO ORDERED.[34]

Petitioners filed a motion for reconsideration, but the same was denied by the CA in its May 16, 2016 Resolution.

Hence, this petition.

The Court's Ruling

The petition utterly fails to convince the Court that the CA, in the case at bench, erred in the appreciation of evidence or committed an error in law reversible by a petition for review on *certiorari*.

The instant petition effectively beseech the Court to revisit and recalibrate the evidence on record already passed upon by the labor tribunals as part of their statutory function,[35] and ultimately, to rule on the factual issue of whether or not there is sufficient basis to hold petitioners liable to pay disability benefits owing to Narbonita under the Philippine Overseas Employment Administration's (POEA's) "Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels"[36] deemed written in the latter's contract of employment. However, the Court has repeated many

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[34] *Id.* at 459.

[35] *P.J. Lhuillier, Inc. v. National Labor Relations Commission*, 497 Phil. 298, 309 (2005).

[36] POEA Department Order No. 4 (2000).

times over that it is not a trier of facts and that its jurisdiction in petitions filed under Rule 45 of the Rules of Court is limited to reviewing only errors of law, unless it can be shown that the factual findings complained of are completely devoid of support in the records or that the assailed judgment is based on a gross misapprehension of facts.[37] The principle that this Court is a non-trier of facts applies with greater force in labor cases inasmuch as the factual findings of quasi-judicial bodies like the LA and the NLRC, especially when affirmed by the CA, are generally accorded not only with respect, but even finality by this Court.[38]

At any rate, the Court, after a careful review of the case, sees no cogent reason to disturb the common findings and conclusion of all the three tribunals below that the subject illness of Narbonita was work-related, hence, compensable.

Every employment contract between a Filipino seafarer and his employer is governed, not only by their mutual agreements, but also by law specifically, the provisions of the 2000 POEA-Standard Employment Contract (POEA-SEC) for Filipino Seafarers.[39] As such, POEA-SEC spells out the conditions for compensability and Section 20 (B) thereof requires an employer to compensate his employee who suffers from work-related illness or injury during the term of his employment contract, *viz.*:

Section 20-B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS. —

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

x x x x x x x x x

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[37] *Association of Integrated Security Force of Bislig v. Court of Appeals*, 505 Phil. 10, 24 (2005).

[38] *Crewlink, Inc. v. Teringtering*, 697 Phil. 302, 309 (2012).

[39] *Phil-Man Marine Agency, Inc. v. Dedace, Jr.*, G.R. No. 199162, July 4, 2018.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

Otherwise stated, for disability to be compensable, it (1) must be the result of a work-related injury or a work-related illness, and (2) must have existed during the term of the seafarer's employment contract.

Petitioners insist on the supposed pre-existence of Narbonita's illness. According to them, the subject illness did not occur during the course of Narbonita's employment since it already existed prior to the commencement of his second deployment. However, they failed to refute the presumption of its work-relatedness or aggravation by reason of his work.

There is no dispute that the company-designated physician issued his Final Medical Report on November 19, 2013[40] with a final diagnosis of "Degenerative Osteoarthritis, knee, right."

Osteoarthritis is listed as an occupational disease, thus, presumed to be work-related. Under Section 32-A (21) of the 2010 POEA-SEC, for Osteoarthritis to be considered as an occupational disease, it must have been contracted in any occupation involving:

a. Joint strain from carrying heavy load, or unduly heavy physical labor, as among laborers and mechanics;

b. Minor or major injuries to the joint;

c. Excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities;

d. Extreme temperature changes (humidity, heat and cold exposures) and;

e. Faulty work posture or use of vibratory tools.

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[40] CA *rollo*, pp. 90-91.

Here, it cannot be gainsaid that Narbonita's work was contributory in causing or, at least, increasing the risk of contracting his illness. His work history[41] shows that he joined NCLL in 1986. To recap, Narbonita was repatriated for the 2nd and final time on October 29, 2013, which would mean that he has been working as a seafarer for over 27 years already. Granting that Narbonita had osteoarthritic conditions prior to his February 24, 2013 embarkation, the Court agrees with the finding of the NLRC that the same does not obliterate the fact that the pain was suffered while in the course of his employment; and that Narbonita was able to show the nature of his work as Stateroom Steward, where he had to carry suitcases, lift heavy ice chests, lift beds when cleaning rooms, collect trash, *etc*.

Equally telling is the medical evaluation made by private physician, Dr. Runas:

> In the case of Seaman Narbonita, he was prematurely cleared and returned to his strenuous job even though he is still having pain and recurrent selling of the operated right knee. This is the reason why only a few days upon returning to work. He can no longer bear the pain and walks with a limp. The physical therapy resulted in a very minimal effect in relation to joint pain and range of motion. The pain is persistent and unrelenting affecting his activities of daily living. The impediment is permanent and greatly affects his job. No amount of physical therapy can restore his premorbid capacity and performance level. He cannot tolerate prolonged standing or walking due to pain and even more difficult when going up the stairs. Pain on weight bearing makes it difficult to carry heavy items onboard. **As a Steward, he performs his duties sitting low, squatting and kneeling most of the time. With the painful knee, he is now unable to perform his job well**. Hence, a lifestyle modification and occupational change is adviced [sic] to prevent early severe progression of the deformity. This impediment has ended his career as a seafarer. (Emphasis supplied)

The Court, in *Centennial Transmarine, Inc. v. Quiambao*,[42] had the opportunity to rule on a similar case where a seafarer

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[41] See Medical Reports; *id.* at 88-92.

[42] 763 Phil. 411 (2015).

was diagnosed with Osteoarthritis. We held therein that since a seafarer's work generally involves carrying heavy loads and the performance of other strenuous activities, it can reasonably be concluded that his work caused or at least aggravated his illness.

Moreover, according to the 2010 POEA-SEC,[43] an illness shall be ***considered as pre-existing*** if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the **advice of a medical doctor on treatment** was given for such continuing illness or condition; or (b) the seafarer had been **diagnosed and has knowledge** of such illness or condition, but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME.[44] Nothing on the records indicate that any of the aforesaid conditions are present here.

What's more, the LA correctly held that petitioners are to blame for prematurely declaring Narbonita as fit to work for another sea employment while still recovering from his previous knee surgery which eventually ripened to his current osteoarthritis. The Court agrees with the LA that petitioners cannot now be allowed to look the other way and assert pre-existing condition to avoid liability.

In sum, petitioners miserably failed to show any ground to warrant a disturbance of the findings and conclusions of not one, not two, but three different courts or tribunals.

Anent the claim for attorney's fees, the same was correctly granted following Article 2208 of the New Civil Code which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws, and prevailing jurisprudence.[45]

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[43] 2010 POEA-SEC, Definition of Terms, Item No. 11 (a) and (b).

[44] *Philsynergy Maritime, Inc. v. Gallano, Jr.*, G.R. No. 228504, June 6, 2018, 865 SCRA 456, 470-471.

[45] *Abante v. KJGS Fleet Management Manila*, 622 Phil. 761, 771 (2009); *Philippine Transmarine Carriers, Inc. v. Tallafer*, G.R. No. 219923,

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed December 2, 2015 and May 16, 2016 Resolutions of the Court of Appeals in CA-G.R. SP No. 141341 which affirmed the Resolution dated April 10, 2015 of the National Labor Relations Commission are hereby **AFFIRMED *in toto***. Legal interest is no longer imposed on the total award of US$66,000.00 in view of the satisfaction of the amount already made on August 13, 2015.[46]

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 225410. June 17, 2020]

BBB,[*] *petitioner*, *vs.* **AMY B. CANTILLA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE RULE ON DOUBLE JEOPARDY IS SUBJECT TO THE

June 5, 2017; *Nazareno v. Maersk Filipinas Crewing, Inc.*, 704 Phil. 625, 639 (2013).

[46] *Apines v. Elburg Shipmanagement Philippines, Inc.*, 799 Phil. 220, 251 (2016).

[*] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes"; RA 9262, "An Act Defining Violence Against Women

EXERCISE OF JUDICIAL REVIEW BY WAY OF THE EXTRAORDINARY WRIT OF *CERTIORARI*. — Basic is the rule that the grant of a demurrer is tantamount to an acquittal and an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. This rule, however, is not without exception. The rule on double jeopardy is subject to the exercise of judicial review by way of the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court.

2. ID.; PROCEDURAL RULES MUST BE APPLIED STRICTLY. — While it is conceded that procedural rules are to be construed liberally, it is also true that the provisions on reglementary period must be applied *strictly*, as they are indispensable to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SECTION 4, RULE 65 OF THE RULES OF COURT, AS AMENDED BY ADMINISTRATIVE MATTER (AM) NO. 07-7-12-SC; THE PETITION SHALL BE FILED NOT LATER THAN SIXTY (60) DAYS FROM NOTICE OF THE JUDGMENT OR RESOLUTION. — Section 4, Rule 65 of the Rules of Court, as amended by Administrative Matter No. 07-7-12-SC reads: SEC. 4. *When and where to file petition.* — **The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution.** In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from the notice of the denial of the motion. x x x It is clear from the foregoing that the petition for *certiorari* must be filed not later than 60 days from notice of the judgment or resolution. The phrase that "[*n*]*o extension of time to file the petition shall be granted except for compelling reason*

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and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, 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.

and in no case exceeding fifteen (15) days" which was previously found in Section 4, Rule 65 of the Rules was deleted by amendment. The reason for the amendment is essentially to prevent the use or abuse of the petition for *certiorari* under Rule 65 to delay a case or even defeat the ends of justice. As the rule now stands, the 60-day period is inextendible in order to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case. In this case, petitioner failed to show any compelling reason for the grant of an extension. x x x Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, it is settled that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified.

4. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; CONSTRUED. — A petition for *certiorari* is intended to correct errors of jurisdiction only or *grave abuse of discretion* amounting to lack or excess of jurisdiction. Grave abuse of discretion is defined by jurisprudence as the capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility. In order for double jeopardy to not attach, and for the writ of *certiorari* to issue, the petitioner must clearly demonstrate that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham; thus rendering the assailed judgment void. x x x Time and again, we have stressed that accusation is not synonymous with guilt. Hence, in instances where the the prosecution fails to discharge its burden of proving the crime beyond reasonable doubt, it is not only the right of the accused to be freed, it becomes the Court's constitutional duty to acquit him.

APPEARANCES OF COUNSEL

Salvador & Parungao Law Firm for petitioner.
Bonifacio Aranjuez for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court that seeks to set aside the Resolutions dated February 9, 2016[2] and June 23, 2016[3] of the Court of Appeals (CA) in CA-G.R. SP No. 143741. The challenged CA Resolutions dismissed BBB's (petitioner) petition for *certiorari* assailing the Orders dated July 10, 2015[4] and October 12, 2015[5] of Branch 162, Regional Trial Court (RTC), Pasig City, San Juan Station, in Criminal Case No. 145929-SJ, a case for Child Abuse under Section 10 (a) of Republic Act No. (RA) 7610,[6] in relation to Section 5 (j) of RA 8369[7] for having been filed out of time.

The Antecedents

In an Information,[8] Amy B. Cantilla (respondent) was charged with Child Abuse under RA 7610. It reads:

> That, sometime between January to April 2006 in the City of San Juan, Philippines and within the jurisdiction of this Honorable Court the above-named accused in conspiracy with one another, did, then and there knowingly, unlawfully and criminally commit child abuse upon the person of one [AAA], then a 3 year old minor, child of

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[1] *Rollo*, pp. 10-34.

[2] *Id.* at 38-39; penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion, concurring.

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

[4] *Id.* at 254-260; penned by Presiding Judge Cesar Pabel D. Sulit.

[5] *Id.* at 261-266.

[6] Entitled "Special Protection of Children Against Abuse, Exploitation and Discrimination Act," approved on June 17, 1992.

[7] Entitled "Family Courts Act of 1997," approved on October 28, 1997.

[8] *Rollo*, at 88-89.

[BBB] by then and there by hitting her with the use of slippers and her hand, feeding her only twice a day, spanking her right face and pinching both her arms, which acts of cruelty are prejudicial to the normal growth and development of the minor child [AAA] as a human being, in violation of the above-cited law.

CONTRARY TO LAW.[9]

Respondent pleaded not guilty on arraignment.

Trial ensued.

The prosecution alleged that sometime in 2006, petitioner hired the services of Belle Torres (Torres) as caretaker or *yaya* of her daughter AAA in addition to respondent, who was petitioner's househelper. Petitioner worked as flight attendant of Cathay Pacific Airlines and as such, she was usually on international flight for almost a week. Consequently, AAA was left at home in the care of her *yaya* and the respondent.[10]

Sometime in April 2006, petitioner's friend, Maria Antonina C. Espiritu (Espiritu), along with her daughter, and the latter's *yaya*, visited petitioner's house in [redacted]. After the visit, Espiritu called up the petitioner and told her to change AAA's *yaya*. Espiritu never told petitioner of the reason, but she insisted that petitioner should change AAA's *yaya* and the other maid, herein respondent. As petitioner trusted Espiritu, she immediately terminated the services of Torres and respondent sometime in August 2006. It was only when Espiritu confided to petitioner that she learned of what Espiritu's *yaya* witnessed when they visited the petitioner's home. Espiritu's *yaya* saw respondent inflict physical harm on AAA, and Torres did not even bother to stop respondent. Petitioner then requested the administration of [redacted] to ban respondent from entering the premises.[11]

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[9] *Rollo*, p. 88.

[10] *Id.* at 62.

[11] *Id.*

On August 15, 2010, petitioner was surprised to see respondent in the common area of [redacted]. She interviewed AAA for confirmation as to what Torres and respondent did to her when the two were still working for them. AAA then told her mother that respondent inflicted physical harm on her almost everyday. That she would hit her on her backside and on her hand, deprive her of her meals, and would only let her eat past her mealtime.[12]

During the trial of the case, the prosecution presented petitioner as witness to substantiate the allegations in the information and was cross-examined by the counsel of the respondent. The prosecution also presented NBI Supervising Agent Atty. Olga Angustia Gonzales, who testified that she was the one who took the sworn statement of AAA.[13] On January 28, 2014, the prosecution presented AAA as witness. She testified on the circumstances that gave rise to the charge of Child Abuse against the respondent.[14] Thereafter, the prosecution formally offered its documentary evidence on November 11, 2014.[15]

On April 13, 2015, respondent filed a Demurrer to Evidence with Manifestation.[16] Respondent argued that in the Pre-Trial Order[17] dated February 12, 2013, the prosecution lined up as witness one "Maritoni Espiritu," who allegedly witnessed the abuses committed by the respondent against AAA. However, the witness was not presented by the prosecution. According to the respondent, the non-presentation of the supposed eyewitness is fatal since her testimony would give substance to the allegations stated in the Information.[18] While the

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[12] *Id*. at 63.

[13] *Id.* at 166-167.

[14] *Id.* at 197-243.

[15] *Id.* at 245-248.

[16] *Id.* at 250-253.

[17] *Id.* at 106-109.

[18] *Id.* at 251.

prosecution was able to present two witnesses during the trial, the witnesses, however, have no personal knowledge of the alleged abuses committed by respondent. As far as the testimony of AAA was concerned, the respondent argued that AAA's testimony was tainted with doubt. AAA was 12 years old when she testified of the incident that allegedly happened when she was still three years of age. Respondent questioned the delay of the petitioner in filing a case against respondent in year 2010, while the alleged incident took place in 2006.

In its Order[19] dated July 10, 2015, the RTC granted respondent's demurrer to evidence there being no sufficient evidence to support a conviction, *viz.*:

> WHEREFORE, pursuant to Section 23, Rule 119 of the New Rules on Criminal Procedures and as the prosecution failed to present sufficient evidence to prove the guilt of Amy Cantilla, the criminal case against her is hereby DISMISSED.
>
> x x x x x x x x x.
>
> SO ORDERED.[20]

On August 19, 2015, petitioner moved for reconsideration.[21] Subsequently, she moved for the inhibition of the presiding judge.[22]

The RTC denied both motions in an Order[23] dated October 12, 2015.

Aggrieved, petitioner elevated the case to the CA *via* a Petition for *Certiorari*.[24]

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[19] *Id.* at 254-260.

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

[21] *Id.* at 267-270.

[22] *Id.* at 271-280.

[23] *Id.* at 261-266.

[24] *Id.* at 299-330.

In the Resolution[25] dated February 9, 2016, the CA resolved to dismiss the petition for *certiorari* due to the following reasons, to wit: (1) for having been filed beyond the 60-day reglementary period in violation of Section 4, Rule 65 of the Rules of Court; (2) for failure to attach a valid Verification and Certification of Non-Forum Shopping, both not having been executed in accordance with Section 12, Rule II of the 2004 Notarial Rules on Notarial Practice; and (3) for failure to implead the People of the Philippines as respondent in violation of Section 7, Rule 3 of the Rules of Court.

Dismayed, petitioner filed a motion to reinstate petition arguing that she duly filed a motion for additional time to file petition for *certiorari*.

On June 23, 2016, the CA denied the petitioner's motion.[26]

Hence, this petition raising the following issues:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR IN DISMISSING THE PETITION FOR *CERTIORARI* OF THE PETITIONER;

II. WHETHER OR NOT RTC-162 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN GRANTING THE DEMURRER TO EVIDENCE OF THE ACCUSED;

III. WHETHER OR NOT THE PRESIDING JUDGE OF RTC-162 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN REFUSING TO INHIBIT FROM HANDLING CRIMINAL CASE NO. 145929-SJ NOTWITHSTANDING THE FACT THAT HE EXPRESSED IN WRITING HIS PREJUDICE AND BIAS AGAINST THE MINOR VICTIM[.][27]

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

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

[27] *Id.* at 19.

The Court, in its Resolutions dated October 17, 2016[28] and July 4, 2018,[29] ordered respondent to file Comment on the Petition for Review on *Certiorari*. In his Compliance[30] dated October 1, 2018, Atty. Bonifacio F. Aranjuez, Jr., counsel of respondent, stated that he could not possibly file the necessary comment on the petition for review on *certiorari* since he lost communication with the respondent and that he withdrew his representation as her counsel.[31]

The Court took note of the above-stated compliance in its Resolution[32] dated November 21, 2018 and required respondent to manifest her conformity to her counsel's withdrawal of representation within five days from notice thereof. However, respondent having failed to comply with the above-stated Resolution, the Court deemed her to have waived the filing thereof.

Ruling of the Court

The petition is bereft of merit.

Basic is the rule that the grant of a demurrer is tantamount to an acquittal and an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal.[33] This rule, however, is not without exception. The rule on double jeopardy is subject to the exercise of judicial review by way of the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court.[34]

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[28] *Id.* at 238.

[29] *Id.* at 241.

[30] *Id.* at 242-243.

[31] *Id.* at 242.

[32] *Id.* at 245.

[33] See *People v. Lagos*, 705 Phil. 570, 577 (2013), citing *People v. Court of Appeals and Galicia*, 545 Phil. 278, 292-293 (2007).

[34] *Id.* at 577-578.

In this case, the CA dismissed the Petition for *Certiorari* due to its findings that it was filed beyond the 60-day reglementary period, that the verification and certification against forum shopping did not contain the competent evidence of identity of the petitioners, and that the People of the Philippines was not impleaded.

In a last attempt to secure a reversal of the assailed resolutions, petitioner contends that granting that the petition was filed late, substantial justice begs that it be allowed and be given due course.

The Court disagrees.

While it is conceded that procedural rules are to be construed liberally, it is also true that the provisions on reglementary period must be applied *strictly*, as they are indispensable to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.[35]

Section 4, Rule 65 of the Rules of Court, as amended by Administrative Matter No. 07-7-12-SC reads:

SEC. 4. *When and where to file petition*. — **The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution.** In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)-day period shall be counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

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[35] *Le Soleil Int'l. Logistics Co., Inc., et al. v. Sanchez, et al.*, 769 Phil. 466, 473 (2015).

In election cases involving an act or commission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (Emphasis supplied.)

It is clear from the foregoing that the petition for *certiorari* must be filed not later than 60 days from notice of the judgment or resolution. The phrase that "*[n]o extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days*" which was previously found in Section 4, Rule 65 of the Rules was deleted by amendment.[36]

The reason for the amendment is essentially to prevent the use or abuse of the petition for *certiorari* under Rule 65 to delay a case or even defeat the ends of justice.[37] As the rule now stands, the 60-day period is inextendible in order to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case.[38]

In this case, petitioner failed to show any compelling reason for the grant of an extension. Hence, the Court quote with approval the findings of the CA in its Resolution[39] dated June 23, 2016, *viz.*:

There is no basis to grant the Motion to Reinstate Petition. Notably, we dismissed the Petition for *Certiorari* on grounds, including that the petitioner filed the Petition beyond the 60-day reglementary period. Although the Motion to Reinstate Petition admits that the petitioner filed the Petition beyond the reglementary period, the petitioner attempts to justify the failure to file the Petition on time by alleging that the failure was due to circumstances of her

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[36] Riano, *Civil Procedure (The Bar Lecture Series)*, Volume II (2012), p. 285.

[37] *Laguna Metts Corp. v. Court of Appeals, et al.*, 611 Phil. 530, 537 (2009).

[38] *Labao v. Flores*, 649 Phil. 213, 221 (2010), citing *Laguna Metts Corp. v. Court of Appeals, et al.*, *supra* note 37.

[39] *Rollo*, pp. 42-43.

(petitioner's) counsel. However, we cannot give credence to the petitioner's explanation. Notably, counsel of record for the petitioner is the Salvador & Parungao Law Firm, and not an attorney who is in solo practice. If one attorney is unable to comply with the 60-day reglementary period another attorney of the Law Firm can assist him.[40]

Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.[41] After all, it is settled that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified.[42]

At any rate, even if the Court considers the petition for *certiorari* as having been properly filed, it would still be denied for lack of merit.

A petition for *certiorari* is intended to correct errors of jurisdiction only or *grave abuse of discretion* amounting to lack or excess of jurisdiction.[43] Grave abuse of discretion is defined by jurisprudence as the capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[44]

In order for double jeopardy to not attach, and for the writ of *certiorari* to issue, the petitioner must clearly demonstrate that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham; thus rendering the assailed judgment void.[45]

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[40] *Id.* at 43.

[41] *Labao v. Flores*, *supra* note 38, citing *Bello v. National Labor Relations Commission*, 559 Phil. 20, 29 (2007).

[42] *Id.*, citing *NAPOCOR v. Sps. Laohoo, et al.*, 611 Phil. 194, 218 (2009).

[43] See *People v. Sandiganbayan (2nd Division), et al.*, 765 Phil. 845, 858 (2015).

[44] *Id.*, citing *Jimenez, Jr. v. People*, 743 Phil. 468, 482 (2014).

[45] See *Sanvicente v. People*, 441 Phil. 139, 147 (2002).

However, the petitioner failed to discharge this burden.

As aptly concluded by the RTC, the best evidence to sustain a conviction is the testimony of the eyewitness in the person of Espiritu, who allegedly saw how the respondent inflicted physical harm upon AAA. But the prosecution failed to present Espiritu to the court. As regards the testimony of AAA, it was noted that even during the pre-trial conference, there was already doubt on the nature of the testimony of AAA, and that despite allowing her to testify to prove matters "after the fact," her testimony still failed to establish the guilt of the respondent beyond reasonable doubt.

Time and again, we have stressed that accusation is not synonymous with guilt. Hence, in instances where the prosecution fails to discharge its burden of proving the crime beyond reasonable doubt, it is not only the right of the accused to be freed, it becomes the Court's constitutional duty to acquit him.[46]

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.

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

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[46] *People v. Wagas*, 717 Phil. 224, 227-228 (2013).

[**] Designated additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 225971. June 17, 2020]

THE ROMAN CATHOLIC BISHOP OF MALOLOS, INC., THE MOST REV. BISHOP JOSE F. OLIVEROS, D.D., *petitioner*, *vs.* **THE HEIRS OF MARIANO MARCOS, represented by FRANCISCA MARCOS *alias* KIKAY,** *respondents*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; 1989 DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD RULES; DESIGNED FOR LIBERAL CONSTRUCTION IN ORDER TO PROMOTE JUST, EXPEDITIOUS, AND INEXPENSIVE ADJUDICATION AND SETTLEMENT OF ANY AGRARIAN DISPUTE AND THEY ARE NOT BOUND BY TECHNICALITIES. —** Given that RCBMI filed the Complaint for the issuance of a writ of preliminary injunction and damages before the PARAD on February 2, 1994, the governing rules before the DARAB and its adjudicators were those in the 1989 DARAB Rules, which took effect on February 6, 1989. The 1989 DARAB Rules were designed for liberal construction, in order to promote "just, expeditious, and inexpensive adjudication and settlement of any agrarian dispute, case, matter or concern." Those rules were also x x x not bound by technicalities, with the adjudicators themselves even authorized to adopt external measures or procedures in case an issue brought before them were not contemplated by the rules. The 1989 DARAB Rules were infused with provisions that put a premium on the expeditious and inexpensive disposition of agrarian cases, with the foreword for the same providing the guideposts of the rules x x x.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; ALLOWS THE ADMINISTRATIVE AGENCIES CONCERNED TO TAKE EVERY OPPORTUNITY TO CORRECT ITS OWN ERRORS, AND AFFORDS THE LITIGANT THE OPPORTUNITY TO AVAIL OF SPEEDY RELIEF THROUGH THE ADMINISTRATIVE PROCESSES AND SPARING THEM OF THE LABORIOUS AND COSTLY RESORT TO COURTS;**

EXCEPTIONS. — The doctrine of exhaustion of administrative remedies, in and of itself, is grounded on practical reasons, including allowing the administrative agencies concerned to take every opportunity to correct its own errors, as well as affording the litigants the opportunity to avail of speedy relief through the administrative processes and sparing them of the laborious and costly resort to courts. However, this principle is not inflexible, and admits of several exceptions that include situations where the very rationale of the doctrine has been defeated. The Court has taken many occasions to outline these exceptions, including its observation in *Samar II Electric Cooperative, Inc., et al. v. Seludo, Jr.*, to wit: True, the doctrines of primary jurisdiction and exhaustion of administrative remedies are subject to certain exceptions, to wit: (a) where there is *estoppel* on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings. As applied to the factual backdrop of this case, with the peculiar length of time with which this case has lasted, this Court concludes that RCBMI's action falls within the temporal exempting circumstance, or where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant. Specifically, the exempting circumstance is the suspension of RCBMI's enjoyment of its legal victory, which was awarded to it by the MAR in 1982, but to date, 37 years later, remains to be executed.

APPEARANCES OF COUNSEL

Arcinas & Arcinas for petitioner.
Manuel Punzalan for respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the 1997 Rules of Court (Rules), filed by the Roman Catholic Bishop of Malolos, Inc., Rev. Bishop Jose F. Oliveros, D.D. (RCBMI), seeking, among others, the reversal of the Resolutions of the Court of Appeals, Ninth Division (CA) dated April 8, 2016[2] and July 20, 2016,[3] in CA-G.R. SP No. 144354, which dismissed the petition for *certiorari* and *mandamus* that RCBMI filed for non-exhaustion of administrative remedies.

Factual Antecedents

RCBMI is the registered owner of a parcel of land covered by Original Certificate of Title No. 597. On October 21, 1972, upon the enactment of Presidential Decree No. (P.D.) 27, otherwise known as the "Tenants Emancipation Decree," portions of said land, namely those covered by Certificates of Land Transfer (CLT) Nos. 746, 749 and 0392296 (subject Certificates of Land Transfer (CLT) Nos. 746, 749, and 0392296 (subject property), were awarded to Mariano Marcos (Marcos), now represented by his heirs (Heirs of Marcos).

On June 17, 1980, RCBMI sought the cancellation of the award of the above portions to Marcos, mainly alleging that those lots were not devoted to rice production[4] but to social

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[1] *Rollo*, pp. 3-31.

[2] *Id.* at 33-37. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Melchor Q.C. Sadang.

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

[4] Paragraph 5 of P.D. 27 provides: "This shall apply to tenant farmers of private agricultural lands primarily devoted to rice and corn under a system of sharecrop or lease-tenancy, whether classified as landed estate or not[.]"

and humanitarian programs. Two years later, in an Order issued on June 29, 1982 [1982 Ministry of Agrarian Reform (MAR) Order], then MAR granted RCBMI's petition and cancelled CLT No. 0392296 on the ground that the lot it covered was vacant and uncultivated upon P.D. 27's issuance. Marcos filed for a reconsideration of the same three years after, but the same was denied in a January 29, 1986 Order, for the reason that the order of cancellation had long become final and executory, with Marcos faulted for laches. Despite said cancellation, however, the Heirs of Marcos allegedly refused to surrender possession of the subject property.[5]

Keen on recovering possession of the subject property, RCBMI filed a Complaint[6] for the issuance of a writ of preliminary injunction and damages on February 2, 1994 before the Office of the Provincial Agrarian Reform Adjudicator (PARAD) of Malolos, Bulacan, and in its Decision[7] dated July 24, 1995, the PARAD ruled in favor of RCBMI, and issued an order for the Heirs of Marcos to vacate the subject property along with a declaration of nullity of any sale made by the Heirs of Marcos involving the same. The Heirs of Marcos appealed to the Department of Agrarian Reform Adjudication Board (DARAB), which, in its Decision[8] dated October 25, 2001, affirmed the PARAD's Decision and restated the order for the Heirs of Marcos to vacate. The Heirs of Marcos filed a motion for reconsideration which was similarly denied by the DARAB in its Resolution dated October 24, 2002.[9]

Still aggrieved, the Heirs of Marcos appealed the matter to the CA *via* a petition for review under Rule 43 in CA-G.R. SP No. 73969. On May 26, 2004, the CA denied the petition, significantly observing that it was the PARAD's duty to render

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

[6] *Id.* at 52-54.

[7] *Id.* at 60-67.

[8] *Id.* at 68-72.

[9] *Id.* at 7.

a just and expeditious determination of the actions filed before it, and that in the present case, it would have been unjust for the PARAD to overlook the fact that the Heirs of Marcos nevertheless insisted on their right to retaining possession of the subject property despite a final pronouncement to the contrary.[10] This CA Decision[11] became final and executory with an Entry of Judgment[12] issued on June 19, 2004.

Yet even with an entry of judgment, as RCBMI alleged, the records of the case were not remanded to the PARAD for purposes of execution. Met with this new delay, RCBMI filed before the CA Fourteenth Division an Urgent *Ex-Parte* Motion to Remand.[13] Over three years later, a certification remanding records of the case to the PARAD for execution was finally issued.

Thereafter, on March 10, 2008, RCBMI filed a Motion for the Issuance of Writ of Execution[14] before the PARAD, submitting that the 1982 MAR Order it sought to have executed had long become final and executory, and that the writ of execution should have issued as a matter of right.

This Writ of Execution, at the heart of the present controversy, would take a staggering length of time to issue, or six years after it was prayed for, and a confounding 28 years after the 1982 MAR Order it sought to execute was promulgated. This astonishing delay, as will be gleaned from the following narrative, is the height of legal irony, considering that the order for execution involved a specialized quasi-judicial agency created precisely to settle agrarian disputes with justice and dispatch.

On March 11, 2008, instead of issuing the writ of execution as requested, the PARAD directed the Heirs of Marcos to

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[10] *Id.* at 79.

[11] *Id.* at 74-81.

[12] *Id.* at 82.

[13] *Id.* at 83-86.

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

comment or oppose,[15] and set the Motion for the Issuance of Writ of Execution for hearing. The Heirs of Marcos filed an Opposition,[16] alleging that a supervening event made the execution of the 1982 MAR Order impossible or illegal, the same being the placement of the subject property under the coverage of Republic Act No. (R.A.) 6657, otherwise known as the "Comprehensive Agrarian Reform Law of 1988" (CARP Law).[17]

The Motion for the Issuance of Writ of Execution was submitted for resolution on April 21, 2008,[18] but the same would not be resolved for nearly two years, until after RCBMI filed a Motion to Resolve.[19] On May 6, 2010, the PARAD granted[20] RCBMI's Motion for the Issuance of Writ of Execution and held that "[t]he rule has always been to the effect that 'once a decision becomes final and executory, it is the ministerial duty of the court to order its execution.[']"[21]

The Heirs of Marcos filed for a reconsideration[22] of the same on the ground of the supervening Comprehensive Agrarian Reform Program[23] (CARP) coverage over the subject property. The Heirs of Marcos submitted that since the Department of Agrarian Reform (DAR) Order[24] subsuming the subject property under CARP was still pending appeal before the office of the DAR Secretary, the writ of execution could not issue.

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[15] *Id.* at 94.

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

[17] This was through an Order issued by the DAR Regional Director dated June 18, 2005 in Docket No. A-0302-0714-04 A.R. LSD-0001'04, upon recommendation of the PARAD; *id.* at 8.

[18] *Id.* at 100.

[19] *Id.* at 101-102; the Motion to Resolve was dated April 12, 2010.

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

[21] *Id.* at 104.

[22] *Id.* at 105-109.

[23] R.A. 6657, Sec. 2.

[24] See footnote 17.

RCBMI opposed[25] the Heirs of Marcos' Motion for Reconsideration, arguing that: (1) the writ of execution should already issue as a matter of right under the 1994 New Rules of Procedure of the DARAB, specifically Section 1, Rule XII on Execution;[26] and (2) there was no existing decision directing the issuance of a title over the subject property in favor of the Heirs of Marcos, and that the latter would still have to be evaluated as to whether they were qualified beneficiaries under the CARP Law.[27]

On September 20, 2010, the PARAD granted the Heirs of Marcos' Motion for Reconsideration, and held in abeyance the resolution of the Motion for the Issuance of Writ of Execution,[28] until the DAR Secretary had finally decided on the supervening CARP matter involving the subject property.

The suspensive condition concerning the DAR Secretary's resolution occurred on May 5, 2011 when then DAR Secretary Virgilio Delos Reyes dismissed[29] the Heirs of Marcos' petition for coverage of the subject property under the CARP Law, declaring the said parcel of land exempt from CARP coverage. The DAR Secretary held that upon ocular inspection[30] conducted by the DAR Office, the subject property was found to be a fishpond surrounded by residential areas, and was deemed far from suitable for agricultural purposes, with not a single portion of it devoted to rice land. The DAR Secretary determined that since Sections 3 (e),[31]

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[25] *Rollo*, pp. 107-109.

[26] *Id.* at 107.

[27] *Id.* at 10, 108.

[28] *Id.* at 110-112.

[29] *Id.* at 113-118.

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

[31] Sec. 3 (e) provides:

(e) Idle or Abandoned Land refers to any agricultural land not cultivated, tilled or developed to produce any crop nor devoted to any specific economic purpose continuously for a period of three (3) years immediately prior to

10[32] and 11[33] of the CARP Law, as amended, exempt fishponds and prawn ponds from CARP coverage, the subject property was likewise exempt.

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the receipt of notice of acquisition by the government as provided under this Act, but does not include land that has become permanently or regularly devoted to non-agricultural purposes. It does not include land which has become unproductive by reason of *force majeure* or any other fortuitous event, provided that prior to such event, such land was previously used for agricultural or other economic purpose.

[32] Sec. 10 states:

SECTION 10. *Exemptions and Exclusions*. — Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds, and mangroves, national defense, school sites and campuses including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from the coverage of this Act.

[33] Sec. 11 provides:

SECTION 11. *Commercial Farming*. — Commercial farms, which are private agricultural lands devoted to commercial livestock, poultry and swine raising, and aquaculture including saltbeds, fishponds and prawn ponds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after ten (10) years from the effectivity of this Act. In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation, as determined by the DAR. During the ten-year period, the government shall initiate the steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall thereafter manage the said lands for the worker-beneficiaries.

If the DAR determines that the purposes for which this deferment is granted no longer exist, such areas shall automatically be subject to redistribution.

The provisions of Section 32 of this Act, with regard to production- and income-sharing, shall apply to commercial farms.

With no more supervening circumstance in the way of execution, RCBMI filed another Motion to Resolve[34] the Heirs of Marcos' Motion for Reconsideration. The PARAD ordered[35] the Heirs of Marcos to file a comment or opposition, which they filed on August 10, 2011, reiterating their previous submissions.[36]

On February 17, 2012, the PARAD issued an Order[37] denying the Heirs of Marcos' Motion for Reconsideration, and finally granting RCBMI's Motion for the Issuance of a Writ of Execution. The PARAD ruled that "[l]itigation must end and terminate sometime and somewhere"[38] given that the judgment that becomes final and executory becomes immutable and unalterable.[39] The Heirs of Marcos filed a second Motion for Reconsideration[40] which was set for hearing[41] and was eventually denied.[42]

This sense of finality, however, seemed to have been more apparent than real, as no writ of execution issued thereafter, and RCBMI had to file three Motions to Resolve[43] before the PARAD finally issued one on December 16, 2014.[44]

Undaunted, the Heirs of Marcos filed a Motion to Quash the Writ of Execution[45] arguing that the five-year period from

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[34] *Rollo*, pp. 119-121.

[35] *Id.* at 122-123.

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

[37] *Id.* at 124-126.

[38] *Id.* at 125.

[39] *Id.*

[40] *Id.* at 127-129; the same was filed on March 22, 2012, *id.* at 12.

[41] *Id.* at 130.

[42] *Id.* at 131.

[43] *Id.* at 132-141.

[44] *Id.* at 142-144.

[45] *Id.* at 145-148.

the date of promulgation of the 1982 MAR Order within which to execute the same, as required by Section 4, Rule 20 of the 1989 DARAB Revised Rules of Procedure[46] (1989 DARAB Rules) had already lapsed. This was opposed[47] by RCBMI, claiming that the delay of the execution of the decision could only be attributed to the Heirs of Marcos themselves.

On August 19, 2015, the PARAD granted the Heirs of Marcos' Motion to Quash,[48] chiefly ruling that due to the lapse of the five-year period, RCBMI could only enforce the 1982 MAR Order sought to be executed *via* an action. In RCBMI's Motion for Partial Reconsideration,[49] it argued that the five-year period should have been suspended when the Heirs of Marcos filed their Opposition to RCBMI's Motion for the Issuance of a Writ of Execution. It likewise argued that the astonishing delay in execution was caused by the actions of the Heirs of Marcos, through their abuse of the rules of procedure which resulted in an overall suspension of the proceedings. This prayer for reconsideration was denied by the PARAD.[50]

Proceedings Before the CA

Aggrieved, RCBMI filed a Petition for *Certiorari* and *Mandamus*[51] under Rule 65 before the CA on February 26, 2016, but the same was dismissed in the CA's Resolution[52] dated April 8, 2016. The CA dismissed RCBMI's petition for its non-exhaustion of administrative remedies, noting that RCBMI should have first filed an appeal before the DARAB,

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[46] *Id.* at 147.

[47] *Id.* at 149-153.

[48] *Id.* at 154-160.

[49] *Id.* at 161-168.

[50] *Id.* at 169-171.

[51] *Id.* at 172-194.

[52] *Supra* note 2.

pursuant to Section 1,[53] Rule XII and Section 5,[54] Rule II of the 1989 DARAB Rules, as well as Section 2,[55] Rule II of the 2009 DARAB Rules of Procedure.

In finding non-exhaustion of administrative remedies, the CA ruled:

A special civil action for *certiorari* under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law; it cannot be a substitute for a lost appeal. In the case at bar, (petitioner) is not without any plain, speedy, and adequate remedy as the remedy of an appeal is [x x x] available. Hence, the present petition for *certiorari* will not prosper even if the ground is grave abuse of discretion. (E)xhaustion of administrative remedies is a requisite for the filing of a petition for *certiorari* and non-exhaustion of administrative remedies renders (the) petition premature and thus dismissible.

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[53] Sec. 1, Rule XII of the 1989 DARAB RULES provides:

SECTION 1. *Execution upon Final Order or Decision.* — Execution shall issue upon an order or decision that finally disposes of the action or proceeding. Such execution shall issue as a matter of course after the parties have been furnished with copies of the decision in accordance with these Rules and upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

The Board or Adjudicator concerned may, upon certification by the proper officer that a resolution, order or decision has become final and executory, upon motion or *motu proprio*, issue a writ of execution and order the DAR sheriff or a DAR officer to enforce the same.

[54] Sec. 5, Rule II of the 1989 DARAB RULES provides:

SECTION. 5. *Appellate Jurisdiction*. — The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter or affirm resolutions, orders, decisions, and other dispositions of its RARAD and PARAD.

[55] Sec. 2, Rule II of the 2009 DARAB RULES OF PROCEDURE provides:

SECTION 2. Appellate Jurisdiction of the Board. — The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders and decisions of the Adjudicators.

No order of the Adjudicators on any issue, question, matter, or incident raised before them shall be elevated to the Board until the hearing shall have been terminated and the case decided on the merits.

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Accordingly, the instant Petition for *Certiorari* and [*Mandamus*] under Rule 65 is dismissible for being the wrong remedy and for non-exhaustion of administrative remedies.

WHEREFORE, premised considered, the Petition is **DISMISSED** outright.

SO ORDERED.[56]

RCBMI filed a Motion for Reconsideration[57] of the said dismissal, but the same was likewise denied by the CA in a Resolution[58] dated July 20, 2016.

Hence this Petition.

Chiefly, RCBMI contends that the petition was no longer about the merits of the agrarian dispute which had long been decided, but more so about jurisdiction,[59] and that the Writ of Execution on the final and executory 1982 MAR Order was but ministerial in nature.[60] It likewise argues that the DARAB did not have the authority to issue writs of *certiorari* nor correct errors of jurisdiction such as the issuance of a *mandamus*,[61] which made RCBMI's appeal before it under the present circumstances futile.[62] It likewise proffers that the PARAD committed grave abuse of discretion when it granted the Heirs of Marcos' Motion to Quash, considering that the issuance of a writ of execution was already a matter of right as far as RCBMI was concerned since the 1982 MAR Order had already become final.[63]

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[56] *Rollo*, pp. 35-37; citations omitted.

[57] *Id.* at 38-41.

[58] *Supra* note 3.

[59] *Id.* at 19-20.

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

[61] *Id.* at 21.

[62] *Id.*, citing *DARAB v. Lubrica*, 497 Phil. 313 (2005).

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

Further, RCBMI submits that the Writ of Execution should have issued as a matter of course pursuant to Section 1, Rule XX of the 2003 DARAB Rules of Procedure,[64] had it not been for the dilatory tactics of the Heirs of Marcos,[65] additionally citing *Olongapo City v. Subic Water & Sewerage Co., Inc*.[66] on meritorious grounds that allow for an execution of a decision by motion even after the lapse of the five-year period. Finally, RCBMI submits that the PARAD is not bound by technical rules and is instead mandated to promote just, expeditious and inexpensive adjudication of agrarian disputes under Section 3, Rule I of its very own 1989 DARAB Rules.[67]

The Heirs of Marcos filed a Comment[68] to the present Petition on June 21, 2018, reiterating the ruling of the CA on RCBMI's non-exhaustion of administrative remedies.[69]

In response, RCBMI filed its Reply[70] on August 24, 2018, countering that: (1) the DARAB has no *certiorari* powers, and so Rule 65 was the proper remedy; (2) the issuance of the writ of execution was ministerial;[71] and (3) the delay in execution was either on the occasion of or for the benefit of the Heirs of Marcos.[72]

Issues

The issues brought before the Court are: (1) whether the CA erred in dismissing RCBMI's petition for *certiorari* and

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[64] *Id.*

[65] *Id.* at 23-26.

[66] 740 Phil. 502 (2014).

[67] *Rollo*, p. 26.

[68] *Id.* at 222-230.

[69] *Id.* at 224-227.

[70] *Id.* at 234-240.

[71] *Id.* at 236.

[72] *Id.* at 237.

mandamus under Rule 65 for its non-exhaustion of administrative remedies; and the ultimate question of (2) whether the PARAD acted in excess of its jurisdiction when it granted the Heirs of Marcos' Motion to Quash the Writ of Execution and denied RCBMI's Motion for Reconsideration.

The Court's Ruling

The Petition is impressed with merit.

Firstly, the crucial starting point for the proper framing of the present issues is the determination of the governing rules of procedure when the earliest action in the PARAD was commenced. Given that RCBMI filed the Complaint for the issuance of a writ of preliminary injunction and damages before the PARAD on February 2, 1994, the governing rules before the DARAB and its adjudicators were those in the 1989 DARAB Rules, which took effect on February 6, 1989.

The 1989 DARAB Rules were designed for liberal construction, in order to promote "just, expeditious, and inexpensive adjudication and settlement of any agrarian dispute, case, matter or concern."[73] Those rules were also, as rightly argued by RCBMI, not bound by technicalities, with the adjudicators themselves even authorized to adopt external measures or procedures in case an issue brought before them were not contemplated by the rules.[74] The 1989 DARAB Rules were infused with provisions that put a premium on the expeditious and inexpensive disposition of agrarian cases, with the foreword for the same providing the guideposts of the rules, to wit:

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[73] 1989 DARAB RULES, Rule I, Sec. 2.

[74] 1989 DARAB RULES, Rule I, Sec. 3 (b) provides:

> b) To this end, the Adjudication Board and its Regional Agrarian Reform Adjudicators (RARAD) and Provincial Agrarian Reform Adjudicators (PARAD) shall have the authority to adopt any appropriate measure or procedure in any given situation or matter not covered by these Rules. All such special measures or procedures and the situations to which they were applied shall be reported to the Adjudication Board and the Secretary of Agrarian Reform.

The primary objective of these Rules, it cannot be overstressed, is to promote a just, speedy and inexpensive adjudication and disposition of agrarian disputes. Towards this end, among the salient features and underlying principles of the Revised Rules are:

1. Agrarian cases brought before the DARAB are to be viewed as non-litigious, non-adversarial and non-confrontational in character.
2. The Rules of Court do not apply in the DARAB, not even in a supplemental character, except in contempt cases.
3. The proceedings are summary in nature and, as such, the legal processes have been considerably shortened.
4. The Rules are flexible enough to allow for creativity and innovation in procedural matters to be able to deal adequately with the peculiar circumstances attendant to agrarian disputes.
5. The Rules are specially crafted to allow the Adjudication Board free and unfettered exercise of its broad discretionary powers to carry into effect a firm State policy in dispensing social justice in the field of agrarian reform.[75]

This outstanding leniency with respect to technical rules is as pragmatic as it is purposive, and presenting the present issues within its light disposes them both in favor of RCBMI.

Non-Exhaustion of Administrative Remedies

First, this Court finds that the CA erred in dismissing RCBMI's petition outright on the ground of non-exhaustion of administrative remedies, as the narrative clearly illustrates how RCBMI's action falls within the exemptions to the said principle.

The CA, in dismissing RCBMI's petition, harked back to Section 5, Rule II of the 1989 DARAB Rules and concluded that as provided therein, RCBMI should have first appealed

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[75] Philip Ella Juico, Foreword, *1989 DARAB REVISED RULES OF PROCEDURE*.

the PARAD's quashal of the writ of execution before the DARAB, for the exhaustion of the administrative remedies available to it.

The doctrine of exhaustion of administrative remedies, in and of itself, is grounded on practical reasons, including allowing the administrative agencies concerned to take every opportunity to correct its own errors, as well as affording the litigants the opportunity to avail of speedy relief through the administrative processes and sparing them of the laborious and costly resort to courts.[76]

However, this principle is not inflexible, and admits of several exceptions that include situations where the very rationale of the doctrine has been defeated. The Court has taken many occasions to outline these exceptions, including its observation in *Samar II Electric Cooperative, Inc., et al. v. Seludo, Jr.*,[77] to wit:

> True, the doctrines of primary jurisdiction and exhaustion of administrative remedies are subject to certain exceptions, to wit: (a) where there is *estoppel* on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings.[78]

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[76] See *Public Hearing Committee of the Laguna Lake Development Authority, et al. v. SM Prime Holdings, Inc.*, 645 Phil. 324 (2010) and *Montanez v. PARAD, et al.*, 616 Phil. 203 (2009).

[77] 686 Phil. 786 (2012).

[78] *Id.* at 797; citation omitted, italics in the original.

As applied to the factual backdrop of this case, with the peculiar length of time with which this case has lasted, this Court concludes that RCBMI's action falls within the temporal exempting circumstance, or where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant. Specifically, the exempting circumstance is the suspension of RCBMI's enjoyment of its legal victory, which was awarded to it by the MAR in 1982, but to date, 37 years later, remains to be executed.

RCBMI's resort to the DARAB to appeal the PARAD's quashal would not only be time-consuming but more so wasteful, as the relief it prays for the DARAB is not clothed with the authority to grant. This is largely because the cases over which the DARAB has primary, original and appellate jurisdiction, as enumerated in Section 1, Rule II of the 1989 DARAB Rules,[79]

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[79] Section 1, Rule II of the 1989 DARAB RULES provides:

Sec. 1. *Primary, Original and Appellate Jurisdiction*. — The Agrarian Reform Adjudication Board shall have primary jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under Republic Act No. 6657, Executive Order Nos. 229, 228 and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations.

Specifically, such jurisdiction shall extend over but not be limited to the following:

a) Cases involving the rights and obligations of persons engaged in the cultivation and use of agricultural land covered by the Comprehensive Agrarian Reform Program (CARP) and other agrarian laws;
b) Cases involving the valuation of land, and determination and payment of just compensation, fixing and collection of lease rentals, disturbance compensation, amortization payments, and similar disputes concerning the functions of the Land Bank;
c) Cases involving the annulment or cancellation of orders or decisions of DAR officials other than the Secretary, lease contracts or deeds of sale or their amendments under the administration and disposition of the DAR and LBP;
d) Cases arising from, or connected with membership or representation in compact farms, farmers' cooperatives and other registered farmers'

are more merit-focused in nature, with their application to the substantive issues of an agrarian dispute. Therefore, a resort to it may only take more time, but ultimately not grant for RCBMI the redress it seeks.

This is precisely the kind of long-drawn, circuitous, agrarian dispute, with high human and economic costs, that the creation of the DARAB sought to remedy. This length of delay for the DAR's decision, *i.e.*, the 1982 MAR Order to be carried out in the case at bar is baffling, ridicules the very logic underlying the creation of the DARAB and its adjudicators, and therefore cannot be countenanced.

PARAD's grave abuse of discretion through unjustified delay

Second, with regard to the decisive matter of the issuance of a writ of execution, the provisions of Rule XII of the 1989 DARAB Rules are clear, to wit:

SECTION 1. *Execution upon Final Order or Decision.* — Execution shall issue upon an order or decision that finally disposes of the action or proceeding. Such execution shall issue as a matter of course after the parties have been furnished with copies of the decision in accordance with these Rules and upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

The Board or Adjudicator concerned may, upon certification by the proper officer that a resolution, order or decision has become

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associations or organizations, related to land covered by the CARP and other agrarian laws;

e) Cases involving the sale, alienation, mortgage, foreclosure, pre-emption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws;

f) Cases involving the issuance of Certificate of Land Transfer (CLT), Certificate of Land-ownership Award (CLOA) and Emancipation Patent (EP) and the administrative correction thereof;

g) And such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

Provided, however, that matters involving strictly the administrative implementation of the CARP and agrarian laws and regulations, shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

final and executory, upon motion or *motu proprio* issue a writ of execution and order the DAR sheriff or a DAR officer to enforce the same.

SECTION 2. *Immediate Execution of Order or Decision*. — The order or decision of the Board or the Adjudicator shall be immediately executory, regardless of any appeal, unless otherwise expressly provided therein: except when execution is stayed in accordance with the provisions of the next succeeding section.

SECTION 3. *No Stay of Execution, Exception*. — Any appeal taken from the order or decision of the Board or the Adjudicator shall not stay the execution of the same; except where the ejectment of the tenant farmer, agricultural lessee or tenant tiller, settler or amortizing owner-cultivator and any other beneficiary, is directed.

To recall, the CA Decision which upheld RCBMI's right to recover possession of the subject property became final and executory with an Entry of Judgment on June 19, 2004. RCBMI sought the execution of this final decision on March 10, 2008. In turn, PARAD, contrary to the immediacy of execution as provided for in Sections 1, 2 and 3 of Rule XII of the 1989 DARAB Rules, failed to immediately issue a writ of execution but instead ordered the Heirs of Marcos to file a comment or opposition, and thereby patently prolonged the life of this litigation which should have already terminated then.

This unfounded extension and delay of the issuance of the Writ of Execution dragged on until February 17, 2012, by which time, the five-year period to execute had already long lapsed, which in turn gave rise to the ground for the Motion to Quash the execution writ. The stalling of execution is therefore attributable to both the PARAD's inaction and the Heirs of Marcos' serial oppositions. The long delay, with no knowable basis in the records, is both unexplained and unacceptable, and may not be taken against RCBMI, which did not fall short in seeking the execution of the award in its favor through efforts within the permits of the law.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **GRANTED**. The Resolutions dated April 8, 2016 and July 20, 2016 of Court of Appeals, Ninth Division, in

CA-G.R. SP No. 144354, are **REVERSED**. The Office of the Provincial Agrarian Reform Adjudicator's Order dated February 17, 2012, which granted the Roman Catholic Bishop of Malolos, Inc.'s Motion for the Issuance of a Writ of Execution, is **REINSTATED**.

The PARAD is further **ORDERED** to proceed with the execution **with dispatch**, and inform the Court within five days of the action/s it has taken to this end.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 226338. June 17, 2020]

ANTHONEL M. MIÑANO, *petitioner*, *vs.* **STO. TOMAS GENERAL HOSPITAL and DR. NEMESIA ROXAS-PLATON,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, INCLUDING LABOR TRIBUNALS, ARE ACCORDED MUCH RESPECT AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION ESPECIALLY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, EXCEPT WHERE THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONTRARY

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[*] Designated as additional Member per Raffle dated January 20, 2020.

TO THE FINDINGS AND CONCLUSIONS OF THE QUASI-JUDICIAL AGENCY. — The Court, not being a trier of facts, is not duty bound to review all over again the records of the case and make its own factual determination. For factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect as they are specialized to rule on matters falling within their jurisdiction especially when supported by substantial evidence. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the quasi-judicial agency, as in this case. After a judicious review of the records, the Court is constrained to reverse the Court of Appeals' factual findings and legal conclusion.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; COMPLAINT FOR ILLEGAL DISMISSAL, NOT PREMATURELY FILED. —** In reversing the findings of the labor tribunals, the Court of Appeals held that at the time petitioner filed his complaint on May 30, 2011, there was no illegal dismissal to speak of yet. It accepted respondents' assertion that an administrative investigation was still to be conducted as shown in its letter dated June 6, 2011 requiring petitioner to explain his failure to report for work after his suspension. Thus, it was petitioner who wrongly presumed he was dismissed and prematurely filed the complaint. We do not agree. Petitioner had all the reason to believe that he had been dismissed from employment due to the events that transpired prior to and after his illegal suspension, *viz*: (1) when he reported for work after the holy week of 2011, respondent Dr. Roxas-Platon and the hospital staff already treated him indifferently; x x x. (3) when he reported for work on May 7, 2011 based on his schedule, he found out he was no longer included in the work schedule of duty nurses; (4) Chief Nurse Dela Cueva then told him Dr. Roxas-Platon did not like him anymore and he could not work until the hospital told him so; (5) on May 9, 2011, he was informed that he was suspended from May 5, 2011 to May 18, 2011 without any prior investigation or notice; (6) when he reported back to work on May 19, 2011, his name was still not on the list of duty nurses; x x x (8) he continued to report to the hospital but he was not given any duty schedule. x x x. Surely, the foregoing circumstances would

lead petitioner to believe that his employment had been terminated. Anyone with a reasonable mind would. The callous treatment he received from respondents, his superior, and co-workers left petitioner with no choice but to cry foul. Hence, his recourse of filing an illegal dismissal case against respondents could not have been premature. For the truth was, he had already been dismissed by respondents.

3. ID.; ID.; ID.; THE EMPLOYER'S FAILURE TO ISSUE A RETURN-TO-WORK ORDER TO THE EMPLOYEE NEGATES ITS CLAIM THAT THE LATTER WAS NOT YET TERMINATED. — [I]f indeed petitioner had not yet been terminated and respondents still considered him an employee, they could have sent him a return-to-work order. But they never did. Instead, they stuck to their narrative that it was petitioner who erroneously assumed he was terminated. In ***Daguinod v. Southgate Foods, Inc***., the Court elucidated that the employer's failure to issue a return-to-work order to the employee negates its claim that the latter was not yet terminated. The employer's excuse that it was the employee who wrongly presumed he was dismissed from employment was rejected. The employee was thus declared to have been illegally dismissed.

4. ID.; ID.; ID.; ABANDONMENT; ELEMENTS; ABANDONMENT AS A JUST GROUND FOR DISMISSAL REQUIRES THE DELIBERATE, UNJUSTIFIED REFUSAL OF THE EMPLOYEE TO PERFORM HIS EMPLOYMENT RESPONSIBILITIES; A MERE ABSENCE OR FAILURE TO WORK, WITHOUT ANY OVERT ACT UNERRINGLY POINTING TO THE FACT THAT THE EMPLOYEE SIMPLY DOES NOT WANT TO WORK ANYMORE, EVEN AFTER NOTICE TO RETURN, IS NOT TANTAMOUNT TO ABANDONMENT. — [R]espondents failed to prove its defense of abandonment so as to make petitioner's termination a valid one. To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and manifested by some overt acts. Abandonment as a just ground for dismissal requires the deliberate, unjustified refusal of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment. The second element of abandonment is lacking

here. Aside from petitioner's alleged failure to report for work, respondents failed to prove that petitioner had the intention of abandoning his job. They failed to establish that petitioner exhibited a deliberate and unjustified refusal to resume his employment. His mere absence was not accompanied by any overt act unerringly pointing to the fact that he simply does not want to work anymore.

5. ID.; ID.; ID.; ID.; A CHARGE OF ABANDONMENT IS TOTALLY INCONSISTENT WITH THE IMMEDIATE FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL, AS THE FILING THEREOF IS PROOF ENOUGH OF ONE'S DESIRE TO RETURN TO WORK. — [P]etitioner's immediate filing of the complaint below after his superior Chief Nurse Dela Cueva told him he was already terminated is a clear indication that he had the desire to continue with his employment. As we held in ***Fernandez v. Newfield Staff Solutions, Inc.*:** Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment. Indeed, it would be illogical for petitioner to abandon his work and then immediately file an action for illegal dismissal. Petitioner's act of contesting the legality of his dismissal ably supports his sincere intention to return to work, thus negating respondents' claim that he had abandoned his job.

6. ID.; ID.; ID.; PETITIONER WAS ILLEGALLY DISMISSED AS HE DID NOT ABANDON HIS WORK. — [A]bandonment here was a just trumped-up charge to make it appear that petitioner was not yet terminated when he filed the illegal dismissal complaint and to give a semblance of truth to the belated investigation against him. But the truth is, petitioner did not abandon his work. He was repeatedly told that respondents did not want him anymore and he was dismissed from his employment. The NLRC, therefore, did not gravely abuse its discretion in upholding the labor arbiter's finding that petitioner was illegally dismissed. Verily, the Court of Appeals' erred in ruling that petitioner was validly dismissed.

APPEARANCES OF COUNSEL

Ramel C. Muria & Krisandra Ann D. Malaluan for petitioner.

Pacis and Reyes for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition[1] seeks to nullify the following dispositions of the Court of Appeals in CA-G.R. SP No. 133582:

1. Decision[2] dated August 28, 2015 finding that petitioner was validly dismissed for abandoning his job; and

2. Resolution[3] dated July 22, 2016 denying petitioner's motion for reconsideration.

The Facts

On May 30, 2011, petitioner Anthonel M. Miñano sued respondents for illegal suspension, illegal dismissal, non-payment of holiday pay, separation pay, damages, and attorney's fees.[4]

Petitioner essentially alleged that on April 18, 2008, he was hired as a nurse at Sto. Tomas General Hospital owned by respondent Dr. Nemesia Roxas-Platon. After being a trainee for six (6) months, he was regularized and had since worked for respondents for over three (3) years already.[5]

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[1] Petition dated August 30, 2016; *rollo*, pp. 3-24.

[2] Penned by Associate Justice (now Supreme Court Associate Justice) Rosmari D. Carandang and concurred in by Associate Justices Mario V. Lopez (also now Supreme Court Associate Justice) and Myra V. Garcia-Fernandez, *rollo*, pp. 29-37.

[3] *Rollo*, pp. 39-40.

[4] *Id.* at 30 and 42.

[5] *Id.* at 43.

During the holy week of 2011, he went on a three-day leave to attend to some urgent family matters. When he returned to work, however, he received an unwelcome treatment from respondent Dr. Roxas-Platon and was told by a co-employee that Dr. Roxas-Platon wanted him to resign since the hospital did not need him anymore.[6]

On May 4, 2011, a regular meeting with the hospital nurses was held but he failed to attend because he was off-duty. He was expected to return to work on May 7, 2011 based on his work schedule. But when he reported for work on said date, he found out he was not listed in the work schedule of duty nurses. Chief Nurse Vilma Dela Cueva told him Dr. Roxas-Platon did not like him anymore. She informed him he could not work until the hospital administration told him so.[7]

On May 9, 2011, a hospital staff informed him he was placed under suspension from May 5, 2011 to May 18, 2011. He was neither given any prior written notice, nor a reason for his suspension.[8]

On May 19, 2011, after his supposed suspension, he reported for work. But his name was still not on the list of duty nurses. He asked for an explanation and the nursing department told him that Dr. Roxas-Platon did not like him anymore and he was already dismissed from work.[9]

On May 25, 2011, Pharmacy Aide Mariz Villanueva belatedly handed him a Memorandum of Suspension dated May 4, 2011 stating his suspension from work on May 5-18, 2011, *viz.*:

> You are hereby suspended for two weeks effective May 5 to 18, 2011 for being habitually late in coming to work, for not attending the meeting and sleeping while on duty.[10]

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[6] *Id.*

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

[8] *Id.* at 44.

[9] *Id.* at 31.

[10] *Id.* at 65.

Despite the foregoing, he continued to report to the hospital to inquire about his duty schedule. But he was not given any. After several follow-ups, Chief Nurse Dela Cueva finally informed him he was already dismissed from work *"Ayaw na ni doktora sa 'yo, ayaw ka na nyang magtrabaho, tanggal ka na sa trabaho."*[11] Thus, he filed the present case.

For their part, respondents countered that petitioner was validly suspended from May 5 to 18, 2011 for being habitually late, not attending the staff nurses' meeting, and sleeping while on duty. After his suspension though, petitioner did not report for work anymore. Chief Nurse Dela Cueva gave him work assignments but since he was not present, another nurse got assigned instead.

On June 6, 2011, the hospital sent him a letter requiring him to explain within five (5) days why no disciplinary action should be taken against him. Petitioner, however, failed to comply. A letter dated July 7, 2011 was then sent to petitioner informing him to appear before the hospital's disciplinary committee on July 12, 2011 at 2 o'clock in the afternoon. But petitioner did not show up.

Thus, on July 28, 2011, the hospital terminated petitioner's employment on ground of abandonment.

The Ruling of the Labor Arbiter

By Decision[12] dated September 27, 2012, the labor arbiter ruled in favor of petitioner, thus:

WHEREFORE, premises considered, respondents are hereby adjudged to have illegally suspended and illegally dismissed complainant, and are hereby ordered to pay complainant's backwages in the amount of ₱161,827.40. As reinstatement is already impracticable, they are likewise ordered to pay him his separation pay in the amount of ₱35,048.00; and his holiday pay for May 1, 2011 in the amount of

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[11] *Id.* at 66.

[12] *Id.* at 49.

₱337.00. Also, his attorney's fees, equivalent to 10% of the judgment amount which is ₱19,721.24.

SO ORDERED.[13]

According to the labor arbiter, petitioner's suspension and dismissal were both illegal. Petitioner was not afforded an opportunity to explain his side prior to his suspension. Too, he was illegally dismissed sans any authorized or just cause when the hospital's Chief Nurse told him he was terminated just because the hospital owner Dr. Roxas-Platon did not like him anymore.

The Ruling of the NLRC

On appeal, the NLRC affirmed under Decision[14] dated July 31, 2013. It sustained the labor arbiter's finding that petitioner was illegally suspended. For respondents already adjudged him guilty, albeit he was not yet informed of his infractions and before the conduct of an investigation. Thus, the NLRC added that petitioner should also be paid his salary from May 5-18, 2011 in the amount of ₱4,718.00.

As regards petitioner's dismissal, the NLRC found that respondents failed to prove abandonment as a valid ground. On the contrary, petitioner's immediate filing of the illegal dismissal complaint below negated respondents' claim that he abandoned his work. Too, the supposed administrative investigation conducted by respondents was a mere afterthought because petitioner's dismissal was already a "foregone conclusion."[15]

Respondents' motion for reconsideration was denied under Resolution[16] dated November 29, 2013.

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[13] At page 1 of the CA Decision dated August 28, 2015.

[14] Penned by Commissioner Mercedes R. Posada-Lacap with the concurrence of Commissioner Dolores M. Peralta-Beley; *rollo*, pp. 60 & 68.

[15] As stated in the NLRC Decision dated July 31, 2013; *rollo*, p. 59.

[16] *Rollo*, pp. 63-69.

Respondents then elevated the case to the Court of Appeals via a petition for *certiorari*. Although they did not dispute the finding that petitioner was illegally suspended, they argued that the NLRC gravely abused its discretion when it found petitioner to have been illegally dismissed.

The Ruling of the Court of Appeals

By Decision[17] dated August 28, 2015, the Court of Appeals reversed, *viz.*:

> **WHEREFORE, premises considered**, the instant petition is **GRANTED**. Finding grave abuse of discretion on the part of the public respondent, the Decision dated July 31, 2013 and the Resolution dated November 29, 2013 are hereby **SET ASIDE**. Respondent's complaint for illegal dismissal is **DISMISSED**. However, the award of ₱4,718.00 during the period of his suspension is hereby maintained.
>
> **SO ORDERED.**[18]

According to the Court of Appeals, petitioner's complaint dated May 30, 2011 was premature. He failed to prove he was dismissed from employment on May 19, 2011 when Chief Nurse Dela Cueva told him *"Ayaw na ni doktora sa 'yo, ayaw ka na nyang magtrabaho, tanggal ka na sa trabaho."*[19] On the contrary, it was petitioner who abandoned his job when he failed to report back to work after his suspension. Too, respondents' letter dated June 6, 2011 requiring petitioner to explain why he failed to return to work after his suspension showed that no dismissal happened on May 19, 2011. As such, the Court of Appeals ruled that petitioner was validly dismissed on July 28, 2011 on ground of abandonment.

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[17] Penned by Associate Justice (now Supreme Court Associate Justice) Rosmari D. Carandang and concurred in by Associate Justices Mario V. Lopez (also now Supreme Court Associate Justice) and Myra V. Garcia-Fernandez; *rollo*, pp. 29-37.

[18] *Rollo*, p. 37.

[19] *Id.* at 66.

Petitioner moved for reconsideration but it was denied under Resolution[20] dated July 22, 2016.

The Present Petition

Petitioner now faults the Court of Appeals for brushing aside the factual findings and legal conclusion of the NLRC which sustained the labor arbiter's ruling that he was illegally dismissed by herein respondents. In support hereof, petitioner reiterates: (1) he never abandoned his job and continued to report for work even after his illegal suspension; (2) respondents, however, no longer gave him a duty schedule after illegally suspending him; (3) the hospital's Chief Nurse herself told him he was dismissed from employment and respondent Dr. Roxas-Platon did not like him anymore.

In their Comment,[21] respondents replead their submissions below against petitioner's plea for affirmative relief.

Issue

Was petitioner illegally dismissed?

Ruling

The Court, not being a trier of facts, is not duty bound to review all over again the records of the case and make its own factual determination. For factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect as they are specialized to rule on matters falling within their jurisdiction especially when supported by substantial evidence. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the quasi-judicial agency, as in this case.[22]

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

[21] *Id.* at 83-88.

[22] *The Peninsula Manila v. Jara*, G.R. No. 225586, July 29, 2019. Citations omitted.

After a judicious review of the records, the Court is constrained to reverse the Court of Appeals' factual findings and legal conclusion.

Petitioner was illegally dismissed

In reversing the findings of the labor tribunals, the Court of Appeals held that at the time petitioner filed his complaint on May 30, 2011, there was no illegal dismissal to speak of yet. It accepted respondents' assertion that an administrative investigation was still to be conducted as shown in its letter dated June 6, 2011 requiring petitioner to explain his failure to report for work after his suspension. Thus, it was petitioner who wrongly presumed he was dismissed and prematurely filed the complaint.

We do not agree.

Petitioner had all the reason to believe that he had been dismissed from employment due to the events that transpired prior to and after his illegal suspension, *viz.*: (1) when he reported for work after the holy week of 2011, respondent Dr. Roxas-Platon and the hospital staff already treated him indifferently; (2) he was excluded from the meeting of hospital nurses held on May 4, 2011 — the same day he was off-duty; (3) when he reported for work on May 7, 2011 based on his schedule, he found out he was no longer included in the work schedule of duty nurses; (4) Chief Nurse Dela Cueva then told him Dr. Roxas-Platon did not like him anymore and he could not work until the hospital administration told him so; (5) on May 9, 2011, he was informed that he was suspended from May 5, 2011 to May 18, 2011 without any prior investigation or notice; (6) when he reported back to work on May 19, 2011, his name was still not on the list of duty nurses; (7) the nursing department told him Dr. Roxas-Platon did not like him anymore and he was already dismissed from work; (8) he continued to report to the hospital but he was not given any duty schedule;

(9) after several follow-ups, Chief Nurse Dela Cueva finally informed him he was already dismissed from work saying *"Ayaw na ni doktora sa 'yo, ayaw ka na nyang magtrabaho, tanggal ka na sa trabaho."*[23]

Surely, the foregoing circumstances would lead petitioner to believe that his employment had been terminated. Anyone with a reasonable mind would. The callous treatment he received from respondents, his superior, and co-workers left petitioner with no choice but to cry foul. Hence, his recourse of filing an illegal dismissal case against respondents could not have been premature. For the truth was, he had already been dismissed by respondents.

Abandonment was not proven

Respondents though maintain that petitioner was not illegally dismissed. They claim that when petitioner filed the complaint below, the hospital's disciplinary committee had yet to conduct an investigation on his alleged failure to report for work after his suspension. But since petitioner no longer reported for work and ignored the notices sent him, he was validly dismissed on July 28, 2011 on ground of abandonment.

Respondents are mistaken.

First. Respondents' supposed administrative investigation is clearly an afterthought. The letters dated June 6, 2011 and July 7, 2011 were only made after petitioner sued them for illegal dismissal. By then, respondents may have already realized that petitioner's termination was illegal. As the NLRC keenly observed:

> It is rather surprising why, despite [respondents'] claim that [petitioner] failed to report since May 19, 2011 no memorandum was given to the latter for his long absence until the memorandum dated June 6, 2011 requiring [petitioner] to explain. It did not escape notice

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[23] *Rollo*, p. 66.

that [petitioner] filed his complaint on May 30, 2011 and summons was received by [respondents] on June 06, 2011.

We do not consider these a coincidence.

On the contrary, this shows that the notice to explain, the investigation on July 12, 2011 per notice dated July 7, 2011 [were] mere afterthoughts to remedy the earlier act of dismissal. At the time these documents were prepared, [respondents] already knew that [petitioner] had filed a complaint with the arbitration branch of NLRC.[24]

Obviously, the purported investigation conducted by the hospital's disciplinary committee was only meant to give a semblance of validity to petitioner's dismissal from service. For its outcome was already predetermined as respondents were already resolute in their decision to terminate petitioner, albeit for the second time. As the NLRC aptly noted, petitioner's dismissal was already a "foregone conclusion."

Second. If indeed petitioner had not yet been terminated and respondents still considered him an employee, they could have sent him a return-to-work order. But they never did. Instead, they stuck to their narrative that it was petitioner who erroneously assumed he was terminated.

In ***Daguinod v. Southgate Foods, Inc.***,[25] the Court elucidated that the employer's failure to issue a return-to-work order to the employee negates its claim that the latter was not yet terminated. The employer's excuse that it was the employee who wrongly presumed he was dismissed from employment was rejected. The employee was thus declared to have been illegally dismissed.

Third. Respondents failed to prove its defense of abandonment so as to make petitioner's termination a valid one.

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[24] At pp. 5-6 of the NLRC Resolution dated November 29, 2013; *rollo*, p. 67.

[25] G.R. No. 227795, February 20, 2019.

To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and manifested by some overt acts.[26] Abandonment as a just ground for dismissal requires the deliberate, unjustified refusal of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment.[27]

The second element of abandonment is lacking here. Aside from petitioner's alleged failure to report for work, respondents failed to prove that petitioner had the intention of abandoning his job. They failed to establish that petitioner exhibited a deliberate and unjustified refusal to resume his employment. His mere absence was not accompanied by any overt act unerringly pointing to the fact that he simply does not want to work anymore.[28]

In ***Demex Rattancraft, Inc. v. Leron***,[29] the Court decreed that an employee's absences and non-compliance with return-to-work notices do not convincingly show a clear and unequivocal intention to sever one's employment. For strained relations caused by being legitimately disappointed after being unfairly treated could explain the employee's hesitation to report back immediately. If any, his actuations only explain that he has a grievance, not that he wanted to abandon his work entirely.

Too, petitioner's immediate filing of the complaint below after his superior Chief Nurse Dela Cueva told him he was already terminated is a clear indication that he had the desire to continue

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[26] *Concrete Solutions, Inc. v. Cabusas*, 711 Phil. 477, 287-288 (2013).

[27] *Manarpiis v. Texan Philippines, Inc.*, 752 Phil. 305, 321 (2015).

[28] *Geraldo v. The Bill Sender Corp.*, G.R. No. 222219, October 3, 2018.

[29] G.R. No. 204288, November 8, 2017.

with his employment.[30] As we held in ***Fernandez v. Newfield Staff Solutions, Inc.***:[31]

> Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.

Indeed, it would be illogical for petitioner to abandon his work and then immediately file an action for illegal dismissal. Petitioner's act of contesting the legality of his dismissal ably supports his sincere intention to return to work, thus negating respondents' claim that he had abandoned his job.[32]

All told, abandonment here was a just trumped-up charge to make it appear that petitioner was not yet terminated when he filed the illegal dismissal complaint and to give a semblance of truth to the belated investigation against him. But the truth is, petitioner did not abandon his work. He was repeatedly told that respondents did not want him anymore and he was dismissed from his employment. The NLRC, therefore, did not gravely abuse its discretion in upholding the labor arbiter's finding that petitioner was illegally dismissed. Verily, the Court of Appeals' erred in ruling that petitioner was validly dismissed.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated August 28, 2015 and the Resolution dated July 22, 2016 of the Court of Appeals in CA-G.R. SP No. 133582 are **REVERSED** and **SET ASIDE**. The Decision dated July 31, 2013 NLRC RAB-IV-05-00822-11-B and NLRC LAC No. 01-000065-13 is **REINSTATED**.

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[30] *Tamblot Security & General Services, Inc. v. Item*, 774 Phil. 312, 317-318 (2015).

[31] 713 Phil. 707, 718 (2013).

[32] *Supra* note 26.

The Court **DIRECTS** the labor arbiter to facilitate the re-computation of the total monetary awards due to the petitioner in accordance with this Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 226731. June 17, 2020]

CELLPAGE INTERNATIONAL CORPORATION, *petitioner*, *vs.* **THE SOLID GUARANTY, INC.,** *respondent*.

SYLLABUS

1. COMMERCIAL LAW; INSURANCE CODE (PD 612); SURETYSHIP; DEFINITION. — Section 175 of Presidential Decree No. 612 or the Insurance Code defined suretyship as an agreement where a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of a third person called the obligee.

2. ID.; ID.; ID.; NATURE AND EXTENT OF A SURETY'S LIABILITY; ELUCIDATED. — Under Section 176 of the Insurance Code, the nature and extent of a surety's liability are as follows: SEC. 176. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. **It is determined strictly by the terms of the contract of suretyship in relation to the principal contract**

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[*] Additional member in lieu of Justice Mario V. Lopez who took part in the CA Decision.

between the obligor and the obligee. Thus, the surety's liability is joint and several with the obligor, limited to the amount of the bond, and determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee. Does the phrase "in relation to the principal contract between the obligor and obligee" means that a written principal agreement is required in order for the surety to be liable? The Court answers in the negative. Article 1356 of the Civil Code provides that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. Thus, an oral agreement which has all the essential requisites for validity may be guaranteed by a surety contract. To rule otherwise contravenes the clear import of Article 1356 of the Civil Code.

3. **ID.; ID.; ID.; ID.; THE LIABILITY OF A SURETY IS DETERMINED STRICTLY BY THE TERMS OF THE SURETY CONTRACT.** — Since the liability of a surety is determined strictly by the terms of the surety contract, each case then must be assessed independently in light of the agreement of the parties as embodied in the terms of the contract of suretyship. Basic is the rule that a contract is the law between the contracting parties and obligations arising therefrom have the force of law between them and should be complied with in good faith. The parties are not precluded from imposing conditions and stipulating such terms as they may deem necessary as long as the same are not contrary to law, morals, good customs, public order or public policy. Among these conditions is the requirement to submit a written principal agreement before the surety can be made liable under the suretyship contract. Thus, whether or not a written principal agreement is required in order to demand performance from the surety would depend on the terms of the surety contract itself.

4. **ID.; ID.; ID.; ID.; THE RULE IN SURETYSHIP IS THAT A SURETY'S LIABILITY IS JOINT AND SOLIDARY WITH THAT OF THE PRINCIPAL DEBTOR.** — A suretyship agreement is a contract of adhesion ordinarily prepared by the surety or insurance company. Therefore, its provisions are interpreted liberally in favor of the insured and strictly against the insurer who, as the drafter of the bond, had the opportunity to state plainly the terms of its obligation. The oft-repeated

rule in suretyship is that a surety's liability is joint and solidary with that of the principal debtor. This makes a surety agreement an ancillary contract as it presupposes the existence of a principal agreement. Although the surety's obligation is merely secondary or collateral to the obligation contracted by the principal, this Court has nevertheless characterized the surety's liability to the creditor of the principal as "direct, primary, and absolute; in other words, the surety is directly and equally bound with the principal."

5. CIVIL LAW; DAMAGES; INTEREST; COMPUTATION OF LEGAL INTEREST. — In *Eastern Shipping Lines v. Court of Appeals*, the Court established the guidelines for imposition of compensatory interests x x x Subsequently, the Bangko Sentral ng Pilipinas-Monetary Board (BSP-MB) issued Circular No. 799, series of 2013 reducing the rate of interest applicable on loan or forbearance of money from 12% to 6% per annum, effective on July 1, 2013. This reduced interest rate is applied prospectively. Thus, the interest rate of 12% *per annum* can only be applied until June 30, 2013, while the reduced interest rate of 6% can be applied from July 1, 2013. Applying the guidelines and in the absence of an agreement as regards the interest, the Court is compelled to award the legal interest at the rate of 12% per annum from the date of the last extra-judicial demand until June 30, 2013, and at the reduced rate of 6% per annum from July 1, 2013 until its full satisfaction.

APPEARANCES OF COUNSEL

Sagayo Evangelista & Rebuelta Law Offices for petitioner.
Roderick M. Santos for respondent.

D E C I S I O N

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

This resolves the Petition[1] for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, seeking the reversal of

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[1] *Rollo*, pp. 3-24.

the Decision[2] dated June 9, 2016 and the Resolution[3] dated August 25, 2016 issued by the Court of Appeals (CA) in CA-G.R. CV No. 100565.

The Facts

Cellpage International Corp. (Cellpage) approved Jomar Powerhouse Marketing Corporation's (JPMC) application for credit line for the purchase of cellcards, with a condition that JPMC will provide a good and sufficient bond to guaranty the payment of the purchases. In compliance with this condition, JPMC secured from The Solid Guaranty, Inc. (Solid Guaranty) the following surety bonds:

Surety Bond No. 007422	March 20, 2002	₱2,500,000.00
Surety Bond No. 00474	April 24, 2002	₱2,500,000.00
Surety Bond No. 00748	May 6, 2002	₱2,000,000.00

In August 2002, JPMC purchased cellcards amounting to Seven Million Two Thousand Six Hundred Pesos (₱7,002,600.00) from Cellpage, as follows:

DATE	QUANTITY	INVOICE NO.	AMOUNT
08/08/02	1,000 pcs.	O35701	₱ 273,000.00
08/08/02	4,000 pcs.	O35713	₱1,092,000.00
08/09/02	4,000 pcs.	O35732	₱1,092,000.00
08/12/02	1,000 pcs.	O35790	₱ 273,000.00
08/13/02	1,000 pcs.	O35839	₱ 273,000.00
08/14/02	3,000 pcs.	O35864	₱ 819,000.00
08/14/02	3,000 pcs.	O35871	₱ 837,000.00

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[2] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, concurring; *id.* at 26-35.

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

08/16/02	3,000 pcs.	O35904	₱ 837,000.00
08/20/02	900 pcs.	O35972	₱ 251,100.00
08/22/02	3,000 pcs.	O36028	₱ 837,000.00
08/23/02	500 pcs.	O36045	₱ 139,500.00
08/24/02	1,000 pcs.	O36061	₱ 279,000.00
TOTAL			₱7,002,600.00

In partial payment for its purchases, JPMC issued to Cellpage the following postdated checks:

BANK/BRANCH	CHECK NO.	DATE	AMOUNT
Security-Caloocan	992310	08/23/02	₱546,000.00
Security-Caloocan	992311	08/23/02	₱546,000.00
Security-Caloocan	992312	08/23/02	₱273,000.00
Security-Caloocan	992320	08/24/02	₱546,000.00
Security-Caloocan	992321	08/24/02	₱546,000.00
TOTAL			₱2,457,000.00

When Cellpage presented these checks to the bank for payment, the same were all dishonored for being drawn against insufficient funds. Thus, Cellpage demanded from JPMC the full payment of its outstanding obligation, in the amount of ₱7,002,600.00, but the latter failed to pay. Cellpage also demanded from Solid Guaranty the payment of JPMC's obligation pursuant to the surety bonds issued by Solid Guaranty. Solid Guaranty, however, refused to accede to Cellpage's demand.

Thus, Cellpage filed a complaint for sum of money against JPMC and Solid Guaranty before the Regional Trial Court (RTC).

In the Decision dated January 3, 2012, the RTC ruled in favor of Cellpage and declared JPMC and Solid Guaranty jointly and solidarily liable to the former. The dispositive portion of this decision reads:

WHEREFORE, it appearing that the material allegations of the complaint had been established by clear, convincing and competent evidence, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay the former jointly and solidarily, the following amounts:

1) Seven Million Two Thousand Six Hundred Pesos (₱7,002,66.00) (*sic*) plus twelve percent (12%) interest per annum computed from the date of last demand until fully paid;

2) Twenty Thousand Pesos (₱20,000.00) as exemplary damages;

3) Twenty Thousand Pesos (₱20,000.00) as reasonable attorney's fees; and

4) Costs of Suit.

SO ORDERED.[4]

Solid Guaranty filed a motion for reconsideration, but the RTC denied the said motion in an Order dated December 19, 2012.

Aggrieved, Solid Guaranty filed its appeal before the CA, arguing that since a surety bond is a mere collateral or accessory agreement, the extent of the liability of Solid Guaranty is determined by the terms of the principal contract between JPMC and Cellpage. Since neither JPMC nor Cellpage submitted copies of said written agreement before or after the issuance of the surety bonds, Solid Guaranty argued that there can be no valid surety claim against it.

The CA found Solid Guaranty's appeal to be impressed with merit, and granted the same. The CA ruled that Cellpage cannot demand from Solid Guaranty the performance of the latter's obligation under the surety contract. In so ruling, this Court invoked the pronouncement in *First Lepanto-Taisho Insurance Corporation v. Chevron Philippines, Inc.*,[5] where we applied strictly the terms and conditions of the surety contract which

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[4] *Id.* at 28.

[5] 679 Phil. 313 (2012).

expressly states that a copy of the principal agreement must be attached and made an integral part of the surety contract.

The CA found that the surety bonds issued by Solid Guaranty insured the payment/remittance of the cost of products on credit by JPMC in accordance with the terms and conditions of the agreement it entered into with Cellpage. According to the CA, the word agreement pertains to the credit line agreement between JPMC and Cellpage. Applying the ruling in *First Lepanto*, the CA ruled that JPMC's failure to submit the written credit line agreement to Solid Guaranty, affected not the validity and effectivity of the surety bonds, but rather the right of the creditor, Cellpage, to demand from Solid Guaranty the performance of its obligation under the surety contract. The dispositive portion of the CA's Decision states:

> WHEREFORE, the instant appeal is GRANTED. The Decision dated January 3, 2012 and Order dated December 19, 2012 of the Regional Trial Court, Branch 102, Quezon City, in Civil Case No. Q-03-48797 are REVERSED and SET ASIDE and the plaintiff-appellee's Complaint AGAINST the Solid Guaranty, Inc. is DISMISSED.
>
> SO ORDERED.

Not convinced by the CA's Decision, Cellpage appealed the case before us, raising the following errors:

A.

THE COURT OF APPEALS GRAVELY ERRED IN EXONERATING RESPONDENT SOLID GUARANTY, INC. ON THE LAME EXCUSE THAT JPMC FAILED TO SUBMIT A WRITTEN CREDIT LINE AGREEMENT WITH ITS CREDITOR. THE SURETY BONDS DID NOT REQUIRE THAT THE CREDIT LINE AGREEMENT MUST BE IN WRITING AND MUST BE ATTACHED TO THE BONDS AS A CONDITION FOR THE LIABILITY OF RESPONDENT THEREON, HENCE, THE DECISION OF THE COURT OF APPEALS IS WITHOUT BASIS.

B.

THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE TRIAL COURT'S FINDING THAT RESPONDENT SOLID GUARANTY, INC. IS ALREADY BARRED BY ESTOPPEL AND

COULD NO LONGER QUESTION THE VALIDITY AND BINDING EFFECT OF THE GUARANTY BONDS IT ISSUED TO JPMC. BY DEMANDING PAYMENT FROM JPMC, RESPONDENT SOLID GUARANTY UNDENIABLY RECOGNIZED ITS LIABILITY ON THE BONDS.

Cellpage maintains that the mere issuance by a surety company of a bond makes it liable under the same even if the applicant failed to comply with the requirement set by a surety company. Cellpage argues that an accessory surety agreement is valid even if the principal contract is not in writing. According to Cellpage, there is no requirement that only principal obligations that are reduced into writing are guaranteed by surety bonds. It reasons that under Article 1356 of the Civil Code, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. Since the surety contract is valid, Solid Guaranty shall be liable and it is barred by estoppel from questioning its liability under the surety bond it issued.

Cellpage further avers that Solid Guaranty knew from the very start the obligation it bound itself to be liable for, and did not require that the purchases on credit or the credit line agreement be in writing and attached to the surety agreements in order for the latter to be valid or have binding effect. It likewise claims that to excuse Solid Guaranty from its liability is a clear case of unjust enrichment since Solid Guaranty was paid premiums and the bonds were secured by indemnity agreements and mortgages. It also contends that it would not have consented to the sale of cell cards to JPMC on credit were it not for its trust and confidence on the surety bond issued by Solid Guaranty.

Cellpage further argues that the reliance in the case of *First Lepanto v. Chevron* was misplaced because, unlike the surety in said case, Solid Guaranty did not require the submission of a written principal contract. Cellpage also stresses that the principal obligation secured by the surety bond is not the credit line agreement but the subsequent purchases made on credit under the said facility.

The Issues

The issues in this case are: 1) whether or not Solid Guaranty is liable to Cellpage in the absence of a written principal contract; 2) whether or not Solid Guaranty is barred by estoppel from questioning the binding effect of the surety bond it issued to JPMC.

The Ruling of the Court

We find the Petition meritorious.

Section 175 of Presidential Decree No. 612 or the Insurance Code defined suretyship as an agreement where a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of a third person called the obligee.

Under Section 176 of the Insurance Code, the nature and extent of a surety's liability are as follows:

> SEC. 176. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. **It is determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee**. (Emphasis supplied)

Thus, the surety's liability is joint and several with the obligor, limited to the amount of the bond, and determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee.

Does the phrase "in relation to the principal contract between the obligor and obligee" means that a written principal agreement is required in order for the surety to be liable? The Court answers in the negative. Article 1356 of the Civil Code provides that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. Thus, an oral agreement which has all the essential requisites for validity may be guaranteed by a surety contract. To rule otherwise contravenes the clear import of Article 1356 of the Civil Code.

The CA, however, held that there being no written credit line agreement, Cellpage cannot demand from Solid Guaranty the performance of its obligation under the surety contract pursuant to the ruling in the case of *First Lepanto*,[6] where the Court applied strictly the terms and conditions of the surety contract which expressly state that a copy of the principal agreement must be attached and made an integral part thereof. According to *First Lepanto*, having accepted the bond, the creditor must be held bound by the recital in the surety bond that the terms and conditions of its distributorship contract be reduced in writing or at the very least communicated in writing to the surety.[7] Thus, the CA ruled that the failure of the creditor to comply strictly with the terms of the surety bond which specifically required the submission and attachment of the principal agreement to the surety contract, affected its right to demand performance from the surety.

It bears pointing out that the ruling in *First Lepanto* was anchored on Section 176 of the Insurance Code which emphasizes the strict application of the terms of the surety contract in relation to the principal contract between the obligor and obligee. *First Lepanto's* pronouncement that a written principal agreement is required in order for the creditor to demand performance was arrived at by applying strictly the terms of the surety bond which required the submission and attachment of the principal agreement to the surety contract.

Thus, following the provision of Section 176 of the Insurance Code, the ruling in *First Lepanto* cannot be applied to this case. Since the liability of a surety is determined strictly by the terms of the surety contract, each case then must be assessed independently in light of the agreement of the parties as embodied in the terms of the contract of suretyship.

Basic is the rule that a contract is the law between the contracting parties and obligations arising therefrom have the

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[6] *Supra* note 5, at 322-328.

[7] *Id.*

force of law between them and should be complied with in good faith.[8] The parties are not precluded from imposing conditions and stipulating such terms as they may deem necessary as long as the same are not contrary to law, morals, good customs, public order or public policy.[9] Among these conditions is the requirement to submit a written principal agreement before the surety can be made liable under the suretyship contract. Thus, whether or not a written principal agreement is required in order to demand performance from the surety would depend on the terms of the surety contract itself.

Hence, it is necessary to examine the surety bonds issued by Solid Guaranty in order to answer the issue of whether or not a written agreement is required in order for Cellpage to demand from Solid Guaranty the performance of its obligations under the bonds. The said surety bonds, which contain the same terms and conditions, except for the amount they guarantee, pertinently read:

> That we, JOMAR POWERHOUSE MARKETING CORP., with address at No. 92 C. Palanan Street, Quiapo Manila, as PRINCIPAL, and THE SOLID GUARANTY, INC., a non-life insurance corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the Eighth Floor, Solidbank Building, Dasmariñas, Manila, Philippines, as SURETY, are held and firmly bound unto CELLPAGE INTERNATIONAL CORPORATION in the sum of x x x (x x x) Philippine Currency, for the payment of which well and truly to be made, we bind ourselves jointly and severally by these presents.
>
> The conditions of this obligation are as follows:
>
> WHEREAS, **the principal has applied for a credit line with the Obligee for the purchase of cell cards and accessories.**
>
> WHEREAS, **the Obligee requires the principal to post a good and sufficient bond in the above stated sum to guarantee payment/**

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[8] CIVIL CODE, Article 1159. See also *The Mercantile Insurance Co., Inc. v. DMCI-Laing Construction, Inc.*, G.R. No. 205007, September 16, 2019.

[9] CIVIL CODE, Article 1159.

remittance of cost of products within the stipulated time in accordance with the terms and conditions of the agreement.

IN NO CASE, HOWEVER, shall the liability of the surety hereunder exceed the sum of x x x (x x x) Philippine Currency, inclusive.

x x x x x x x x x

WHEREAS, **the contract requires the above-bounden Principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on their part of said contract.**

NOW THEREFORE, if the above-bounden Principal shall in all respects duly and fully observe and perform all and singular the aforesaid covenants, conditions and agreements to the true intent and meaning thereof, then this obligation shall be null and void, otherwise to remain in full force and effect.

Liability of the Surety on this bond will expire [on] March 20, 2003 and said bond will be cancelled Five (5) days after its expiration, unless Surety is notified of any existing obligation thereunder. (Emphasis supplied)

The surety bonds do not expressly require the submission of a written principal agreement. Nowhere in the said surety bonds did Solid Guaranty and Cellpage stipulate that Solid Guaranty's performance of its obligations under the surety bonds is preconditioned upon Cellpage's submission of a written principal agreement. It is clear that Solid Guaranty bound itself solidarily with JPMC for the payment of the amount stated in the surety bonds in case of the latter's failure to perform its obligations to Cellpage, with knowledge of the following: 1) the principal, JPMC, has applied for a credit line with Cellpage for the purchase of cell cards and accessories; 2) Cellpage required JPMC to post a good and sufficient bond in the amount specified in the surety bonds in order to guarantee payment/remittance of cost of products within the stipulated time in accordance with the terms and conditions of the agreement; and 3) the contract between JPMC and Cellpage requires the former to give a sufficient bond to secure its full and faithful performance of its obligation in the principal contract.

The CA misconstrued the phrase "in accordance with the terms and conditions of the agreement" in the second whereas

clause as a condition imposed upon Cellpage to attach the principal agreement to the surety bonds. At the risk of being repetitive, the second condition merely states that JPMC is required to post a bond that will guarantee its payment of the cost of the products within the stipulated time in accordance with the terms and conditions of the agreement. If Solid Guaranty's intention was to impose a condition upon its solidary liability, then it should have clearly and unequivocally specified in the surety bonds that it requires the written principal agreement to be attached thereto. Its failure to do so must be construed against it.[10] A suretyship agreement is a contract of adhesion ordinarily prepared by the surety or insurance company.[11] Therefore, its provisions are interpreted liberally in favor of the insured and strictly against the insurer who, as the drafter of the bond, had the opportunity to state plainly the terms of its obligation.[12]

The oft-repeated rule in suretyship is that a surety's liability is joint and solidary with that of the principal debtor.[13] This makes a surety agreement an ancillary contract as it presupposes the existence of a principal agreement.[14] Although the surety's obligation is merely secondary or collateral to the obligation contracted by the principal, this Court has nevertheless characterized the surety's liability to the creditor of the principal as "direct, primary, and absolute; in other words, the surety is directly and equally bound with the principal."[15]

Here, the existence of a valid principal agreement is not in question. The principal contract between JPMC and Cellpage was duly substantiated by issue slips, delivery receipts and purchase orders, and was acknowledged by Solid Guaranty.

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[10] *FGU Insurance Corp. v. Spouses Roxas*, 816 Phil. 71-110 (2017).

[11] *Id.*

[12] *Id.*

[13] *Gilat Satellite Networks, Ltd. v. United Coconut Planters Bank General Insurance Co., Inc.*, 731 Phil. 464, 473 (2014).

[14] *Id.*

[15] *FGU Insurance Corp. v. Spouses Roxas*, *supra* note 10.

The CA even acknowledged the validity of this contract when it ruled that the absence of a written agreement affected not the validity and effectivity of the surety bonds but the right of the creditor to demand from the surety the performance of its obligations under the surety bonds. By upholding the validity and effectivity of the surety bonds, the CA, in effect, upheld the existence and validity of the principal contract which the ancillary contract of suretyship presupposes to exist.

Solid Guaranty cannot escape its liability arising from the surety bonds. By the terms of the surety bonds, Solid Guaranty obligated itself solidarily with JPMC for the fulfillment of the latter's obligation to Cellpage. Upon JPMC's failure to perform its obligations to the latter, Solid Guaranty's liabilities under the bonds accrued. Hence, Solid Guaranty is solidarily liable with JPMC for the payment of its obligations to Cellpage up to the face amount of the surety bonds.

Having ruled so, we find no need to discuss the second assignment of error.

Thus, the Decision dated June 9, 2016 and Resolution dated August 25, 2016 of the CA are hereby reversed and set aside, and the Decision dated January 3, 2012 and Order dated December 19, 2012 of the RTC of Quezon City are reinstated with modification in that Solid Guaranty is solidarily liable with JPMC for the payment of the latter's obligation to Cellpage in the amount of ₱7,000,000, the face amount of the surety bonds.

The Court also modifies the interest rate imposed upon the monetary liability of JPMC and Solid Guaranty. In *Eastern Shipping Lines v. Court of Appeals*,[16] the Court established the guidelines for imposition of compensatory interests as follows:

> With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of

[16] 304 Phil. 236, 252-254 (1994).

money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

x x x x x x x x x

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

Subsequently, the Bangko Sentral ng Pilipinas-Monetary Board (BSP-MB) issued Circular No. 799, series of 2013 reducing the rate of interest applicable on loan or forbearance of money from 12% to 6% per annum, effective on July 1, 2013. [17] This reduced interest rate is applied prospectively. [18] Thus, the interest rate of 12% *per annum* can only be applied until June 30, 2013, while the reduced interest rate of 6% can be applied from July 1, 2013. [19]

Applying the above guidelines and in the absence of an agreement as regards the interest, the Court is compelled to award the legal interest at the rate of 12% per annum from the date of the last extra-judicial demand until June 30, 2013, and at the reduced rate of 6% per annum from July 1, 2013 until its full satisfaction.[20]

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[17] *Philippine Commercial and International Bank v. William Golangco Construction Corp.*, G.R. Nos. 195372 & 195375, April 10, 2019.

[18] *Nacar v. Gallery Frames*, 716 Phil. 267, 279-281 (2013).

[19] *Id.*

[20] *Id.*

WHEREFORE, the Petition is **GRANTED**. The Decision dated June 9, 2016 and the Resolution dated August 25, 2016 issued by the Court of Appeals are hereby **REVERSED** and **SET ASIDE**. The Decision dated January 3, 2012 and Order dated December 19, 2012 of the Regional Trial Court of Quezon City are hereby **REINSTATED** with **MODIFICATION** as follows:

1. The amount of Seven Million Two Thousand Six Hundred (₱7,002,600) is subject to a legal interest at the rate of 12% per annum from the date of the last extra-judicial demand until June 30, 2013, and at the reduced rate of 6% per annum from July 1, 2013 until its full satisfaction.

2. Solid Guaranty, Inc. is solidarily liable with Jomar Powerhouse Marketing Corporation for the payment of the latter's obligation to Cellpage International Corp. only up to the face amount of the surety bonds, equivalent to Seven Million Pesos ₱7,000,000, subject to a legal interest at the rate of 12% per annum from the date of the last extra-judicial demand until June 30, 2013, and at the reduced rate of 6% per annum from July 1, 2013, until its full satisfaction.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 229087. June 17, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **JEFFREY LIGNES *y* PAPILLERO,** *accused-appellant*.

SYLLABUS

1. **CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS.** — The crime for which appellant was charged and convicted was Robbery with Homicide. It is a special complex crime against property. It exists when a homicide is committed either by reason, or on the occasion, of the robbery. In charging Robbery with Homicide, the *onus probandi* is to establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed.

2. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; CONSIDERED SUFFICIENT TO SUPPORT A CONVICTION, AND THAT DIRECT EVIDENCE IS NOT THE SOLE MEANS OF ESTABLISHING GUILT BEYOND REASONABLE DOUBT.** — Admittedly, there was no direct evidence to establish appellant's commission of the crime charged. However, direct evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. It is a settled rule that circumstantial evidence is sufficient to support a conviction, and that direct evidence is not always necessary. This Court has recognized the reality that in certain cases, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence. 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."

3. **ID.; ID.; ID.; ID.; THE PECULIARITY OF CIRCUMSTANTIAL EVIDENCE IS THAT THE GUILT OF THE ACCUSED CANNOT BE DEDUCED FROM SCRUTINIZING JUST ONE PARTICULAR PIECE OF EVIDENCE BUT ALL**

EVIDENTIARY FACTS WEAVED TOGETHER. — Circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting felons free. The standard that should be observed by the courts in appreciating circumstantial evidence was extensively discussed in the case of *People v. Modesto* x x x. In this case, We agree with the RTC, as affirmed by the CA, that the circumstantial evidence proven by the prosecution sufficiently established that appellant committed the offense charged. x x x The x x x factual circumstances constitute evidence of weight and probative force. The peculiarity of circumstantial evidence is that the guilt of the accused cannot be deduced from scrutinizing just one particular piece of evidence. Circumstantial evidence is like a rope composed of many strands and cords. One strand might be insufficient, but five together may suffice to give it strength. Thus, all evidentiary facts weaved together compels Us to conclude that the crime of Robbery with Homicide has been committed, and that the appellant cannot hide behind the veil of presumed innocence.

4. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; DWELLING; AGGRAVATES A FELONY WHEN THE CRIME IS COMMITTED IN THE DWELLING OF THE OFFENDED PARTY PROVIDED THAT THE LATTER HAS NOT GIVEN PROVOCATION THEREOF. — We note that both the trial court and the CA failed to take into account dwelling as an ordinary aggravating circumstance, despite the fact that the Information contains sufficient allegation to that effect x x x. In *People v. Mesias*, We held that "dwelling is not inherent in the crime of *Robbery with Homicide* and should be appreciated as an aggravating circumstance since the author thereof could have accomplished the heinous deed without having to violate the domicile of the victim." Dwelling is aggravating because of the sanctity of privacy which the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere. Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor. Here, the prosecution established the fact that Robbery with Homicide was committed inside the victim's home, without provocation on the part of the latter. Hence, the trial court should have appreciated dwelling as an ordinary aggravating circumstance.

5. ID.; PENALTIES; APPLICATION OF INDIVISIBLE PENALTIES; IN ALL CASES IN WHICH THE LAW PRESCRIBES A PENALTY COMPOSED OF TWO INDIVISIBLE PENALTIES, AND WHEN IN THE COMMISSION OF THE DEED THERE IS PRESENT ONLY ONE AGGRAVATING CIRCUMSTANCE, THE GREATER PENALTY SHALL BE APPLIED. — In view of the attendant ordinary aggravating circumstance, the Court must modify the penalty imposed on appellant. Robbery with Homicide is punishable by *reclusion perpetua* to death. Article 63 of the Revised Penal Code provides that in all cases in which the law prescribes a penalty composed of two indivisible penalties, and when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. Thus, with an ordinary aggravating circumstance of dwelling, the imposable penalty is death. However, pursuant to Republic Act No. 9346, which proscribed the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua*, without eligibility for parole.

6. ID.; CIVIL LIABILITY FOR FELONIES; IN THE AWARD OF DAMAGES WHERE THE IMPOSABLE PENALTY IS *RECLUSION PERPETUA* TO DEATH, THE PRINCIPAL CONSIDERATION IS THE PENALTY PROVIDED FOR BY LAW OR IMPOSABLE FOR THE OFFENSE BECAUSE OF ITS HEINOUSNESS, NOT THE PUBLIC PENALTY ACTUALLY IMPOSED ON THE OFFENDER. — As regards the award of damages, the same must accordingly be modified. In *People v. Jugueta*, We exhaustively explained that in the award of damages where the imposable penalty is *reclusion perpetua* to death, such as in a case involving Robbery with Homicide, the principal consideration is the penalty provided for by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender. In the case at bar, the crime was aggravated by dwelling, and the penalty to be imposed is death, but is reduced to *reclusion perpetua* because of Republic Act No. 9346. Thus, following *Jugueta*, the award of damages must be: IV. For Special Complex Crimes like Robbery with Homicide x x x, where the penalty consists of indivisible penalties: 1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. 9346: a. Civil indemnity — ₱100,000.00 b. Moral damages — ₱100,000.00 c. Exemplary damages — ₱100,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

On appeal is the Decision[1] dated August 31, 2016 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 07011, which affirmed the Decision[2] of the Regional Trial Court (*RTC*), Quezon City, Branch 94, in Criminal Case No. Q-12-179191, finding accused-appellant Jeffrey Lignes *y* Papillero guilty beyond reasonable doubt of the crime of *Robbery with Homicide* under Article 294 of the Revised Penal Code.

The antecedent facts, as culled from the records, are as follows:

Jeffrey Lignes *y* Papillero (*Lignes*) and a Child in Conflict with the Law (CICL) were charged with Robbery with Homicide in an Information,[3] which read:

> That on or about the 13th day of October 2012, in Quezon City, Philippines, the above-named accused, JEFFREY LIGNES *y* PAPILLERO[,] conspiring [and] confederating with [CICL XXX], a minor, 16 years old, but acting with discernment, and mutually helping each other, with intent to gain[,] and by means of force, violence against and/or intimidation of persons, did, then and there, willfully, unlawfully[,] and feloniously take the personal properties of one JOVEN LAURORA *y* RANCES in the manner as follows: while complainant was inside his house at Block 7, Kaingin I, Brgy. Pansol, this City, accused[,] pursuant to their conspiracy[,] robbed and

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[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Samuel H. Gaerlan (now a member of the Court) and Ma. Luisa C. Quijano-Padilla concurring; *rollo*, pp. 2-13.

[2] CA *rollo*, pp. 44-56.

[3] Records, pp. 1-2.

divested him of his following items, to wit: one (1) unit Acer laptop with charger worth ₱30,000.00; one (1) unit cellphone iPhone 4s with charger worth ₱40,000.00; one (1) unit cellphone Samsung Corby worth ₱7,000.00; black wallet containing his personal identification cards; one (1) pair of leather shoes; one (1) bottle of kingsgate perfume; one (1) tin of Johnson baby powder; one (1) small black flashlight; one (1) color green [ballpen]; one (1) black coin purse containing ₱62.25 coins; one (1) unit [screwdriver]; one (1) checkered [backpack] (Jansport) and cash money of ₱12,560.00, all valued in the total amount of ₱89,622.25, Philippine Currency; that the accused[,] by reason or on occasion of[,] and in the course of the commission of the said robbery, did, then and there, with intent to kill[,] with evident premeditation, treachery[,] and abuse of superior strength, attack, assault, and employ personal violence upon said Joven Laurora *y* Rances, by[,] then and there[,] stabbing him several times in the body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said victim.

CONTRARY TO LAW.

Accused-appellant pleaded not guilty, and thus, trial ensued.

Prosecution

The prosecution established that on October 12, 2012, at around 9:00 or 10:00 p.m., Raul Jayson (*Jayson*), Ryan Libo-on (*Libo-on*), and Jonathan Verdadero (*Verdadero*) were having a conversation in their house when two (2) persons asked them where the house of Kagawad Joven Laurora (*Laurora*) was located. They pointed to the house of Laurora, who was their neighbor. Thereafter, they closed the gate of their house and had a drinking spree.

The following day, at around 1:00 a.m., Jayson, Libo-on, and Verdadero heard someone shouting and moaning inside the house of Laurora. Verdadero went out of the house and saw somebody waving a flashlight inside Laurora's house, as if looking for something. This prompted him to call Jayson and Libo-on. They immediately went out of their house and was joined by Francisco Villamor, Jr. (*Villamor*), another neighbor who was also stirred

up from his sleep when he heard the shouting and moaning coming from Laurora's house. Verdadero then left to get help from the *barangay*.

While waiting if somebody would come out of the house of Laurora, Villamar, Jayson, and Libo-on heard someone washing inside the house, and they noticed that the water coming out therefrom was red in color. A few minutes later, a man wearing a black t-shirt and carrying a backpack, followed by another man wearing a green shirt and carrying a pair of shoes, came out of the house of Laurora. Libo-on and Jayson immediately ran after them unto the basketball court, and saw that the two were already on board a black Yamaha motorcycle. Luckily, Verdadero arrived with the *barangay tanod* and immediately accosted the two men.

Libo-on, Jayson, and Verdadero recognized the two as the same persons who asked them earlier about the location of Laurora's house. The man wearing black shirt was identified as the accused-appellant, while the one wearing green shirt was identified as CICL XXX. Recovered from their possession was a Jansport backpack containing several personal items owned by Laurora, *i.e.*, one (1) Acer laptop with charger, one (1) iPhone 4s with charger, one (1) Samsung Corby, black wallet containing his personal identification cards and credit cards, one (1) bottle of perfume, one (1) tin of baby powder, one (1) small black flashlight, one (1) ballpen, one (1) black coin purse containing Sixty-Two Pesos and Twenty-Five Centavos (₱62.25), and cash money of Twelve Thousand Five Hundred Sixty Pesos (₱12,560.00). Accused-appellant was further frisked and a screw driver was found in his possession.

Villamor then asked a certain Cora, Laurora's laundrywoman, to check on Laurora. When she returned, she told them that Laurora was killed. Cora also identified that the green shirt worn by CICL XXX belongs to Laurora.

Dr. Rhodney G. Rosario, the officer who conducted the autopsy on the body of Laurora, found that the latter's death

was caused by the multiple stab wounds in the head, neck, trunk, and upper extremities of Laurora.[4]

Defense

Both accused opted not to present evidence despite careful explanation of the RTC as to the possible consequences of their action and the possible impossible penalty.

Ruling of the RTC

The trial court rendered judgment against the accused-appellant and CICL XXX. Its decision read —

> WHEREFORE, premises considered, the court finds accused Jeffrey Lignes *y* Papillero and CICL XXX guilty beyond reasonable doubt of the crime of Robbery with Homicide[,] defined and penalized under Article [2]94 of the Revised Penal Code. Accused Lignes is sentenced to suffer the penalty of *reclusion perpetua* and to pay the cost.
>
> In view of the minority of CICL XXX[,] and taking into consideration the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of Eight (8) Years and One (1) Day of *prision mayor*[,] as minimum, to Twelve (12) Years and One (1) Day of *reclusion temporal*[,] as maximum, and to pay the cost.
>
> Accused Lignes and CICL XXX are further ordered to jointly and severally pay the heirs of the victim Joven Laurora y Rances [the amount of] ₱177,742.00 as actual damages, ₱75,000.00 as moral damages[,] and ₱25,000.00 as exemplary damages.
>
> Considering that CICL XXX was a minor at the time of the commission of the crime and [is] still below twenty-one (21) years of age, his sentence is hereby suspended. He is committed to the National Training School for Boys (NTSB), Sampaloc, Tanay, Rizal. The NTSB is directed to submit the corresponding report.
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> x x x x x x x x x.
>
> SO ORDERED.[5]

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[4] Records, p. 25 (Dorsal side).

[5] CA *rollo*, pp. 54-55.

The trial court held that the prosecution was able to prove the guilt of the accused Lignes and CICL XXX of the offense charged beyond reasonable doubt through circumstantial evidence.

The circumstances established by the prosecution, all taken together are consistent with the hypothesis that accused Lignes and CICL XXX are guilty, and at the same time inconsistent with the hypothesis that they are innocent.

Aggrieved, accused Lignes filed an appeal before the Court of Appeals.

Ruling of the CA

In its Decision dated August 31, 2016, the CA denied Lignes's appeal and affirmed with modification the ruling of the trial court.

It held that the circumstantial evidence proven by the prosecution sufficiently established that the accused-appellant committed the offense charged, and that these circumstances make out an unbroken chain which leads to but one fair and reasonable conclusion which points to the accused-appellant and CICL XXX as the perpetrators of the crime, to the exclusion of all other conclusions.

Thus, the present appeal.

Before Us, both Lignes and the People manifested that they would no longer file their Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.[6]

Issues

The accused-appellant Lignes raises the following issues:

1. Whether or not the court *a quo* gravely erred in convicting him of Robbery with Homicide based on circumstantial evidence; and

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[6] *Rollo*, pp. 21-30.

2. Whether or not the court *a quo* gravely erred in convicting him of Robbery with Homicide despite the prosecution's failure to prove his guilt beyond reasonable doubt.[7]

Our Ruling

The appeal lacks merit.

Essentially, accused-appellant maintains that the prosecution's evidence failed to prove that he took Laurora's personal properties with violence or intimidation against a person and to establish with moral certainty that the killing was by reason of or on the occasion of the Robbery. He points out that the totality of evidence cannot be considered as an unbroken chain leading to the conclusion that he committed the crime charged.

We are not persuaded.

The crime for which appellant was charged and convicted was Robbery with Homicide. It is a special complex crime against property.[8] It exists when a homicide is committed either by reason, or on the occasion, of the robbery. In charging Robbery with Homicide, the *onus probandi* is to establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used, in the generic sense, was committed.[9]

Admittedly, there was no direct evidence to establish appellant's commission of the crime charged. However, direct evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[10] It is a settled rule

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[7] CA *rollo*, p. 28.

[8] *People v. Arondain*, 418 Phil. 354, 362 (2001).

[9] *People v. Beriber*, 693 Phil. 629, 640-641 (2012).

[10] *Salvador v. People*, 581 Phil. 430, 439 (2008); *People v. Almoguerra*, 461 Phil. 340, 356 (2003).

that circumstantial evidence is sufficient to support a conviction, and that direct evidence is not always necessary. This Court has recognized the reality that in certain cases, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence.

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.[11] The crime charged may also be proved by circumstantial evidence, sometimes referred to as indirect or presumptive evidence.[12] 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."[13]

The Rules of Court itself recognizes that circumstantial evidence is sufficient for conviction, under certain circumstances. Section 4, Rule 133 of the Rules of Court provides:

> Sec. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:
>
> (1) There is more than one circumstance;
>
> (2) The facts from which the inferences are derived are proven; and
>
> (3) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

Circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting felons free.[14]

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[11] *People v. Caparas*, 471 Phil. 210, 221 (2004).

[12] *People v. Buntag*, 471 Phil. 82, 94 (2004).

[13] *People v. Modesto*, 134 Phil. 38, 43 (1968).

[14] *Alvarez v. Court of Appeals*, 412 Phil. 137, 144 (2001).

The standard that should be observed by the courts in appreciating circumstantial evidence was extensively discussed in the case of *People v. Modesto*,[15] thus:

> x x x No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.
>
> It has been said, and we believe correctly, that the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person. From all the circumstances, there should be a combination of evidence which in the ordinary and natural course of things, leaves no room for reasonable doubt as to his guilt. Stated in another way, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused.

In this case, We agree with the RTC, as affirmed by the CA, that the circumstantial evidence proven by the prosecution sufficiently established that appellant committed the offense charged.

Based on the records, the following circumstances were established by the prosecution:

First. On October 12, 2012, at around 9:00 or 10:00 p.m., Lignes and XXX asked Jayson, Verdadero, and Libo-on the location of Laurora's house;

Second. Lignes and XXX went to Laurora's house;

Third. At around 1 a.m., the following day, Jayson, Verdadero, and Libo-on, together with Villamor, heard the shouting and moaning from Laurora's house;

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[15] *Supra* note 13, at 44.

Fourth. Verdadero went out and noticed somebody waving a flashlight inside Laurora's house, as if looking for something;

Fifth. While they were waiting if somebody would come out of Laurora's house, the witnesses heard a faucet being opened, and they noticed that the water coming out of the drainage was brownish, as if mixed with blood (Lignes and XXX's body and hair were wet at the time they were captured);

Sixth. After a few moments, Lignes, wearing a black t-shirt and carrying a backpack, and followed by XXX, wearing a green shirt and carrying a pair of shoes, rushed out of Laurora's house;

Seventh. Laurora's personal belongings were recovered from the backpack that Lignes was carrying;

Eighth. Lignes was further frisked and a screwdriver was found in his possession;

Ninth. Laurora's death was due to multiple stab wounds in her head, neck, trunk, and upper extremities; and

Tenth. Cora identified the green shirt worn by XXX as Laurora's.

The foregoing factual circumstances constitute evidence of weight and probative force. The peculiarity of circumstantial evidence is that the guilt of the accused cannot be deduced from scrutinizing just one particular piece of evidence. Circumstantial evidence is like a rope composed of many strands and cords. One strand might be insufficient, but five together may suffice to give it strength.[16] Thus, all evidentiary facts weaved together compels Us to conclude that the crime of Robbery with Homicide has been committed, and that the appellant cannot hide behind the veil of presumed innocence.

Furthermore, We note that both the trial court and the CA failed to take into account dwelling as an ordinary aggravating

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[16] *People v. Fernandez*, 460 Phil. 194, 213 (2003), citing Francisco, *Evidence*, 3rd Ed., citing *Reg. v. Exall*, 4 F. & F. 922, 929.

circumstance, despite the fact that the Information contains sufficient allegation to that effect:

> x x x while complainant was inside his house at Block 7, Kaingin I, Brgy. Pansol, this City, accused x x x robbed and divested him of his following items x x x.

In *People v. Mesias*,[17] We held that "dwelling is not inherent in the crime of *Robbery with Homicide* and should be appreciated as an aggravating circumstance since the author thereof could have accomplished the heinous deed without having to violate the domicile of the victim." Dwelling is aggravating because of the sanctity of privacy which the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[18] Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor.[19]

Here, the prosecution established the fact that Robbery with Homicide was committed inside the victim's home, without provocation on the part of the latter. Hence, the trial court should have appreciated dwelling as an ordinary aggravating circumstance.

In view of the attendant ordinary aggravating circumstance, the Court must modify the penalty imposed on appellant. Robbery with Homicide is punishable by *reclusion perpetua* to death. Article 63 of the Revised Penal Code provides that in all cases in which the law prescribes a penalty composed of two indivisible penalties, and when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. Thus, with an ordinary aggravating circumstance of dwelling, the imposable penalty is death. However, pursuant to Republic Act No. 9346, which proscribed the imposition of

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[17] 276 Phil. 21, 29 (1991).

[18] *People v. Agcanas*, 674 Phil. 626, 635 (2011).

[19] *People v. Evangelio*, 672 Phil. 229 (2011).

the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua*, without eligibility for parole.[20]

As regards the award of damages, the same must accordingly be modified. In *People v. Jugueta*,[21] We exhaustively explained that in the award of damages where the imposable penalty is *reclusion perpetua* to death, such as in a case involving Robbery with Homicide, the principal consideration is the penalty provided for by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender. In the case at bar, the crime was aggravated by dwelling, and the penalty to be imposed is death, but is reduced to *reclusion perpetua* because of Republic Act No. 9346. Thus, following *Jugueta*, the award of damages must be:

> IV. For Special Complex Crimes like Robbery with Homicide x x x, where the penalty consists of indivisible penalties:
>
> 1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. 9346:
>
> a. Civil indemnity — ₱100,000.00
> b. Moral damages — ₱100,000.00
> c. Exemplary damages — ₱100,000.00

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The Decision dated August 31, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07011 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

(1) The Court finds accused-appellant Jeffrey Lignes *y* Papillero **GUILTY** beyond reasonable doubt of the crime of Robbery with Homicide under Article 294 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole;

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[20] Pursuant to A.M. No. 15-08-02-SC (*Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties*).

[21] 783 Phil. 708 (2016).

(2) Accused-appellant Lignes is **FURTHER ORDERED** to **PAY** the heirs of Joven Laurora *y* Rances the following amounts: (a) ₱100,000.00 as civil indemnity; (b) ₱100,000.00 as moral damages, and (c) ₱100,000.00 as exemplary damages, in addition to the actual damages awarded by the trial court; and

(3) Six percent (6%) interest *per annum* is imposed on all the amounts awarded, reckoned from the date of finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 229450. June 17, 2020]

PHILIPPINE SAVINGS BANK, *petitioner, vs.* **MARIA CECILIA SAKATA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW OR "THOSE WHICH ASK TO RESOLVE WHICH LAW APPLIES ON A GIVEN SET OF FACTS" MAY BE RAISED THEREIN; THE PARTY RAISING QUESTIONS OF FACT MUST NOT ONLY ALLEGE THE EXCEPTION BUT SHOULD ALSO PROVE AND SUBSTANTIATE THAT ITS CASE CLEARLY FALLS UNDER THE EXCEPTION. — The general rule is that only questions of law or "those which ask to resolve which law applies on a given set of facts" may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Meanwhile, questions of fact — or those which require a review of the evidence to determine "the truth or falsehood of alleged facts"

or involve the correctness of the lower courts' appreciation of the evidence — are not proper in a Petition for Review on *Certiorari*. The function of the Court, not being a trier of facts, is limited to reviewing errors of law committed by the lower courts. Thus, it accords finality to the factual findings of the trial court, especially when such findings are affirmed by the appellate court. While the general rule admits of exceptions, the party raising questions of fact must not only allege the exception but should also prove and substantiate that its case clearly falls under the exception.

2. ID.; ID.; ID.; ID.; ID.; WHETHER FORGERY EXISTS ON THE CHECKS IS A QUESTION OF FACT, WHICH REQUIRES REEVALUATION OF EVIDENCE BEST LEFT TO THE LOWER COURTS; THE TRIAL COURT'S FINDING OF FORGERY, AS AFFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE UPON THE COURT. — Forgery is the "counterfeiting of any writing, consisting in the signing of another's name with intent to defraud[.]" Since it is not presumed, forgery "must be proved with clear, positive and convincing evidence" by the party alleging it. Whether forgery exists on the checks is a question of fact, which requires reevaluation of evidence best left to the lower courts. In this case, we find no reason to depart from the findings of the trial court, as affirmed by the Court of Appeals, that respondent was able to establish the forgery of her signature on the questioned checks. These factual findings are binding and conclusive upon us.

3. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PARTY ALLEGING A FACT HAS THE BURDEN OF PROVING IT AND A MERE ALLEGATION CANNOT TAKE THE PLACE OF EVIDENCE. — Petitioner insists that the finding of forgery was based on assumptions and conjectures which falls under the exceptions allowing questions of fact to be raised under a Petition for Review on *Certiorari*. However, petitioner failed to prove and substantiate how its case clearly falls under the exception. Aside from alleging that the lower courts' findings were grounded entirely on speculation, surmises or conjectures, petitioner offered nothing else to substantiate its claim. On the contrary, it is actually petitioner who dwelled on speculations. In its Petition, it claimed that physical presence is not indispensable in the requisition and issuance of checks. It posits that "[r]espondent may [have] used the service of private and

public couriers to deliver the checks to the named payee." It added that "[t]he [checks] may also be sent through somebody close to respondent who went back to the Philippines" and that "[i]t is also possible for respondent to issue postdated checks before leaving for Japan." However, these allegations were not substantiated by evidence. Petitioner's allegation that respondent authorized her mother, Gemma Bartolome, to receive the two checkbooks containing Check Nos. 159601 to 159650 and 159651 to 159700, and the monthly statements of account issued to her is also mere speculation since it was not duly proven. Further, petitioner failed to present any credible testimony as to the circumstances of the execution of the Updated Specimen Signature Card on the basis of which the 25 questioned checks were encashed. It is settled that "the party alleging a fact has the burden of proving it and a mere allegation cannot take the place of evidence."

4. **MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; FORGED SIGNATURE; EFFECT OF; A FORGED SIGNATURE IS A REAL OR ABSOLUTE DEFENSE, AND A PERSON WHOSE SIGNATURE ON A NEGOTIABLE INSTRUMENT IS FORGED IS DEEMED TO HAVE NEVER BECOME A PARTY THERETO AND TO HAVE NEVER CONSENTED TO THE CONTRACT THAT ALLEGEDLY GAVE RISE TO IT; AS PAYMENT MADE UNDER A FORGED SIGNATURE IS INEFFECTUAL, THE DRAWEE BANK CANNOT CHARGE IT TO THE DRAWER'S ACCOUNT BECAUSE IT IS IN A SUPERIOR POSITION TO DETECT FORGERY. —** That respondent never authorized anyone to issue or deliver the questioned checks is further bolstered by the stipulations in the Pre-Trial Order. There, petitioner, through its counsel, admitted that "the signatures of the drawer on the twenty five (25) questioned checks are not the authorized signatures of the [respondent] as shown and indicated in the specimen signature card of the [respondent] for her savings account and current account." Considering that the forgery of respondent's signature in the questioned checks was established, Section 23 of the Negotiable Instruments Law is clearly applicable: SECTION 23. *Forged Signature; Effect of*. — When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a

discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. Thus, "a forged signature is a real or absolute defense, and a person whose signature on a negotiable instrument is forged is deemed to have never become a party thereto and to have never consented to the contract that allegedly gave rise to it." As payment made under a forged signature is ineffectual, the drawee bank cannot charge it to the drawer's account because it is in a superior position to detect forgery. "The forgery may be so near like the genuine as to defy detection by the depositor himself, and yet the bank is liable to the depositor if it pays the check."

5. ID.; BANK AND BANKING; BY THE NATURE OF ITS FUNCTIONS, A BANK IS UNDER OBLIGATION TO TREAT THE ACCOUNTS OF ITS DEPOSITORS WITH METICULOUS CARE, ALWAYS HAVING IN MIND THE FIDUCIARY NATURE OF THEIR RELATIONSHIP; THUS, THE PRIME DUTY OF A BANK IS TO ASCERTAIN THE GENUINENESS OF THE SIGNATURE OF THE DRAWER OR THE DEPOSITOR ON THE CHECK BEING ENCASHED, WITH REASONABLE BUSINESS PRUDENCE. — Banking institutions are imbued with public interest, and the trust and confidence of the public to them are of paramount importance. As such, they are expected to exercise the highest degree of diligence, and high standards of integrity and performance. "By the nature of its functions, a bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship." Thus, the prime duty of a bank is to ascertain the genuineness of the signature of the drawer or the depositor on the check being encashed, with reasonable business prudence.

6. ID.; ID.; ID.; A BANK IS BOUND TO KNOW THE SIGNATURES OF ITS CUSTOMERS, AND IF IT PAYS A FORGED CHECK, IT MUST BE CONSIDERED AS MAKING THE PAYMENT OUT OF ITS OWN FUNDS, AND CANNOT ORDINARILY CHARGE THE AMOUNT SO PAID TO THE ACCOUNT OF THE DEPOSITOR WHOSE NAME WAS FORGED; THE BANK BEARS THE LOSS WHERE IT WAS NEGLIGENT IN FAILING TO DETECT THE FORGERY. — [N]egligence is the "omission

to do something which a reasonable man, guided by those considerations that ordinarily regulate the conduct of human affairs, would do, or doing of something which a prudent and reasonable man would not do." The issue of whether a party is negligent is a question of fact, which is to be determined after taking into account the particulars of each case. To reiterate, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. They are entitled to utmost respect and even finality, if there is no palpable error that would warrant a reversal of the lower courts' assessment of facts. While petitioner contends that it made a signature verification procedure to confirm respondent's signature on the disputed checks, it still failed to detect the 25 instances of forgery and omitted the degree of diligence required of a bank. Petitioner was clearly negligent in encashing the forged checks when it based the examination of respondent's signature on the questionable Updated Specimen Signature Card. As found by the lower courts, the Updated Specimen Signature Card is dubious because it lacked vital information such as its date of execution, Sakata's complete account number, her correct passport details, and her updated photograph. "A bank is bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged." Being negligent in failing to detect the forgery, petitioner bears the loss.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; EVERY PERSON TAKES ORDINARY CARE OF HIS OR HER CONCERNS, AND THAT THE ORDINARY COURSE OF BUSINESS HAS BEEN FOLLOWED; NEGLIGENCE IS NOT PRESUMED, BUT MUST BE PROVEN BY HIM OR HER WHO ALLEGES IT. — [P]etitioner insists that respondent should contribute to the loss considering that she was also negligent in failing to detect the unauthorized transactions in her account despite the monthly statements issued by petitioner. It also claims that her mother was the one who presented and negotiated the questioned checks. "Section 23 of the Negotiable Instruments Law bars a party from setting up the defense of forgery if it is guilty of negligence." However, we find that respondent is not negligent in this case. Petitioner failed to prove its contentions that respondent received the monthly

statements, and that her mother received, forged and presented the questioned checks. Thus, there is no need to discuss the applicability of Section 14 of the Negotiable Instruments Law. The presumption remains that every person takes ordinary care of his or her concerns, and that the ordinary course of business has been followed. "Negligence is not presumed, but must be proven by him [or her] who alleges it." Here, petitioner was unable to dispute the presumption of ordinary care exercised by respondent.

8. ID.; ID.; FORGERY; WHERE IT WAS ESTABLISHED THAT THE DRAWER/DEPOSITOR'S SIGNATURE WAS FORGED AND THAT THE DRAWEE BANK IS NEGLIGENT IN FAILING TO DETECT THE FORGERY ON THE CHECKS, THE CHECKS ARE WHOLLY INOPERATIVE, AND ONLY THE DRAWEE BANK IS LIABLE FOR MAKING PAYMENTS ON THE FORGED CHECKS.— [I]n *Philippine National Bank v. Quimpo*, the respondent's act of leaving his checkbook in the car with his longtime classmate and friend while he went out for a short while cannot be considered negligence sufficient to excuse the bank from its own negligence, because respondent had no reason to suspect that his friend would breach his trust. Similarly in this case, even assuming that her mother indeed presented the questioned checks while respondent was in Japan, she cannot be held negligent in entrusting the same to her mother. Having established the forgery of respondent's signatures and petitioner's negligence in failing to detect the forgery on the checks, the checks are wholly inoperative. Thus, only petitioner is liable for making payments on the forged checks.

APPEARANCES OF COUNSEL

PSB Legal Services Department for petitioner.
Florence E. Uy for respondent.

D E C I S I O N

LEONEN, *J.*:

It is settled that "a bank is bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily

charge the amount so paid to the account of the depositor whose name was forged."[1]

This Petition for Review on *Certiorari*[2] assails the Decision[3] and Resolution[4] of the Court of Appeals in CA-G.R. CV No. 101976, which affirmed the Decision[5] of the Regional Trial Court of Imus, Cavite, Branch 20 in Civil Case No. 2283-08.

On December 17, 2002, Maria Cecilia Sakata (Sakata) opened Savings Account No. 035-111-05773-6 with the Philippine Savings Bank (PS Bank) Dasmariñas, Cavite Branch.[6] On December 20, 2002, Sakata opened Current Account No. 035-101-00399-5 in the same bank, and received a passbook and checkbook with Serial Nos. 99501 to 99550.[7]

Stamped on the Deposit Account Information and Specimen Signature Card for her savings account were the words: "With Instruction to transfer funds from [savings account no.] 035-111-05773-6 to [current account no.] 035-101-00399-5."[8]

On May 4, 2003, Sakata left for Osaka, Japan to work. While in Japan, she remitted cash to her PS Bank savings account, and issued checks for the support of her children and the

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[1] *Bank of the Philippine Islands v. Casa Montessori Internationale*, 474 Phil. 298, 319 (2004) [Per J. Panganiban, First Division]; *San Carlos Milling Co. v. Bank of the Philippine Islands*, 59 Phil. 59 (1933) [Per J. Hull, Second Division].

[2] *Rollo*, pp. 3-27.

[3] *Id*. at 28-51. The August 25, 2016 Decision was penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante of the 8th Division, Court of Appeals, Manila.

[4] *Id*. at 52-53. The Resolution was dated January 16, 2017.

[5] *Id*. at 71-76. The June 23, 2013 Decision was penned by Presiding Judge Fernando Felicen.

[6] *Id*. at 29.

[7] *Id*. at 29 and 33.

[8] *Id*.

amortization of a house and lot she purchased. On July 27, 2006, Sakata went back to the Philippines.[9]

On August 7, 2006, Sakata went to PS Bank to close her checking account and surrender unused checks.[10] When Sakata had her passbook updated, she noticed that the deposit and withdrawal entries from May 1, 2003 to September 16, 2005 were "lumped in one entry" instead of having a "per transaction entry."[11] This prompted Sakata to request for a copy of the itemized transaction entries from October 1, 2004 to September 16, 2005 as she had trouble verifying the bank transactions. However, PS Bank denied her requests.[12]

Upon updating her savings account, Sakata was surprised to find out that instead of ₱1,000,000.00, she only had a remaining balance of ₱391.00. She also discovered that there was a deposit of ₱4,488,197.01 and a withdrawal of ₱4,751.112.42 both made on September 16, 2005. Sakata informed the teller that she could not have made those transactions as she was in Japan during that time, but she was only asked to return to the bank.[13]

Sometime in January 2007, Sakata talked to the PS Bank branch manager who instructed her to write a letter requesting for "specimen signature cards for her savings and current accounts, statement of account for her current account, printout of her passbook, and the original checks which were encashed and paid by the bank."[14]

On April 30, 2007, PS Bank provided Sakata with copies of her current account statement and some checks, as well as two original checks. Upon examination of the documents, Sakata

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[9] *Id*. at 29.

[10] *Id*.

[11] *Id*.

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

[13] *Id*. at 30.

[14] *Id*.

found that there were 25 checks debited from her account which she did not issue or sign. She claimed that she never possessed a checkbook bearing the serial numbers of the 25 checks, and the entries and signatures on them were all forged.[15] Upon demand, PS Bank refused to give Sakata the original copies of the 25 checks, which were:

Date Debited/ Paid	Check Number	Amount
12-15-04	159654	₱150,000.00
01-12-05	159655	30,000
01-25-05	159656	30,000
02-10-05	159658	70,000
02-11-05	159659	10,000
02-21-05	159660	40,000
03-17-05	159662	40,000
03-23-05	159663	16,000
13-30-05	159664	20,000
04-07-05	159665	20,000
04-19-05	159666	40,000
05-12-05	159672	50,000
05-19-05	159673	30,000
06-06-05	159675	60,000
06-17-05	159677	40,000
07-07-05	159681	320,000.00
07-12-05	159682	10,000
07-18-05	159683	10,000
08-03-05	159684	20,000
08-17-05	159685	20,000
09-01-05	159686	25,000

[15] *Id*.

09-16-05	159688	20,000
05-17-06	159692	10,000
06-30-06	159694	5,000
07-08-06	159698	1,500
Total Amount		**₱ 1,087,500.00**[16]

On March 14, 2008, Sakata, through her counsel, made a formal request asking PS Bank to hand over the 25 checks and the specimen signature cards. A demand letter was also sent to PS Bank on the same date asking them to re-credit ₱1,087,500.000 to Sakata's account representing the amount withdrawn through the forged checks plus interest.[17]

PS Bank failed to re-credit the amount prompting Sakata to file a Civil Case for Sum of Money and Damages before the Regional Trial Court of Imus, Cavite, Branch 20 docketed as Civil Case No. 2283-08.[18]

In its Answer with Counterclaim, PS Bank insisted that Sakata authorized her mother, Gemma Bartolome, to request and receive two additional checkbooks bearing serial numbers 159601 to 159650 and 159651 to 159700. They claimed the 25 checks were validly encashed as they were verified by their bank personnel.[19]

In her Reply, Sakata denied that she authorized her mother to request and receive additional checkbooks and monthly bank statements from PS Bank.[20]

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

[17] *Id*. at 32.

[18] *Id*. at 71.

[19] *Id*. at 33 and 71.

[20] *Id*. at 37.

In its June 27, 2013 Decision,[21] the Regional Trial Court of Imus, Cavite, Branch 20 ruled in favor of Sakata and ordered PS Bank to pay Sakata ₱1,087,500.00 plus attorney's fees. The dispositive portion of the Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against defendant as follows, *viz*:
>
> 1. ORDERING the defendant Philippine Savings Bank to PAY plaintiff Maria Cecilia E. Sakata the sum of One Million Eighty Seven Thousand Five Hundred Pesos (Php1,087,500.00) representing the total amount of unauthorized fund transfers from her savings account or the value of the forged check withdrawals; and
>
> 2. ORDERING the defendant Philippine Savings Bank to PAY plaintiff Maria Cecilia E. Sakata the amount of Twenty Thousand Pesos (Php20,000.00) as and by way of attorney's fees and the costs of suit.
>
> **SO ORDERED.**[22] (Emphasis in the original)

The Regional Trial Court gave more credence to Sakata's claim of forgery, considering that: (1) Sakata could not have signed the form for Requisition of New Checkbooks and Gemma Bartolome's authorization to receive on June 3, 2004 as she was in Japan from May 4, 2003 to July 27, 2006; (2) the forms did not bear the signature of an authorized representative and had pertinent information missing; and (3) the Updated Specimen Signature Card relied upon by PS Bank lacked vital information and could not have been filled out by Sakata in 2004 as she was in Japan then.[23]

Thus, the Regional Trial Court ruled that PS Bank should shoulder the loss incurred by Sakata on account of forgery because it failed to observe the due diligence required of banking institutions.[24]

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[21] *Id*. at 71-76.

[22] *Id*. at 76.

[23] *Id*. at 73-74.

[24] *Id*. at 74-75.

On July 29, 2013, PS Bank filed its Motion for Reconsideration,[25] which was denied by the trial court in an Order dated October 8, 2013. Thus, PS Bank filed an appeal before the Court of Appeals.[26]

In its August 25, 2016 Decision, the Court of Appeals affirmed the findings of the trial court with some modification as to interest and damages. The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE**, premises considered, the appeal is ***DENIED***. The *Decision* of the Regional Trial Court, Branch 20 of Imus, Cavite dated June 27, 2013 is ***AFFIRMED*** with ***MODIFICATION*** such that the awards of moral and exemplary damages are ***DELETED***.
>
> **Accordingly**, the defendant-appellant is hereby ordered to pay the plaintiff-appellee the following:
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> 1. The principal amount of One Million Eighty Seven Thousand and Five Hundred Pesos ([₱]1,087,500.00) representing the total value of the forged checks with legal interest at the rate of twelve percent (12%) per annum from the time of filing of the *Complaint* on September 8, 2008 up to June 30, 2013, and thereafter, at the lower rate of six percent (6%) per annum from July 1, 2013 until full satisfaction;
> 2. Attorney's fees of ten percent (10%) of the total monetary obligation; and
> 3. The costs of the suit.
>
> **SO ORDERED.**[27] (Emphasis in the original)

The Court of Appeals held that Sakata sufficiently established her claim of forgery on the checks.[28] It affirmed that PS Bank should bear the loss since it was negligent in detecting the forgery and it failed to show Sakata's participation therein.[29] The Court

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[25] *Id*. at 77-82.

[26] *Id*. at 83.

[27] *Id*. at 50.

[28] *Id*. at 39.

[29] *Id*. at 41.

of Appeals further found that Sakata was not negligent in handling her financial affairs and was not estopped from questioning PS Bank's error as she did not receive the statements of account allegedly sent by PS Bank.[30]

PS Bank's Motion for Reconsideration was denied by the Court of Appeals in its January 16, 2017 Resolution.[31]

On February 9, 2017, petitioner filed before this Court a Petition for Review on *Certiorari*.[32]

In an April 30, 2017 Resolution,[33] this Court required respondent to file a Comment. On June 30, 2017, respondent filed her Comment.[34] In a July 26, 2017 Resolution,[35] this Court required petitioner to file a Reply. On September 29, 2017, petitioner filed its Reply.[36]

Petitioner claims that the present case involved mixed questions of fact and law. Assuming it raised questions of fact, petitioner asserts the same falls under the exceptions in Rule 45 of the Rules of Court as the findings of forgery by the lower courts were based on assumptions and conjectures.[37]

Petitioner argues that Section 23 of the Negotiable Instruments Law is not applicable for failure of respondent to establish forgery.[38] Petitioner avers that the requisites for a valid finding of forgery were not met, and the allegation of forgery was based solely on the self-serving and unsubstantiated claim of

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

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

[32] *Id*. at 3-27.

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

[34] *Id*. at 131-138.

[35] *Id*. at 142.

[36] *Id*. at 144-152.

[37] *Id*. at 9-10.

[38] *Id*. at 11.

respondent.[39] Petitioner insists that the signature appearing on the documents were that of respondent because "C. Sakata" is the same signature that appears on her passport, the specimen signature cards, and the verification and certification of non-forum shopping attached to her complaint.[40] Even assuming there was forgery, petitioner claims the alleged forged signatures were similar to the authentic ones and the forgery was not readily noticeable without the use of scientific equipment.[41]

Petitioner also maintains that the doctrine of shared responsibility between the drawee bank and the negligent drawer applies in this case as respondent was negligent in handling her current account from December 14, 2004 to July 8, 2006 by failing to inquire on its status.[42]

On the other hand, respondent alleges that the present Petition solely raised questions of facts — specifically whether the checks were forged and whether respondent was negligent.[43] Respondent maintains that the lower courts did not commit "misappreciation of facts, conjectures, assumptions, speculations and surmises"[44] which necessitates a review of the questions of fact raised.

Respondent argues that the factual findings of the lower courts had "sufficient evidentiary basis sustaining forgery and negligence of petitioner."[45] Denying petitioner's accusations, respondent claims that her passbook could not have been presented to the bank during the questionable transactions as it had always been in her possession.[46] Respondent emphasizes

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[39] *Id*. at 14.

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

[41] *Id*. at 17.

[42] *Id*. at 22.

[43] *Id*. at 131.

[44] *Id*. at 132.

[45] *Id*. at 133.

[46] *Id*. at 132.

that she never possessed, issued and signed the 25 checks in question, and that petitioner was grossly negligent in failing to detect that the signatures therein were obviously forged. She claims that she never authorized petitioner to accept the signature "C. Sakata" as the signature in her Specimen Signature Card was shown as "Maria Cecilia Sakata."[47] She likewise claims that the Updated Specimen Signature Card relied upon by the bank was fabricated.[48]

Respondent argues that the doctrine of shared responsibility does not apply because only the petitioner was negligent. Respondent claims that she had no opportunity to inquire with the bank about the questionable transactions since she was in Japan at that time and she had full trust and confidence in the bank.[49] Respondent also maintains that petitioner failed to prove her mother's alleged involvement in the questionable transactions.[50]

In rebuttal, petitioner insists that it raised a question of law in arguing that Section 23 of the Negotiable Instruments Law is not applicable.[51] Further, petitioner raises for the first time that Section 14 of the Negotiable Instruments Law applies because of the *prima facie* authority of respondent's mother, who presented and negotiated the questioned checks.[52] Petitioner maintains that respondent was negligent in failing to detect the unauthorized transactions in her account and should thus shoulder her loss.[53]

For this Court's resolution are the following issues: (1) whether or not the Court of Appeals erred in ruling that there was forgery

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[47] *Id*. at 133.

[48] *Id*. at 134.

[49] *Id*. at 135.

[50] *Id*. at 135-136.

[51] *Id*. at 144.

[52] *Id*. at 145.

[53] *Id*. at 150.

of respondent's signature in the questioned checks; and (2) whether or not respondent was negligent, which demands the application of the doctrine of shared responsibility between the drawee bank and the negligent drawer.

We deny the Petition.

I

The general rule is that only questions of law or "those which ask to resolve which law applies on a given set of facts"[54] may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Meanwhile, questions of fact—or those which require a review of the evidence to determine "the truth or falsehood of alleged facts"[55] or involve the correctness of the lower courts' appreciation of the evidence—are not proper in a Petition for Review on *Certiorari*. The function of the Court, not being a trier of facts, is limited to reviewing errors of law committed by the lower courts. Thus, it accords finality to the factual findings of the trial court, especially when such findings are affirmed by the appellate court.[56]

While the general rule admits of exceptions,[57] the party raising questions of fact must not only allege the exception but should

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[54] *Rodriguez v. Your Own Home Development Corp*., G.R. No. 199451, August 15, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64599> [Per J. Leonen, Third Division]; *Pascual v. Burgos, et al*., 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

[55] *Rodriguez v. Your Own Home Development Corp*., G.R. No. 199451, August 15, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64599> [Per J. Leonen, Third Division]; *Pascual v. Burgos, et al*., 776 Phil. 167, 183 (2016) [Per J. Leonen, Second Division].

[56] *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015) [Per J. Villarama, Third Division].

[57] *Pascual v. Burgos, et al*., 776 Phil. 167, 182-183 (2016) [Per J. Leonen, Second Division] citing *Medina v. Mayor Asistio, Jr.,* 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division] provides:

(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;

also prove and substantiate that its case clearly falls under the exception.[58]

Forgery is the "counterfeiting of any writing, consisting in the signing of another's name with intent to defraud[.]"[59] Since it is not presumed, forgery "must be proved with clear, positive and convincing evidence"[60] by the party alleging it. Whether forgery exists on the checks is a question of fact, which requires reevaluation of evidence best left to the lower courts.[61]

In this case, we find no reason to depart from the findings of the trial court, as affirmed by the Court of Appeals, that respondent was able to establish the forgery of her signature on the questioned checks. These factual findings are binding and conclusive upon us:[62]

In the present case, we hold that Sakata established that there was forgery of the drawer's signature on the check.

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(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.

[58] *Pascual v. Burgos, et al.*, 776 Phil. 167, 184 (2016) [Per J. Leonen, Second Division].

[59] *Bank of the Philippine Islands v. Casa Montessori Internationale*, 474 Phil. 298, 309 (2004) [Per J. Panganiban, First Division].

[60] *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015) [Per J. Villarama, Third Division].

[61] *Id*. at 854-855.

[62] See *Thermochem Incorporated v. Naval*, 397 Phil. 934 (2000) [Per J. Ynares-Santiago, First Division].

Sakata could not have issued in [sic] the checks in question inasmuch as she was in Osaka, Japan at the time they were allegedly issued. An examination of the Passport of Sakata shows that she left the Philippines on May 4, 2003 and returned to the country only July 27, 2006. There were no other records in her Passport that she has flown in and out of the country between May 4, 2003 to July 27, 2006. Hence, it was physically impossible for Sakata to have issued the questioned 25 checks dated December 15, 2004 and July 8, 2006.

As the trial court correctly opined:

> "Based on the evidence adduced by the parties, the Court finds that plaintiff was able to present preponderance of evidence to prove her case. At the center of this controversy is the allegation of plaintiff that her signatures in the bank records and several checks were forged causing her to lose about a Million Peso in her savings account from which the funds were withdrawn. As between the narration of facts as stated by the plaintiff and the version of the defendant bank and its witnesses, the Court is more inclined to believe plaintiff's version.
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> . . . . . .
>
> The witnesses of [defendant] bank testified that they compared the alleged signature of the plaintiff in the checks with the second copy of the updated specimen signature card. Defendant bank's witness alleged that the specimen signature card is updated every two (2) years from the time of opening the account. When plaintiff opened her accounts in 2004, the update of her specimen signature was due in 2004. However, as clearly established by plaintiff, she was out of the country at the time and she only returned in 2006. Verily, the updated specimen signature card allegedly issued by plaintiff upon which defendant bank's employees referred to is dubious. A closer look at the three (3) signature cards would show that: (1) two (2) original specimen signature cards were signed by plaintiff with her full name "Maria Cecilia E. Sakata"; (2) the allegedly updated signature cards was signed with "C. Sakata.'' However, defendant bank failed to present any credible witness to testify as to when the said specimen signature card was updated. In addition, the contents of the updated signature card are highly

> questionable based on the following reasons: it lacks vital information such as the complete current account number of the plaintiff; the passport details of the plaintiff is incorrect with respect to its expiry date; no updated photograph of the plaintiff was submitted; and no date of execution of the said document was placed on the specimen [signature] card to confirm when was it executed. . .[63]

Petitioner insists that the finding of forgery was based on assumptions and conjectures which falls under the exceptions allowing questions of fact to be raised under a Petition for Review on *Certiorari*. However, petitioner failed to prove and substantiate how its case clearly falls under the exception. Aside from alleging that the lower courts' findings were grounded entirely on speculation, surmises or conjectures, petitioner offered nothing else to substantiate its claim.

On the contrary, it is actually petitioner who dwelled on speculations. In its Petition, it claimed that physical presence is not indispensable in the requisition and issuance of checks. It posits that "[r]espondent may [have] used the service of private and public couriers to deliver the checks to the named payee."[64] It added that "[t]he [checks] may also be sent through somebody close to respondent who went back to the Philippines"[65] and that "[i]t is also possible for respondent to issue postdated checks before leaving for Japan."[66] However, these allegations were not substantiated by evidence.

Petitioner's allegation that respondent authorized her mother, Gemma Bartolome, to receive the two checkbooks containing Check Nos. 159601 to 159650 and 159651 to 159700, and the monthly statements of account issued to her[67] is also mere

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[63] *Rollo*, pp. 39-40.

[64] *Id*. at 10.

[65] *Id*.

[66] *Id*.

[67] *Id*. at 7.

speculation since it was not duly proven. Further, petitioner failed to present any credible testimony as to the circumstances of the execution of the Updated Specimen Signature Card on the basis of which the 25 questioned checks were encashed. It is settled that "the party alleging a fact has the burden of proving it and a mere allegation cannot take the place of evidence."[68]

That respondent never authorized anyone to issue or deliver the questioned checks is further bolstered by the stipulations in the Pre-Trial Order. There, petitioner, through its counsel, admitted that "the signatures of the drawer on the twenty five (25) questioned checks are not the authorized signatures of the [respondent] as shown and indicated in the specimen signature card of the [respondent] for her savings account and current account."[69]

Considering that the forgery of respondent's signature in the questioned checks was established, Section 23 of the Negotiable Instruments Law is clearly applicable:

SECTION 23. *Forged Signature; Effect of*. — When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

Thus, "a forged signature is a real or absolute defense, and a person whose signature on a negotiable instrument is forged is deemed to have never become a party thereto and to have never consented to the contract that allegedly gave rise to it."[70]

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[68] *Crisostomo v. Court of Appeals*, 456 Phil. 845, 858 (2003) [Per *J*. Ynares-Santiago, First Division].

[69] *Rollo*, p. 139.

[70] *Bank of the Philippine Islands v. Casa Montessori Internationale*, 474 Phil. 298, 309 (2004) [Per *J*. Panganiban, First Division].

As payment made under a forged signature is ineffectual, the drawee bank cannot charge it to the drawer's account because it is in a superior position to detect forgery.[71] "The forgery may be so near like the genuine as to defy detection by the depositor himself, and yet the bank is liable to the depositor if it pays the check."[72]

II

Banking institutions are imbued with public interest, and the trust and confidence of the public to them are of paramount importance. As such, they are expected to exercise the highest degree of diligence, and high standards of integrity and performance.[73] "By the nature of its functions, a bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship."[74] Thus, the prime duty of a bank is to ascertain the genuineness of the signature of the drawer or the depositor on the check being encashed, with reasonable business prudence.[75]

On the other hand, negligence is the "omission to do something which a reasonable man, guided by those considerations that ordinarily regulate the conduct of human affairs, would do, or doing of something which a prudent and reasonable man would not do."[76] The issue of whether a party is negligent is a question

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[71] *Samsung Construction Co. Phil. v. Far East*, 480 Phil. 39, 48 (2004) [Per J. Tinga, Second Division].

[72] *Id*. at 50.

[73] *Bank of the Philippine Islands v. Casa Montessori Internationale*, 474 Phil. 298, 318 (2004) [Per J . Panganiban, First Division].

[74] *Id*. at 318-319.

[75] *Philippine National Bank v. Quimpo*, 242 Phil. 324, 327 (1988) [Per J. Gancayco, First Division].

[76] *Cang v. Cullen*, 620 Phil. 403, 418-419 (2009) [Per J. Nachura, Third Division]. See also *Ilusorio v. Court of Appeals*, 441 Phil. 335, 344 (2002) [Per J. Quisumbing, Second Division].

of fact, which is to be determined after taking into account the particulars of each case.[77]

To reiterate, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. They are entitled to utmost respect and even finality, if there is no palpable error that would warrant a reversal of the lower courts' assessment of facts.[78]

While petitioner contends that it made a signature verification procedure to confirm respondent's signature on the disputed checks, it still failed to detect the 25 instances of forgery and omitted the degree of diligence required of a bank. Petitioner was clearly negligent in encashing the forged checks when it based the examination of respondent's signature on the questionable Updated Specimen Signature Card. As found by the lower courts, the Updated Specimen Signature Card is dubious because it lacked vital information such as its date of execution, Sakata's complete account number, her correct passport details, and her updated photograph.[79]

"A bank is bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged."[80] Being negligent in failing to detect the forgery, petitioner bears the loss.

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[77] See *Cang v. Cullen*, 620 Phil. 403 (2009) [Per J. Nachura, Third Division]; *Crisostomo v. Court of Appeals*, 456 Phil. 845 (2003) [Per J. Ynares-Santiago, First Division]; *Thermochem Incorporated v. Naval*, 397 Phil. 934 (2000) [Per J. Ynares-Santiago, First Division].

[78] See *Ilusorio v. Court of Appeals*, 441 Phil. 335 (2002) [Per J. Quisumbing, Second Division].

[79] *Rollo*, p. 74.

[80] *Bank of the Philippine Islands v. Casa Montessori Internationale*, 474 Phil. 298, 319 (2004) [Per J. Panganiban, First Division]. See also *San Carlos Milling Co. v. Bank of the Philippine Islands*, 59 Phil. 59, 66 (1933) [Per J. Hull, Second Division].

However, petitioner insists that respondent should contribute to the loss considering that she was also negligent in failing to detect the unauthorized transactions in her account despite the monthly statements issued by petitioner. It also claims that her mother was the one who presented and negotiated the questioned checks.

"Section 23 of the Negotiable Instruments Law bars a party from setting up the defense of forgery if it is guilty of negligence."[81] However, we find that respondent is not negligent in this case. Petitioner failed to prove its contentions that respondent received the monthly statements, and that her mother received, forged and presented the questioned checks. Thus, there is no need to discuss the applicability of Section 14 of the Negotiable Instruments Law.

The presumption remains that every person takes ordinary care of his or her concerns, and that the ordinary course of business has been followed.[82] "Negligence is not presumed, but must be proven by him [or her] who alleges it."[83] Here, petitioner was unable to dispute the presumption of ordinary care exercised by respondent.

Furthermore, in *Philippine National Bank v. Quimpo*,[84] the respondent's act of leaving his checkbook in the car with his longtime classmate and friend while he went out for a short while cannot be considered negligence sufficient to excuse the bank from its own negligence, because respondent had no reason to suspect that his friend would breach his trust.

Similarly in this case, even assuming that her mother indeed presented the questioned checks while respondent was in Japan, she cannot be held negligent in entrusting the same to her mother.

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[81] *Samsung Construction Co. Phil. v. Far East*, 480 Phil. 39, 57 (2004) [Per *J.* Tinga, Second Division].

[82] RULES OF COURT, Rule 131, Secs. 3 (d) and (q).

[83] *Samsung Construction Co. Phil. v. Far East*, 480 Phil. 39, 58 (2004). [Per *J.* Tinga, Second Division].

[84] 242 Phil. 324 (1988) [Per *J.* Gancayco, First Division].

Having established the forgery of respondent's signatures and petitioner's negligence in failing to detect the forgery on the checks, the checks are wholly inoperative. Thus, only petitioner is liable for making payments on the forged checks.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals' August 25, 2016 Decision and January 16, 2017 Resolution in CA-G.R. CV No. 101976 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 234886-911 & 235410. June 17, 2020]

EDILBERTO M. PANCHO, *petitioner*, *vs.* **SANDIGANBAYAN (6th DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO A SPEEDY DISPOSITION OF CASES; THE CONSTITUTIONAL RIGHT TO A SPEEDY DISPOSITION OF CASES IS AVAILABLE NOT ONLY TO THE ACCUSED IN CRIMINAL PROCEEDINGS BUT TO ALL PARTIES IN ALL CASES, WHETHER CIVIL OR ADMINISTRATIVE IN NATURE, AS WELL AS ALL PROCEEDINGS, EITHER JUDICIAL OR QUASI-JUDICIAL; THUS, ANY PARTY TO A CASE MAY DEMAND EXPEDITIOUS ACTION BY ALL OFFICIALS WHO ARE TASKED WITH THE ADMINISTRATION OF JUSTICE, INCLUDING THE OMBUDSMAN. — Under Section 16, Article III of the 1987 Philippine Constitution (Constitution), all persons are guaranteed the right to a speedy disposition of their cases before

all judicial, quasi-judicial, or administrative bodies. This constitutional right is available not only to the accused in criminal proceedings but to all parties in all cases, whether civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. *Ergo*, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice, including the Ombudsman. No less than the Constitution expressly tasks the OMB to resolve complaints lodged before it with dispatch from the moment they are filed. Section 12, Article XI of the Constitution commands: Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof. Section 13 of RA 6770, otherwise known as "The Ombudsman Act of 1989," magnifies the above constitutional mandate.

2. **ID.; ID.; ID.; ID.; DELAY BEGINS TO RUN ON THE DATE OF THE FILING OF A FORMAL COMPLAINT BY A PRIVATE COMPLAINANT OR THE FILING BY THE FIELD INVESTIGATION OFFICE WITH THE OMBUDSMAN OF A FORMAL COMPLAINT BASED ON AN ANONYMOUS COMPLAINT OR AS A RESULT OF ITS *MOTU PROPRIO* INVESTIGATIONS; THE FACT-FINDING INVESTIGATIONS ARE NOT INCLUDED IN THE PERIOD FOR THE DETERMINATION OF INORDINATE DELAY AS THE PROCEEDINGS AT THIS STAGE ARE NOT YET ADVERSARIAL; THE DUTY OF THE OMB TO ACT PROMPTLY ON COMPLAINTS BROUGHT BEFORE IT SHOULD NOT BE MISTAKEN WITH A HASTY RESOLUTION OF CASES AT THE EXPENSE OF THOROUGHNESS AND CORRECTNESS. —** Both the Constitution and RA 6770, however, are silent with respect to what constitutes a "prompt" action on a complaint. They do not provide for a definite period within which to measure promptness. Neither do they lay out specific criteria or factors in determining the existence of delay in the disposition of complaints. In *Magante v. Sandiganbayan (Magante)*, the Court underscored that the lack of statutory definition on what constitutes a prompt action on a complaint

had opened the gates for judicial interpretation, which did not draw definite lines, but merely listed factors to consider in treating petitions invoking the right to speedy disposition of cases. These factors are: (1) length of the delay, (2) reasons for the delay, (3) assertion of right by the accused, and (4) prejudice to the respondent. It was clarified in *Magante* that delay begins to run on the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the OMB of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. Consistent with *Magante*, the subsequent *En Banc* Decision in *Cagang v. Sandiganbayan (Cagang)* declared that the ruling in *People v. Sandiganbayan, et al.*, that fact-finding investigations are included in the period for the determination of inordinate delay is abandoned. The reason for the abandonment is that the proceedings at this stage are not yet adversarial. This period cannot be counted even if the accused is invited to attend the investigations since these are merely preparatory to the filing of a formal complaint. At this point, the OMB will not yet determine if there is probable cause to charge the accused. x x x Taking into account the foregoing factors, the Court finds that there was no inordinate delay in the conduct of the preliminary investigation and the filing of the informations by the OMB. The Court is mindful of the duty of the OMB under the Constitution and RA 6770 to act promptly on complaints brought before it. Such duty, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. Further, inordinate delay is determined not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case.

3. **ID.; ID.; ID.; ID.; THE ACCUSED MUST INVOKE HIS OR HER CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF CASES IN A TIMELY MANNER AND, FAILURE TO DO SO CONSTITUTES A WAIVER OF SUCH RIGHT EVEN WHEN HE OR SHE HAS ALREADY SUFFERED OR WILL SUFFER THE CONSEQUENCES OF DELAY. —** It is significant to note that despite the pendency of the case since 2013, petitioner only invoked his right to speedy disposition of cases when he filed the Motion to Quash/Dismiss Informations dated May 17, 2017. As noted by the SB, petitioner's motion was

filed only after *three (3) years, five (5) months, and twenty-four (24) days* from the issuance by the Deputy Ombudsman for Luzon of the order to submit his counter-affidavit. It must be emphasized that the accused must invoke his or her constitutional right to speedy disposition of cases in a timely manner and failure to do so constitutes a waiver of such right even when he or she has already suffered or will suffer the consequences of delay. Notably, petitioner had the opportunity to seek reconsideration or move for a reinvestigation of the draft resolution approved by Ombudsman Carpio Morales. Pursuant to Section 7 (a), Rule II of Ombudsman Administrative Order No. 07, otherwise known as the "Rules of Procedure of the OMB," petitioner could have filed a motion for reconsideration or reinvestigation of the approved resolution within five days from notice thereof with the OMB. He chose not to do so. Instead, he slept on his rights and merely waited until the informations were filed against him with the SB.

4. ID.; ID.; ID.; ID.; THE RIGHT TO SPEEDY DISPOSITION OF CASES, LIKE THE RIGHT TO A SPEEDY TRIAL, IS DEEMED VIOLATED ONLY WHEN THE PROCEEDING IS ATTENDED BY VEXATIOUS, CAPRICIOUS, AND OPPRESSIVE DELAYS; ACCUSED IS DEEMED TO HAVE ASSENTED TO THE DELAY AND TO HAVE ULTIMATELY ABANDONED OR WAIVED HIS RIGHT TO THE SPEEDY DISPOSITION OF HIS CASES WHERE HE FAILED TO TIMELY QUESTION THE ALLEGED DELAY IN THE FILING OF THE INFORMATIONS; RIGHT TO SPEEDY DISPOSITION OF CASES, NOT VIOLATED. — The question now is whether the period between the approval by Ombudsman Carpio Morales of the draft resolution of the cases on September 15, 2015 and the filing of the informations by the OSP on January 31, 2017, or *one (1) year, four (4) months and sixteen (16) days*, violated petitioner's constitutional right to speedy disposition of cases. The Court answers in the negative. It is worth mentioning that the constitutional right to speedy disposition of cases, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays. Admittedly, the period in question is a considerable length of time. However, the prosecution was able to satisfactorily explain the delay by stating that the drafting of the informations to be filed before the SB also has to pass the scrutiny of the different offices within the OMB; otherwise, the informations would not be able

to stand the rigors of trial or would fail to charge the correct offenses. On the other hand, petitioner, despite having actual knowledge of the pendency of the criminal complaint against him, neglected to assert his rights during the period in question. Considering his failure to timely question the alleged delay in the filing of the informations, he is deemed to have assented to the delay and to have ultimately abandoned or waived his right to the speedy disposition of his cases. At any rate, the Court does not find the period in question to be vexatious, capricious, or oppressive to petitioner as would warrant the dismissal of the cases on the ground of inordinate delay. Accordingly, the Court holds that the SB did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion to Quash/Dismiss Informations. For failure to timely raise his right to the speedy disposition of his cases, petitioner has acquiesced to the alleged delay and, thus, has waived such right.

5. REMEDIAL LAW; CIVIL PROCEDURE; OMNIBUS MOTION RULE; DEFENSES AND OBJECTIONS NOT PLEADED EITHER IN A MOTION TO DISMISS OR IN THE ANSWER ARE DEEMED WAIVED, EXCEPT ON GROUND OF: (A) LACK OF JURISDICTION OVER THE SUBJECT MATTER; (B) *LITIS PENDENTIA*; (C) *RES JUDICATA*; AND (D) PRESCRIPTION; GROUND RAISED BY PETITIONER, NOT ONE OF THE EXCEPTIONS. — The Court similarly does not find grave abuse of discretion amounting to lack or excess of jurisdiction in the SB's failure and refusal to act on petitioner's motion to dismiss on the ground that the allegations in the informations do not constitute an offense. As correctly ruled by the SB, petitioner should have raised this ground in his Motion to Quash/Dismiss Informations. Notably, petitioner belatedly added this ground in his Supplemental Motion for Reconsideration of the denial of his Motion to Quash/Dismiss Informations. This is not sanctioned under the Rules of Court. Section 8, Rule 15 of the Rules, commonly referred to as the "Omnibus Motion Rule," explicitly states: Section 8. *Omnibus Motion*. — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived. In turn, Section 1 of Rule 9 as mentioned in the above provision states that "[d]efenses and objections not pleaded

either in a motion to dismiss or in the answer are deemed waived." However, this rule is subject to the following exceptions: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription. Since the ground raised by petitioner is not one of these exceptions, the SB was correct in refusing to act on the motion to dismiss based on such ground.

APPEARANCES OF COUNSEL

Tumaru & Tumaru Law Offices for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

INTING, ***J.*:**

This resolves the Petition for *Certiorari*[1] filed by Edilberto M. Pancho (petitioner) pursuant to Rule 65 of the Rules of Court assailing the Resolutions dated August 4, 2017[2] and October 4, 2017[3] of the Sandiganbayan Sixth Division (SB) in SB-17-CRM-0130-142 for violation of Section 3 (e) of Republic Act No. (RA) 3019[4] and SB-17-CRM-0143-0155 for violation of Section 52 (g), in relation to Section 6 (b), of RA 8291.[5] The Resolution dated August 4, 2017 denied petitioner's Motion to

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

[2] *Id.* at 152-164; penned by Associate Justice Karl B. Miranda with Associate Justices Rodolfo A. Ponferrada and Michael Frederick L. Musngi, concurring.

[3] *Id.* at 200-203; penned by Associate Justice Karl B. Miranda with Associate Justices Sarah Jane T. Fernandez and Michael Frederick L. Musngi, concurring.

[4] Entitled "Anti-Graft and Corrupt Practices Act," approved on August 17, 1960.

[5] Entitled "An Act Amending Presidential Decree No. 1146, as amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms therein and for Other Purposes," approved on May 30, 1997.

Quash/Dismiss the Informations[6] dated May 17, 2017, while the Resolution dated October 4, 2017 denied petitioner's subsequent Motion for Reconsideration.[7]

The antecedents, as gathered by the SB, are as follows:

On October 21, 2013, the Field Investigation Office (FIO) of the Office of the Ombudsman through Graft Investigation and Prosecution Officer (GIPO) I Marie Beth S. Almero (Almero) filed a Complaint-Affidavit dated January 16, 2013 with the Office of the Ombudsman. Said complaint-affidavit charged former Nueva Ecija Governor Tomas Joson III (Joson) and [petitioner] Edilberto M. Pancho, former Provincial Treasurer, with violations of Section 3 (e) of R.A. No. 3019, Article 220 of the Revised Penal Code (R.P.C.), R.A. No. 8291, R.A. No. 7875, R.A. No. 9679, R.A. No. 8424, and gross neglect of duty for failure to remit the Government Service Insurance System (GSIS) premiums and other trust liabilities of the Provincial Government of Nueva Ecija from 1997 to June 2007.

On October 31, 2013, the complaint-affidavit was referred to the Office of the Deputy Ombudsman for Luzon. The records of the complaint-affidavit were received by the Office of the Deputy Ombudsman for Luzon on November 7, 2013.

On January 7, 2014, the Office of the Deputy Ombudsman for Luzon through GIPO II Paul Elmer M. Clemente (Clemente) directed [petitioner] and Joson to submit their respective counter-affidavits.

On January 28, 2014, [petitioner] submitted his Counter-Affidavit dated January 20, 2014. [Petitioner] subsequently sought the correction of a clerical error in his counter-affidavit on February 11, 2014.

On February 25, 2014, Joson sought an extension of time to submit his counter-affidavit. Joson submitted his counter-affidavit on March 20, 2014.

On March 18, 2015, the Deputy Ombudsman for Luzon approved the request for an extension of time to resolve the complaint. The records, however, do not show who filed the said request and the reason for such approval.

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[6] *Rollo*, pp. 130-141.

[7] *Id.* at 165-168.

On July 1, 2015, the Special Panel of Investigators through GIPO I Maxlen C. Balanon (Balanon) and GIPO I Elbert L. Bunagan (Bunagan) submitted their draft resolution finding probable cause against [petitioner] for violation of Section 52 (g), in relation to Section 6 (b), of R.A. No. 8291 and violation of Section 3 (e) of R.A. No. 3019. Said draft resolution, however, dismissed the rest of the charges against [petitioner] and all the charges against Joson. On July 6, 2015, Director Joaquin F. Salazar (Salazar) of Evaluation and Investigation Office-Bureau A reviewed the said draft resolution.

On September 15, 2016,[8] Ombudsman Conchita Carpio-Morales (Carpio-Morales) approved the Resolution dated July 1, 2015.

[Petitioner] did not seek a reconsideration of the resolution of the Ombudsman. Thus, on January 31, 2017, the [Office of the Special Prosecutor] filed the informations for thirteen (13) counts of Violation of Section 52 (g), in relation to Section 6 (b), of R.A. No. 8291, and another thirteen (13) counts of Violation of Section 3 (e) of R.A. No. 3019 against [petitioner] with [SB].[9]

On May 17, 2017, petitioner filed with the SB a Motion to Quash/Dismiss Informations[10] contending that the Office of the Ombudsman (OMB) is without authority or has lost jurisdiction to file the cases due to inordinate delay in the conduct of the preliminary investigation. Petitioner averred that despite the approval by Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) of the Resolution dated July 1, 2015 on September 15, 2015, it still took *one (1) year and three (3) months* to cause the filing of the informations before the SB. Therefore, the OMB spent three (3) years and two (2) months, more or less, to conduct the preliminary investigation and the filing of the informations before the SB.[11]

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[8] Should be September 15, 2015; see Resolution dated July 1, 2015, *id.* at 50.

[9] *Id.* at 153-154.

[10] *Id.* at 130-141.

[11] *Id.* at 131.

In its Comment/Opposition (In re: [Petitioner's] Motion to Quash/Dismiss Informations dated 17 May 2017),[12] the People, through the Office of the Special Prosecutor (OSP), argued that there was no inordinate delay in the conduct of the preliminary investigation. It contended that the sheer volume of the documents to be thoroughly reviewed and considered by the OMB as well as the complexity of the nature of the cases filed demanded considerable time in order to resolve all the issues involved therein, including the determination of the respective criminal and/or administrative liabilities of petitioner and former Nueva Ecija Governor Tomas N. Joson III (Joson).[13] Hence, it maintained that there was no violation of petitioner's right to speedy disposition of the cases filed against him.[14]

On August 4, 2017, the SB issued the first assailed Resolution[15] denying petitioner's Motion to Quash/Dismiss the Informations dated May 17, 2017. It ruled that under the circumstances of the case, the total period of *three (3) years and twenty-eight (28) days* devoted to the conduct of the preliminary investigation and the filing of the informations is justified, acceptable, and not capricious, oppressive and vexatious.[16] Thus, it directed the continuation of petitioner's arraignment as scheduled.[17]

Petitioner filed a Motion for Reconsideration[18] of the Resolution dated August 4, 2017, alleging that the date of approval by Ombudsman Carpio Morales of the draft resolution of the cases was erroneously indicated as "September 15, 2016" instead of "September 15, 2015" in the timeline of events.[19] Petitioner

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[12] *Id.* at 143-150.

[13] *Id.* at 147.

[14] *Id.* at 149.

[15] *Id.* at 152-164.

[16] *Id.* at 160.

[17] *Id.* at 164.

[18] *Id.* at 165-168.

[19] *Id.* at 166.

argued that the period of *one (1) year and three (3) months*, more or less, from the approval of the draft Resolution by Ombudsman Carpio Morales on September 15, 2015 to the filing of the Informations with the SB on January 31, 2017 constituted inordinate delay that would justify the dismissal of the cases against him.[20]

In its Comment/Opposition (In re: [Petitioner's] Motion for Reconsideration dated 16 August 2017),[21] the People, through the OSP, asserted that the assailed Resolution must be appreciated in its entirety and not on a piecemeal basis.[22] It emphasized that apart from the approval of the draft resolution, the drafting of the informations to be filed before the SB also has to pass the scrutiny of the different offices within the OMB; otherwise, the informations would not be able to stand the rigors of trial or would fail to charge the correct offenses.[23]

Subsequently, petitioner filed a Supplemental Motion for Reconsideration.[24] He prayed that the Informations charging him with violation of Section 3 (e) of RA 3019 and Section 52 (g) of RA 8291 be dismissed on the following grounds: (1) inordinate delay; and (2) the allegations in the Informations do not constitute an offense.[25]

On October 4, 2017, the SB issued the second assailed Resolution[26] denying petitioner's Motion for Reconsideration and affirming the first assailed Resolution dated August 4, 2017. It held that its inadvertent mistake of indicating the date of approval by Ombudsman Carpio Morales of the draft resolution as "September 15, 201<u>6</u>" instead of "September 15, 201<u>5</u>" does

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[20] *Id.* at 167-168.

[21] *Id.* at 195-198.

[22] *Id.* at 196.

[23] *Id.*

[24] *Id.* at 176-194.

[25] *Id.* at 193.

[26] *Id.* at 200-203.

not materially affect its discussion in the assailed Resolution; and it does not change the fact that the total period spent by the OMB to finish its preliminary investigation and for the OSP to file the corresponding informations is still *three (3) years and twenty-eight (28) days*. Thus, the SB upheld its previous finding that this period is not unreasonable, arbitrary, and oppressive because of the volume of the records, the nature of the cases, and the peculiar incidents involved.[27]

As to the contention that the facts alleged in the informations do not constitute the offenses charged against petitioner, the SB ruled that petitioner's belated attempt to insert this ground in his Motion for Reconsideration constitutes a blatant disregard of procedures. It held that petitioner should have raised this ground in his Motion to Quash/Dismiss Informations.[28]

Hence, this petition relying upon the following grounds:

A. THE UNJUSTIFIED FAILURE AND REFUSAL OF RESPONDENT [SB] TO CONSIDER THE THREE (3) YEARS AND TWO MONTHS (2) IT TOOK THE [OMB] TO TERMINATE THE PRELIMINARY INVESTIGATION AND FILE THE INFORMATIONS AS CONSTITUTING INORDINATE DELAY THAT IMPELS THE DISMISSAL OF THE INFORMATIONS CONSTITUTE GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OR ABSENCE OF JURISDICTION ON THE PART OF THE [SB].

B. THE FAILURE AND REFUSAL OF THE [SB] TO ACT AND TO DISMISS THE INFORMATIONS FILED BY THE [OMB] FOR THE REASON THAT THE ALLEGATIONS THEREIN DO NOT CONSTITUTE AN OFFENSE AMOUNTS TO GRAVE ABUSE OF DISCRETION EQUIVALENT TO ABSENCE OR WANT OF JURISDICTION.[29]

The Court's Ruling

The petition lacks merit.

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[27] *Id.* at 202.

[28] *Id.*

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

Under Section 16, Article III of the 1987 Philippine Constitution (Constitution), all persons are guaranteed the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is available not only to the accused in criminal proceedings but to all parties in all cases, whether civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial.[30] *Ergo*, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice,[31] including the Ombudsman.

No less than the Constitution expressly tasks the OMB to resolve complaints lodged before it with dispatch from the moment they are filed. Section 12, Article XI of the Constitution commands:

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

Section 13 of RA 6770, otherwise known as "The Ombudsman Act of 1989," magnifies the above constitutional mandate. It reads:

> Section 13. *Mandate.* — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

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[30] *Coscolluela v. Sandiganbayan, et al.*, 714 Phil. 55, 61 (2013).

[31] *Roquero v. The Chancellor of UP-Manila, et al.*, 628 Phil. 628, 639 (2010), citing *Lopez, Jr. v. Office of the Ombudsman*, 417 Phil. 39, 49 (2001).

Both the Constitution and RA 6770, however, are silent with respect to what constitutes a "prompt" action on a complaint. They do not provide for a definite period within which to measure promptness. Neither do they lay out specific criteria or factors in determining the existence of delay in the disposition of complaints.

In *Magante v. Sandiganbayan*[32] *(Magante)*, the Court underscored that the lack of statutory definition on what constitutes a prompt action on a complaint had opened the gates for judicial interpretation, which did not draw definite lines, but merely listed factors to consider in treating petitions invoking the right to speedy disposition of cases.[33] These factors are: (1) length of the delay, (2) reasons for the delay, (3) assertion of right by the accused, and (4) prejudice to the respondent.[34]

It was clarified in *Magante* that delay begins to run on the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the OMB of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations.[35] Consistent with *Magante*, the subsequent *En Banc* Decision in *Cagang v. Sandiganbayan*[36] *(Cagang)* declared that the ruling in *People v. Sandiganbayan, et al.*,[37] that fact-finding investigations are included in the period for the determination of inordinate delay is abandoned. The reason for the abandonment is that the

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[32] G.R. Nos. 230950-51, July 23, 2018.

[33] *Id.*

[34] See *Revuelta v. People*, G.R. No. 237039, June 10, 2019; *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 and 210141-42, July 31, 2018, citing *Barker v. Wingo*, 407 U.S. 514 (1972) as cited in *Martin v. Ver*, 208 Phil. 658, 664 (1983); *Magante v. Sandiganbayan, supra* note 32; and *The Ombudsman v. Jurado*, 583 Phil. 132, 145 (2008), citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

[35] *Supra* note 32.

[36] G.R. Nos. 206438, 206458 and 210141-42, July 31, 2018, 875 SCRA 374.

[37] 723 Phil. 444 (2013).

proceedings at this stage are not yet adversarial. This period cannot be counted even if the accused is invited to attend the investigations since these are merely preparatory to the filing of a formal complaint. At this point, the OMB will not yet determine if there is probable cause to charge the accused.[38]

In addition, *Cagang* pronounced:

> The period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation. The periods for the resolution of the preliminary investigation shall be that provided in the Rules of Court, Supreme Court Circulars, and the periods to be established by the Office of the Ombudsman. Failure of the defendant to file the appropriate motion after the lapse of the statutory or procedural periods shall be considered a waiver of his or her right to speedy disposition of cases.[39]

Taking into account the foregoing factors, the Court finds that there was no inordinate delay in the conduct of the preliminary investigation and the filing of the informations by the OMB. The Court is mindful of the duty of the OMB under the Constitution and RA 6770 to act promptly on complaints brought before it. Such duty, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.[40] Further, inordinate delay is determined not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case.[41] Further, as enunciated in *Cagang*:

> x x x Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain

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[38] *Supra* note 36 at 435.

[39] *Id.* at 451-452.

[40] *Raro v. Sandiganbayan*, 390 Phil. 917, 948 (2000), citing *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 908 (2000).

[41] *Supra* note 36 at 391.

the reasons for such delay and that no prejudice was suffered by the accused as a result. x x x[42]

In ruling that there was no inordinate delay, the SB had rendered a thorough and judicious explanation:

Here, the Court takes into account the following factors: 1) the complexity and number of the charges filed against [petitioner] and Joson; 2) the number of the persons involved and the nature of their participation; 3) the number of years covered in the preliminary investigation; 4) the number of employees and the amount involved in the said non-remittance of their government contributions; and 5) voluminous records subject of examination and verification by the Deputy Ombudsman for Luzon. Based on these factors, it is understandable for the Deputy Ombudsman for Luzon to finish the preliminary investigation and draft a resolution in these cases after *one (1) year, three (3) months and eleven (11) days* from receipt of Joson's counter-affidavit.

x x x x x x x x x

x x x While the Office of the Ombudsman dismissed said complaint [for non-remittance of government contributions in the province of Nueva Ecija] against Joson, the resolution of said complaint did not allege or discuss the participation of [petitioner]. Thus, the assigned GIPOs who handled these cases for the first time cannot be faulted for taking more time to review the records of the complaint and draft the resolution. In fact, [petitioner] benefited from this lapse of time because the Office of the Deputy Ombudsman for Luzon found probable cause only for violations of R.A. No. 3019 and Section 52 (g), in relation to Section 6 (b), of R.A. No. 8291, and dismissed all the other criminal and administrative charges against him.

The period from July 1, 2015 to September 15, 2016, or *one (1) year, two (2) months, and fourteen (14) days*, is attributed to the Office of the Ombudsman. During this period, the Resolution dated July 1, 2015 was submitted for approval to Ombudsman Carpio-Morales. The lapse of time is also justified because the Office of the Ombudsman needed to ensure that the proper, correct, and strong cases are filed against [petitioner]. The verification and further evaluation of the case takes time considering the complexity of the cases and the voluminous records involved. x x x

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[42] *Id.* at 446.

The period from September 15, 2016 to January 31, 2017, or *four (4) months and sixteen (16) days*, is also attributed to the Office of the Ombudsman. This period is justified because the OSP reviewed the cases again and made sure that the cases to be filed could stand the rigors of trial.

Based on the foregoing, the total period of *one (1) month and four (4) days*, is attributed to the accused. This period should be excluded from the time spent by the Office of the Ombudsman to terminate its preliminary investigation, and for the OSP to file the corresponding informations with this Court. Again, this period is attributed to the accused because of the submission of his counter-affidavit and its subsequent correction.

The total period of *one (1) month and nine (9) days* should also be excluded from the computation of the period attributed to the Office of the Ombudsman. As explained above, this period was spent by Joson in seeking, an extension of time to submit his counter-affidavit and filing the same afterwards. Said incidents were beyond the control of the Office of the Ombudsman and [petitioner].

Subtracting the periods attributable to [petitioner] and those beyond the control of the Office of the Ombudsman, the total period spent by the Office of the Ombudsman to finish its preliminary investigation, and for the OSP to file the corresponding informations is *three (3) years and twenty-eight (28) days*.

x x x Under the circumstances discussed above, the total period of *three (3) years and twenty-eight (28) days* is justified, acceptable, and not capricious, oppressive and vexatious.[43] (Emphasis omitted.)

It is significant to note that despite the pendency of the case since 2013, petitioner only invoked his right to speedy disposition of cases when he filed the Motion to Quash/Dismiss Informations dated May 17, 2017. As noted by the SB, petitioner's motion was filed only after *three (3) years, five (5) months, and twenty-four (24) days* from the issuance by the Deputy Ombudsman for Luzon of the order to submit his counter-affidavit.[44]

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[43] *Rollo*, pp. 158-160.

[44] *Id.* at 160.

It must be emphasized that the accused must invoke his or her constitutional right to speedy disposition of cases in a timely manner and failure to do so constitutes a waiver of such right even when he or she has already suffered or will suffer the consequences of delay.[45] Notably, petitioner had the opportunity to seek reconsideration or move for a reinvestigation of the draft resolution approved by Ombudsman Carpio-Morales. Pursuant to Section 7 (a), Rule II of Ombudsman Administrative Order No. 07, otherwise known as the "Rules of Procedure of the OMB," petitioner could have filed a motion for reconsideration or reinvestigation of the approved resolution within five days from notice thereof with the OMB. He chose not to do so. Instead, he slept on his rights and merely waited until the informations were filed against him with the SB.

It is petitioner's assertion that the SB erroneously indicated that Ombudsman Carpio Morales approved the draft resolution of the cases on "September 15, 2016" instead of "September 15, 2015"; hence, it actually took *one (1) year and three (3) months*, more or less, before the OSP filed the corresponding informations on January 31, 2017. Petitioner claims that this delay violated his right to speedy disposition of cases.

To the Court, the foregoing assertion does not help petitioner's cause; instead, it reinforces the SB's finding that there was no inordinate delay. Significantly, petitioner's asseveration only means that it actually took a shorter period of time to complete the preliminary investigation since Ombudsman Carpio Morales approved the draft resolution a year earlier than that indicated by the SB. In any case, the total period of *three (3) years and twenty-eight (28) days* that was devoted to the conduct of the preliminary investigation and the filing of the informations remains the same.

The question now is whether the period between the approval by Ombudsman Carpio Morales of the draft resolution of the cases on September 15, 2015 and the filing of the informations

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[45] *Salcedo v. Sandiganbayan*, G.R. Nos. 223869-960, February 13, 2019, citing *Cagang v. Sandiganbayan, supra* note 36.

by the OSP on January 31, 2017, or *one (1) year, four (4) months and sixteen (16) days*, violated petitioner's constitutional right to speedy disposition of cases.

The Court answers in the negative. It is worth mentioning that the constitutional right to speedy disposition of cases, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays.[46] Admittedly, the period in question is a considerable length of time. However, the prosecution was able to satisfactorily explain the delay by stating that the drafting of the informations to be filed before the SB also has to pass the scrutiny of the different offices within the OMB; otherwise, the informations would not be able to stand the rigors of trial or would fail to charge the correct offenses.[47] On the other hand, petitioner, despite having actual knowledge of the pendency of the criminal complaint against him, neglected to assert his rights during the period in question. Considering his failure to timely question the alleged delay in the filing of the informations, he is deemed to have assented to the delay and to have ultimately abandoned or waived his right to the speedy disposition of his cases. At any rate, the Court does not find the period in question to be vexatious, capricious, or oppressive to petitioner as would warrant the dismissal of the cases on the ground of inordinate delay.

Accordingly, the Court holds that the SB did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion to Quash/Dismiss Informations. For failure to timely raise his right to the speedy disposition of his cases, petitioner has acquiesced to the alleged delay and, thus, has waived such right.[48]

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[46] *People v. Sandiganbayan, 5th Div., et al.*, 791 Phil. 37, 53 (2016), citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001), further citing *Cojuangco v. Sandiganbayan*, 360 Phil. 559, 587 (1998). See also *Blanco v. Sandiganbayan*, 399 Phil. 674, 682 (2000).

[47] See Comment/Opposition (In re: Accused's Motion for Reconsideration dated 16 August 2017), *rollo*, pp. 195-198 at 196.

[48] See *People v. Honorable Sandiganbayan*, G.R. No. 240776, November 20, 2019; *People v. Sandiganbayan*, G.R. Nos. 233557-67, June 19, 2019: *Doroteo v. Sandiganbayan*, G.R. Nos. 232765-67, January 16, 2019; *Cagang*

The Court similarly does not find grave abuse of discretion amounting to lack or excess of jurisdiction in the SB's failure and refusal to act on petitioner's motion to dismiss on the ground that the allegations in the informations do not constitute an offense. As correctly ruled by the SB, petitioner should have raised this ground in his Motion to Quash/Dismiss Informations. Notably, petitioner belatedly added this ground in his Supplemental Motion for Reconsideration of the denial of his Motion to Quash/ Dismiss Informations. This is not sanctioned under the Rules of Court. Section 8, Rule 15 of the Rules, commonly referred to as the "Omnibus Motion Rule," explicitly states:

> Section 8. *Omnibus Motion*. — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

In turn, Section 1 of Rule 9 as mentioned in the above provision states that "[d]efenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." However, this rule is subject to the following exceptions: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription. Since the ground raised by petitioner is not one of these exceptions, the SB was correct in refusing to act on the motion to dismiss based on such ground.[49]

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The Resolutions dated August 4, 2017 and October 4, 2017 of the Sandiganbayan Sixth Division in SB-17-CRM-0130-142 and SB-17-CRM-0143-0155 are **AFFIRMED**.

SO ORDERED.

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

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v. Sandiganbayan, supra note 36 at 451; and *Magante v. Sandiganbayan, supra* note 32, citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 932 (2001).

[49] *City of Taguig v. City of Makati*, 787 Phil. 367, 396 (2016).

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 236050. June 17, 2020]

ESTRELLA M. DOMINGO, *petitioner, vs.* **CIVIL SERVICE COMMISSION and VICTORINO MAPA MANALO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. —** The issue presented before the Court is a question of law — what are the legal consequences in an administrative disciplinary proceedings of the facts x x x mentioned? There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. The answer to this issue is a conclusion of law, that is, a legal inference made as a result of a factual showing where no further evidence is required.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE AND GRAVE MISCONDUCT, DISTINGUISHED. —** We rule that petitioner is not liable for either grave or simple misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service. Misconduct is a transgression of some established and definite rule of action, particularly, as a result of a public officer's unlawful behavior, recklessness, or gross negligence. This type of misconduct is characterized for purposes of gravity and penalty as simple misconduct. The misconduct is *grave* if it involves any of the additional elements of corruption, clear willful intent to violate the law, or flagrant disregard of established rules, supported by substantial evidence.

3. **ID.; ID.; ID.; IN THE ABSENCE OF ANY CIRCUMSTANCE REFLECTING ADVERSELY UPON THE GOVERNMENT, WHETHER IN DIRECT RELATION TO AND IN CONNECTION WITH THE PERFORMANCE OF OFFICIAL DUTIES AMOUNTING EITHER TO MALADMINISTRATION OR WILLFUL, INTENTIONAL NEGLECT AND FAILURE TO**

DISCHARGE THE DUTIES OF THE OFFICE, OR THOUGH UNRELATED TO THE EMPLOYEE'S OFFICIAL FUNCTIONS BUT TARNISHES THE IMAGE AND INTEGRITY OF THE EMPLOYEE'S PUBLIC OFFICE, A LOCAL TRAVEL IS NOT ACTIONABLE SOLELY BECAUSE THERE WAS NO OFFICE ORDER APPROVING IT. — It is undisputed that petitioner acted as resource speaker at the seminar organized by the City of Bacoor for its Basic Records Management without office approval where the NAP materials were disseminated for the purpose of conducting the seminar in general. It may also be reasonably inferred from the established facts that petitioner coincided her leave of absence on April 28-29, 2014 so she could take part as a resource speaker at the seminar, and along with Abejuela and Austria, kept respondent Manalo in the dark about their attendance at this seminar. Petitioner's actions, however, do not violate or transgress any rule of conduct. x x x. We take judicial notice of the fact that local travels when done on personal account do not require travel authority, unlike in the case of foreign travels whether personal or official. Local travels in a government employee's personal capacity, as they involve absence from work and work station, only entail the filing and approval of leave of absence. In the absence of any circumstance reflecting adversely upon the government, whether in direct relation to and in connection with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office, or though unrelated to the employee's official functions but tarnishes the image and integrity of the employee's public office, a local travel is not actionable solely because there was no office order approving it.

4. **ID.; ID.; ID.; A GOVERNMENT PERSONNEL IS NOT OBLIGATED TO INFORM HIS/HER OFFICE ABOUT HER ACTIVITIES OR WHEREABOUTS DURING HER LEAVE OF ABSENCE; NEITHER DID HIS/HER ATTENDANCE AS A RESOURCE SPEAKER AT A SEMINAR, WITHOUT MORE, DURING HER LEAVE OF ABSENCE, REQUIRE OFFICE APPROVAL. —** There is as well no law that obligated petitioner to inform the NAP or respondent Manalo about her activities or whereabouts during her leave of absence. Her attendance as a resource speaker at the City of Bacoor seminar, without more, during her leave of absence, did not create rule of conduct requiring her to obtain office approval to do so. In fact, neither the

NAP, the CSC nor the Court of Appeals referred to any law — whether statute, administrative rule, or case law — demanding such office approval. Further, it was not found as a fact that petitioner actually misrepresented herself at the seminar to be acting on behalf of the NAP. That she was misrepresenting herself as such was only an inference, not a factual finding, by the NAP.

5. ID.; ID.; ID.; NO VIOLATION OF ANY RULE OF CONDUCT WHERE MATERIALS OF A GOVERNMENT OFFICE WERE DISSEMINATED AT THE SEMINAR, AS NO COPYRIGHT SHALL SUBSIST IN ANY WORK OF THE GOVERNMENT; PRIOR APPROVAL OF THE GOVERNMENT AGENCY OR OFFICE WHEREIN THE WORK IS CREATED SHALL BE NECESSARY FOR EXPLOITATION OF SUCH WORK FOR PROFIT. — Equally true, petitioner did not violate any rule of conduct when the NAP's materials were disseminated during the seminar. For one, it was not confirmed who directed the dissemination of the NAP materials at the seminar. There is no finding of fact that petitioner was the operating and controlling mind of the dissemination. For another, under Section 176.1 of the *Intellectual Property Code,* the government holds no copyright to its materials: **No copyright** shall subsist in **any work of the Government** of the Philippines. However, **prior approval of the government** agency or office wherein the work is created shall be **necessary** for **exploitation** of such work **for profit**. Such agency or office may, among other things, impose as a condition the payment of royalties. **No prior approval or conditions shall be required for the use for any purpose of** statutes, rules and regulations, and speeches, **lectures**, sermons, addresses and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and **in meetings of public character**. Under the law, the NAP materials were free to be disseminated to the City of Bacoor stakeholders. Presenting the NAP materials to the City of Bacoor is not an exploitation of the NAP materials for profit, but for the noble and laudable cause of improving the basic records management of this local government unit.

6. ID.; ID.; ID.; DISHONESTY IS DEFINED AS THE CONCEALMENT OR DISTORTION OF TRUTH IN A MATTER OF FACT RELEVANT TO ONE'S OFFICE OR CONNECTED WITH THE PERFORMANCE OF HIS OR HER DUTY; CLASSIFIED AS A SERIOUS OFFENSE, WHICH REFLECTS ON THE PERSON'S CHARACTER AND EXPOSES THE MORAL DECAY WHICH VIRTUALLY DESTROYS HIS OR

HER HONOR, VIRTUE AND INTEGRITY; CHARGE OF DISHONESTY AGAINST THE RESPONDENT, NOT ESTABLISHED. — Notably, there is no finding of fact that petitioner personally materially benefitted from her attendance at the seminar. Except for the fact that she could have created goodwill for her own self, as she admitted to being a resident of the City of Bacoor, there is nothing on record that she obtained a monetary profit from it. In any event, it is an established fact that the goodwill created by petitioner extended to the NAP as an institution as shown by the City of Bacoor's letter dated June 26, 2014 thanking the NAP for its support to the City of Bacoor's efforts at professionalizing its basic records management. As there could have been no misrepresentation by petitioner at the seminar as to her representative capacity, no evidence having been presented to this effect but only an inference thereof, which inference is actually negated by the City of Bacoor's letter-request to the NAP for the use of its seal at the seminar, there is no basis for the conclusion that petitioner committed serious dishonesty. Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of honesty, probity, or integrity in principle; lack of fairness and straightforwardness and disposition betray. It is the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his or her duty. It is a serious offense, which reflects on the person's character and exposes the moral decay which virtually destroys his or her honor, virtue and integrity. Its immense debilitating effect on the government service cannot be overemphasized.

7. **ID.; ID.; ID.; IN ASCERTAINING THE INTENTION OF A PERSON ACCUSED OF DISHONESTY, CONSIDERATION MUST BE TAKEN NOT ONLY OF THE FACTS AND CIRCUMSTANCES WHICH GAVE RISE TO THE ACT COMMITTED, BUT ALSO ON THE STATE OF MIND AT THE TIME THE OFFENSE WAS COMMITTED, THE TIME HE MIGHT HAVE HAD AT HIS OR HER DISPOSAL FOR THE PURPOSE OF MEDITATING ON THE CONSEQUENCES OF HIS OR HER ACT, AND THE DEGREE OF REASONING HE OR SHE COULD HAVE HAD AT THAT MOMENT; A PERSON CANNOT BE HELD LIABLE FOR SERIOUS DISHONESTY ABSENT EVIDENCE PROVING MISREPRESENTATION, OR INTENT TO DECEIVE AND DEFRAUD, OR THAT HE/SHE PERSONALLY BENEFITTED**

FROM THE ACT COMPLAINED OF. — In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed, but also on the state of mind at the time the offense was committed, the time he might have had at his or her disposal for the purpose of meditating on the consequences of his or her act, and the degree of reasoning he or she could have had at that moment. To illustrate, acts or omissions considered as dishonesty include: making untruthful statements in the Personal Data Sheet, causing another person to take and pass the Career Service Professional Examination on his or her behalf, use of fake or spurious civil service eligibility, and use of position to make his or her "clients" believe that he or she could give them undue advantage — over others without the same connection — by processing their claims faster. Intent to deceive and defraud then, is evidently present in the enumerated cases. Here, intent to deceive or defraud are not manifest in the act complained of. There was no showing that petitioner personally benefitted from her attendance as a resource speaker. In fact, she rendered service to another government unit which had already made arrangements and incurred costs for the seminar. More, in petitioner's letter-reply to respondent Manalo's show cause memorandum, she readily apologized and admitted conducting the seminar without prior office approval. x x x. To conclude, in the absence of evidence proving misrepresentation or any of the other elements above-stated, we cannot hold petitioner liable for serious dishonesty.

8. **ID.; ID.; ID.; TO CONSTITUTE CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, THE ACTS NEED NOT BE RELATED TO THE RESPONDENT'S OFFICIAL FUNCTIONS, FOR AS LONG AS THE SAME TARNISH THE IMAGE AND INTEGRITY OF HIS OR HER PUBLIC OFFICE THAT WOULD HAVE ERODED THE PUBLIC'S TRUST AND CONFIDENCE IN THE GOVERNMENT; PETITIONER'S FAILURE TO INFORM AND SECURE PRIOR OFFICE APPROVAL TO ACT AS A RESOURCE SPEAKER AT A SEMINAR FOR THE BENEFIT OF THE LOCAL GOVERNMENT UNIT, CANNOT CONSTITUTE CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.—** Petitioner's participation at the seminar cannot also constitute conduct prejudicial to the best interest of the service. In ***Office***

of the Ombudsman-Visayas v. Castro, the nature of this administrative offense was explained as follows: The respondent's actions, to my mind , constitute conduct prejudicial to the best interest of the service, an administrative offense which need not be related to the respondent's official functions. In *Pia v. Gervacio,* we explained that **acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office.** The following acts or omissions have been treated as conduct prejudicial to the best interest of the service: misappropriation of public funds; abandonment of office; failure to report back to work without prior notice; failure to safe-keep public records and property; making false entries in public documents; falsification of court orders; a judge's act of brandishing a gun; and threatening the complainants during a traffic altercation. Here, we cannot deduce from the records and circumstances how petitioner's act amounted to conduct prejudicial to the best interest of the service. Petitioner's assailed act did not tarnish the image of her public office, the NAP. Definitely, when petitioner served as resource speaker at the seminar, she shared her expertise before another government unit, the City of Bacoor. The records also do not show that petitioner's failure to inform and secure prior office approval to act as a resource speaker, needlessly as explained above, tarnished the image and integrity of his or her public office that would have eroded the public's trust and confidence in the government. This is evident from the fact that the City of Bacoor sent the NAP a letter after the seminar thanking it and its employees, petitioner and Austria, for their invaluable contribution to the professionalization of its basic records management. Hence, it cannot be said that petitioner is guilty of conduct prejudicial to the best interest of the service.

9. ID.; ID.; ID.; ABSENT A BLACK-LETTER LAW PROHIBITING THE ATTENDANCE OF EMPLOYEES AT SEMINARS, EVEN DURING THEIR LEAVES OF ABSENCE, THE COURT CANNOT PUNISH ADMINISTRATIVELY AN EMPLOYEE WHO DOES SO; PETITIONER WAS ABSOLVED OF GRAVE MISCONDUCT, SERIOUS DISHONESTY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— Let us be clear about petitioner's acts. She participated at a seminar for the benefit of the local government unit and people of the City of Bacoor. There is no evidence that she

disseminated the NAP's materials (to which the NAP did not have proprietary rights to, in any event) at the seminar. She did not materially profit from her attendance thereat. She did not defraud the government of anything — she was in fact on leave of absence when she was there. As there was no perpetration of fraud, there could have been no intent to defraud on her part. [I]n terms of operational efficiency, there are lots to say about petitioner's conduct. A government office should be in control of the conduct of seminars in its areas of expertise for other government offices in need of such seminars. This is to allow the use of the office's resources judiciously. But in the absence of a black-letter law prohibiting the attendance of employees at seminars, even during their leaves of absence, which are otherwise more efficiently conducted at the expert government office's behest, we cannot punish administratively an employee who does so. In lieu of such black-letter prohibition, a government office and its administrators can deny leaves of absence for purposes of attendance as resource speakers at seminars. They may also coordinate with other government offices to ensure that no such attendance and participation are tolerated. For purposes however of resolving this petition for review, we cannot acquiesce with the dispositions of the tribunals below. There are no legal bases to affirm their decisions.

APPEARANCES OF COUNSEL

Mohammad Nabil M. Mutia for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

This Petition for Review assails the Decision[1] dated June 1, 2017 and Resolution[2] dated November 23, 2017 of the Court

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[1] Penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Normandie B. Pizarro and Pedro B. Corales, all members of the Special Twelfth Division, *rollo*, pp. 32-43.

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

of Appeals in CA-G.R. SP No. 141408 finding petitioner Estrella M. Domingo (petitioner) guilty of grave misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service.

Antecedents

Petitioner is the Chief Archivist of the Archives Preservation Division of the National Archives of the Philippines (NAP).[3] On February 24, 2014, Mayor Strike B. Revilla of Bacoor City, Cavite, requested the NAP to provide resource speakers for a three (3)-day Basic Records Management Seminar Workshop and a two (2)-day Training on Paper Preservation from March 24-28, 2014 at the Productivity Center, Bacoor City, Cavite.[4]

In reply, respondent Executive Director Victorino Mapa Manalo (respondent Manalo) initially confirmed to Josephine F. Austria (Austria), then Chief of the NAP's Training and Information Division, the availability of four resource persons, including petitioner, to the City Mayor, but only for the Basic Records Management Seminar Workshop.[5] Austria prepared the draft conforme letter, draft Travel Order (the Office Order allowing the attendance of the four resource persons), schedule of events, and the Document Endorsement Form. Austria forwarded these documents to respondent Manalo.

In the Document Endorsement Form, however, respondent Manalo wrote his instruction putting on hold all in-house trainings until after April 1, 2014.[6] He then returned the documents to Austria to revise the schedule of the attendance of the resource persons.

Austria did not endorse back the conforme letter, Travel Order, schedule of events, and the Document Endorsement

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

[4] *Id.* at 65.

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

[6] *Id.* at 68.

Form to respondent Manalo, with the latter's revision. These documents hibernated in Austria's custody. As a result, Bacoor City's request was left in limbo.

Meantime, on April 10, 2014, petitioner applied for a leave of absence for the dates April 28-29, 2014. She thereafter personally received on April 26, 2014 a letter dated April 22, 2014 from Mayor Revilla inviting her to serve as resource speaker for the City of Bacoor's Basic Records Management Seminar on April 28-29, 2014 at Tagaytay City. Her leave of absence coincided with the seminar. The April 22, 2014 request was expressly stated to be in lieu of the request earlier sent to the NAP.[7]

On April 23, 2014, the City of Bacoor sent an email to the NAP requesting for its official seal to be used at the April 28-29, 2014 seminar.

Petitioner, together with Austria and Lara Marie R. Abejuela, attended the April 28-29, 2014 seminar at Tagaytay City. Petitioner acted as resource speaker for Basic Records Management. The NAP's handouts were presented and disseminated during this seminar.[8]

On May 19, 2014, respondent Manalo issued a show cause memorandum relative to the conduct of the unapproved seminar and unauthorized use and dissemination of the NAP handouts.[9]

Meantime, on June 26, 2014, the City of Bacoor thanked the NAP for the participation of petitioner and Austria as resource persons at the April 28-29, 2014 seminar.

In her answer, petitioner apologized and admitted to acting as resource person without office approval. She however denied knowing for sure of the request's history. She averred that her information about the prior request only came from Austria

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[7] *Id.* at 71.

[8] *Id.* at 34.

[9] *Id.* at 73.

who had informed her that a request in which she was one of the proposed speakers was still pending approval by respondent Manalo. She claimed that she had to grace the seminar as a resource speaker as she was a resident of Bacoor City and since Bacoor City had already prepared the seminar's venue while awaiting the NAP's approval.[10] She also maintained that she had attended the seminar in her private capacity as she was on leave then.[11]

On August 20, 2014, petitioner and Austria were formally charged with serious dishonesty, grave misconduct, and conduct prejudicial to the interest of public service while Abejuela was charged with simple misconduct.[12] A formal investigation ensued.[13]

Meanwhile, Austria availed of early retirement effective July 1, 2014 while Abejuela resigned on July 25, 2014.[14]

The National Archives of the Philippines' (NAP) Ruling

By Decision[15] dated November 14, 2014, the NAP found petitioner guilty as charged and dismissed her from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

According to the NAP, petitioner's act of attending the seminar as a resource speaker without prior office approval and use of official training materials were clear derogation of office rules, which constituted grave misconduct.

The NAP did not mention the specific rule that petitioner had violated for attending the seminar without prior office

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[10] *Id.* at 75.

[11] *Id.* at 91.

[12] *Id.* at 76-79.

[13] *Id.* at 35.

[14] *Id.* at 96.

[15] *Id.* at 80-99.

approval and not objecting to the dissemination of the NAP's materials during the seminar. It may be inferred though that the NAP was referring to Executive Order No. 77, series of 2019, *Prescribing Rules and Regulations and Rates of Expenses and Allowances for Official Local and Foreign Travels of Government Personnel*, and its implementing NAP office procedures, as well as Section 176.1[16] of the *Intellectual Property Code*.

The NAP ruled that petitioner's liability was aggravated by the fact that she had been charged with the same act when she conducted a seminar before the Dangerous Drugs Board on December 17, 2013. The NAP did not state or confirm the status of this charge though the NAP claimed that petitioner had apologized for this infraction and promised not to do it again.

The NAP found that petitioner did not inform the former of the scheduled seminar, instructed Abejuela not to inform the office about the seminar, filed her leave of absence days back for April 28-29, 2014, and appeared as resource speaker at the seminar.

According to the NAP, these acts constituted serious dishonesty because petitioner made it appear that she had the authority to represent the NAP. Petitioner's actions also constituted conduct prejudicial to the best interest of the service.

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[16] SECTION 176. Works of the Government. — 176.1. No copyright shall subsist in any work of the Government of the Philippines. **However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit.** Such agency or office may, among other things, impose as a condition the payment of royalties. **No prior approval or conditions shall be required for the use for any purpose of** statutes, rules and regulations, and speeches, **lectures**, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and **in meetings of public character**.

Meanwhile, the charges against Austria and Abejuela were mooted by their retirement and resignation, respectively, before they were formally charged.[17]

Petitioner's motion for reconsideration was denied per Order[18] dated December 5, 2014. Aggrieved, petitioner appealed her dismissal to the Civil Service Commission (CSC).

The Civil Service Commission's Ruling

By Decision[19] dated April 23, 2015, the CSC affirmed. Petitioner's motion for reconsideration was denied under Resolution[20] dated June 30, 2015.

The Proceedings before the Court of Appeals

Undaunted, petitioner elevated the case to the Court of Appeals *via* Rule 43 of the Rules of Court.

Petitioner reiterated her denial of personal knowledge about the request's history and the correspondence between the NAP and Mayor Revilla. She maintained that it was Austria who was in direct communication with respondent Manalo regarding the request. She pointed out NAP's customary practice of allowing petitioner to conduct seminars without office approval due to exigency of the service. More, she was without malice nor evil intent when she filed her leave on April 28 and 29, 2014 and proceeded without authorization. There was nothing to prove that she willfully, intentionally, flagrantly, and maliciously conducted the seminar without prior office approval to qualify the infraction as grave misconduct. There was also no concealment of truth as to constitute serious dishonesty. All in all, her allegedly innocent acts could not have amounted to conduct prejudicial to the best interest of the service.[21]

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[17] *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169 (2011).

[18] *Rollo*, pp. 100-106.

[19] *Id.* at 46-57.

[20] *Id.* at 58-64.

[21] *Id.* at 107-126.

On the other hand, the CSC, through the Office of the Solicitor General (OSG), countered that petitioner's guilt was supported by substantial evidence. The CSC pointed out petitioner's admission in her letter reply to respondent Manalo's show cause memorandum where she admitted she acted as a resource person without prior office approval. Petitioner's act manifested flagrant disregard of NAP's established rules and willful defiance of directives which amounted to grave misconduct. Further, petitioner committed serious dishonesty when she made it appear that she had the authority to represent the NAP at the seminar, when she instructed Abejuela not to inform the NAP about the April 28-29, 2014 seminar, and filed their respective leaves of absence on these dates. Lastly, As Chief Archivist, petitioner was expected to exhibit honesty, exemplary professional conduct and ethics. These, she miserably failed to live up to and tantamount to conduct prejudicial to the best interest of the service.[22]

The Court of Appeals' Ruling

Under Decision[23] dated June 1, 2017, the Court of Appeals affirmed. Petitioner moved for reconsideration but the same was denied per Resolution[24] dated November 23, 2017.

The Present Petition

Petitioner now seeks relief from the Court. She avers she honestly believed in good faith that there was no need to obtain prior approval as Mayor Revilla invited her in her personal capacity to be a resource speaker for the seminar. In addition, as the NAP failed to act on Mayor Revilla's letter request dated February 24, 2014, she took it upon herself to attend the seminar as a resource speaker to salvage both the reputation of the NAP and Bacoor City's expenses of putting up the event. Lastly, she claims that the penalty of dismissal is too harsh for

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[22] *Id.* at 129-152.

[23] *Id.* at 32-43.

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

the acts she had done considering her unblemished thirty-six (36) year record in government service.[25]

In their comment,[26] public respondents CSC, and the NAP represented by respondent Manalo, through the OSG defend the Court of Appeals' dispositions affirming petitioner's dismissal from the service. They reiterate their arguments before the Court of Appeals.

For purposes of resolving this petition for review on *certiorari*, we have to be mindful of the facts established below. This is because under Section 1, Rule 45, petitions of this kind shall raise only questions of law. The factual findings are binding upon us and only questions of law, and only from the Court of Appeals' disposition,[27] may be litigated once again.[28] While jurisprudence has laid down exceptions to this rule, any of these exceptions must be alleged, substantiated, and proved by the parties so the Court may in its discretion evaluate and review the facts of the case.[29]

Petitioner does not invoke any of these exceptions.

The NAP, the CSC, and the Court of Appeals hinged petitioner's infractions and the penalty of dismissal from the service upon these facts:

(1) petitioner is the NAP's Chief Archivist of the Archives Preservation Division of the NAP;

(2) the NAP received on February 24, 2014 a letter from Mayor Strike B. Revilla of Bacoor City, Cavite, requesting the NAP to provide resource speakers for a three (3)-day Basic Records Management Seminar Workshop and a two (2)-day Training on Paper Preservation from March 24-28, 2014 at the Productivity Center, Bacoor City, Cavite;

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

[26] *Id.* at 156-182.

[27] *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017.

[28] *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).

[29] *Id.*

(3) respondent Manalo initially approved the participation of four resource persons, including petitioner, but later instructed the NAP to put on hold all in-house trainings until April 1, 2014;

(4) respondent Manalo returned the necessary documents to Austria to reflect the revised schedule;

(5) Austria did not endorse back the documents to respondent Manalo with the latter's revision; the documents instead hibernated in Austria's custody;

(6) petitioner applied for leave on April 10, 2014 for the dates April 28-29, 2014;

(7) petitioner personally received on April 26, 2014 a letter dated April 22, 2014 from Mayor Revilla inviting her to serve as resource speaker for the City of Bacoor's Basic Records Management Seminar on April 28-29, 2014 at Tagaytay City, and stating that this invitation was in lieu of the earlier request sent to the NAP;

(8) on April 23, 2014, the City of Bacoor sent an email to the NAP requesting for its official seal to be used at the April 28-29, 2014 seminar;

(9) petitioner was informed by Abejuela of a pending request by the Bacoor City for the conduct of the same seminar in which she was one of the speakers, but still awaiting the NAP's approval;

(10) petitioner instructed Abejuela not to inform the NAP about the April 28-29, 2014 seminar;

(11) petitioner and Abejuela attended the April 28-29, 2014 seminar, in which NAP's handouts were presented and disseminated;

(12) on June 26, 2014, the City of Bacoor thanked the NAP for the participation of petitioner and Austria as resource persons at the April 28-29, 2014 seminar;

(13) petitioner admitted in her letter-reply to respondent Manalo's show cause memorandum that she had acted as a

resource person without office approval at the April 28-29, 2014 seminar, and apologized for her acts; and

(14) petitioner was previously charged with the same act when she allegedly conducted a seminar before the Dangerous Drugs Board on December 17, 2013.

Issue

Is petitioner liable for grave misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service on the basis of the facts enumerated above?

Ruling

The issue presented before the Court is a question of law — what are the legal consequences in an administrative disciplinary proceedings of the facts above-mentioned? There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts.[30] The answer to this issue is a conclusion of law, that is, a legal inference made as a result of a factual showing where no further evidence is required.[31]

We rule that petitioner is not liable for either grave or simple misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service.

Misconduct is a transgression of some established and definite rule of action, particularly, as a result of a public officer's unlawful behavior, recklessness, or gross negligence. This type of misconduct is characterized for purposes of gravity and penalty as simple misconduct.[32]

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[30] *Supra* note 27.

[31] *Mercene v. Government Service Insurance System,* G.R. No. 192971, January 10, 2018, 850 SCRA 209, 217.

[32] *Imperial, Jr. v. Government Service Insurance System,* 674 Phil. 286, 298 (2011); *Civil Service Commission v. Ledesma*, 508 Phil. 569 (2005).

The misconduct is *grave* if it involves any of the additional elements of corruption, clear willful intent to violate the law, or flagrant disregard of established rules, supported by substantial evidence.[33]

To illustrate, in ***Office of the Ombudsman v. Miedes, Sr.***,[34] therein respondents as members of the Bids and Awards Committee (BAC) purchased 19 cellphones without public bidding and from a mere authorized distributor and not the manufacturer or the latter's exclusive distributor in violation of Presidential Decree No. 1445. As BAC members, they were each presumed to know all existing policies, guidelines and procedures in carrying out the purchase of the cellphones. The Court held petitioner liable only for simple misconduct because while they knew that the approval may violate administrative rules, it cannot be concluded without more as proved by substantial evidence, that they did so with either a corrupt intention or a clear willful intention amounting to an open defiance or a flagrant disregard of the rules. Thus:

> Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."
>
> In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence. Grave Misconduct necessarily includes the lesser offense of Simple Misconduct. Thus, a person charged with Grave Misconduct may be held liable for Simple Misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave.
>
> The CA correctly found no reason to depart from the findings of the petitioner that respondent and his companions are guilty of Simple Misconduct. The elements particular to Grave Misconduct were not adequately proven in the present case. **Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary**

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[33] *Civil Service Commission v. Ledesma, id.*

[34] 570 Phil. 464, 472-473 (2008).

person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. There is no clear and convincing evidence in the present case to show that the purchase and acquisition of the 19 cellular phone units had been **made for personal or selfish ends**. **Nor is there evidence** that respondent and his companions **acted in a capricious, whimsical and arbitrary manner with conscious and deliberate intent to do an injustice to others.**

Nonetheless, as aptly found by the CA, respondent and his companions **should have exercised all the necessary prudence to ensure that the proper procedure was complied with in the purchase of the 19 cellular phone units** because the Municipal Government of Carmen, Davao del Norte was deprived of means of securing the most advantageous price by the purchase of the 19 cellular phone units through an authorized distributor and not directly through a manufacturer or an exclusive distributor. Thus, respondent is liable for Simple Misconduct.

In ***Civil Service Commission v. Ledesma***,[35] we ruled that respondent is guilty only of Simple Misconduct for accepting ₱3,000.00 in exchange for facilitating the release of complainants' emigrant certificate clearances and their respective passports. The Court held:

> The standard was not met in this case. Taken as a whole, the circumstances surrounding this case and the execution of the complaint-affidavits against Ledesma would raise doubts in a reasonable mind.
>
> The primary complainant, Steve Tsai, is a foreigner who was a mere student at the time. Yet he blithely broke into a government office on a day that he probably knew, from his stay in the country, to be a non-working day. At the least, this brazen and appalling conduct shows that Steve Tsai is hardly trustworthy. His version of events should not be accepted wholesale. We have previously held that the standard of substantial evidence is not met by affidavits of questionable veracity.
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> Given the questionable nature of the complainants' affidavits, **we are left with Ledesma's admission that she received ₱3,000 from**

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[35] *Supra* note 32.

complainants. There is no dispute that **₱2,560 was the required fee for two ECCs in 1999. This amount was actually paid to the Bureau, and Steve Tsai and Ching Tsai received their ECCs. Only ₱460 is unaccounted. Ledesma's admission, however, does not prove by itself corruption or the other elements particular to grave misconduct. Ledesma admitted to receiving the money only so she could pass it to someone else and not for her own benefit.** In the absence of substantial evidence to the contrary, Ledesma's explanation is plausible. Moreover, **to warrant dismissal, the misconduct must be grave, serious, important, weighty, momentous and not trifling**. That is not the case here.

We stress that the law does not tolerate misconduct by a civil servant. Public service is a public trust, and whoever breaks that trust is subject to sanction. **Dismissal and forfeiture of benefits, however, are not penalties imposed for all infractions, particularly when it is a first offense.** There must be substantial evidence that grave misconduct or some other grave offense meriting dismissal under the law was committed.

Further, this is Ledesma's first offense in more than three decades of otherwise untarnished public service. Under the circumstances, we agree with the Court of Appeals that suspension for six months is an adequate penalty.

Here, it is undisputed that petitioner acted as resource speaker at the seminar organized by the City of Bacoor for its Basic Records Management without office approval where the NAP materials were disseminated for the purpose of conducting the seminar in general.[36] It may also be reasonably inferred from the established facts that petitioner coincided her leave of absence on April 28-29, 2014 so she could take part as a resource speaker at the seminar, and along with Abejuela and Austria, kept respondent Manalo in the dark about their attendance at this seminar.

Petitioner's actions, however, do not violate or transgress any rule of conduct. As observed, the NAP, including the CSC and the Court of Appeals, did not mention the exact law or

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[36] *Rollo*, p. 11.

office rule that petitioner has violated. We have inferred that the rule of conduct adverted to in the administrative proceedings are, as stated, Executive Order No. (EO) 77, series of 2019, *Prescribing Rules and Regulations and Rates of Expenses and Allowances for Official Local and Foreign Travels of Government Personnel*, and its implementing NAP office procedures, as well as Section 176.1[37] of the *Intellectual Property Code*.

To be sure, EO 77, series of 2019, requires office approval only for local travels that are official in nature, which refer to travels outside of official station on official time. The NAP implementing procedures simply aid in the enforcement of EO 77, and therefore, cannot require more than what EO 77 demands.

Here, petitioner opted not to avail of an official local travel. She decided instead to take a leave of absence during the dates of the seminar. There is no allegation and proof that the NAP denied her leave of absence. Hence, when she attended the seminar at Tagaytay City, she was not on official time, had no right to claim for official expenses, and cannot add the seminar to her credentials as an official work accomplishment. Any risks, legal or physical, she could have faced were for her own look-out. Nonetheless, she was not barred from attending this activity on her own personal volition and account as she was on leave of absence.

We take judicial notice of the fact that local travels when done on personal account do not require travel authority, unlike

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[37] SECTION 176. Works of the Government. – 176.1 No copyright shall subsist in any work of the Government of the Philippines. **However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit.** Such agency or office may, among other things, impose as a condition the payment of royalties. **No prior approval or conditions shall be required for the use for any purpose of** statutes, rules and regulations, and speeches, **lectures**, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and **in meetings of public character**. (Emphasis supplied)

in the case of foreign travels whether personal or official. Local travels in a government employee's personal capacity, as they involve absence from work and work station, only entail the filing and approval of leave of absence. In the absence of any circumstance reflecting adversely upon the government, whether in direct relation to and in connection with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office, or though unrelated to the employee's official functions but tarnishes the image and integrity of the employee's public office, a local travel is not actionable solely because there was no office order approving it.

We also cannot conclude that petitioner acted insubordinately to respondent Manalo. It has not been established that petitioner knew of the status of the first request made by the City of Bacoor. What has only been confirmed is that she was told by Austria of the existence of the first request but not as to any update about respondent Manalo's action or inaction upon it.

While it is clear to any reasonable person that petitioner took advantage of the April 22, 2014 request for resource persons by the City of Bacoor, as this was directly communicated to her on April 26, 2014, we cannot reasonably infer from this fact that she too had known of the status of the City of Bacoor's first request. Petitioner's taking advantage of the opportunity does not prove that she was acting defiantly against her superior — these are two different things. For sure, she could not have acted in defiance of an instruction she knew nothing about.

Petitioner was probably motivated to keep respondent Manalo in the dark about the April 22, 2014 request, because there was no more time between when she had received the request on April 26, 2014 and the seminar's schedule on April 28-29, 2014, to obtain office approval and make her attendance thereat an official local travel. To a reasonable person, she graced the seminar using her leave of absence because in all probability she could not have obtained the travel order to make her participation an official activity.

There is as well no law that obligated petitioner to inform the NAP or respondent Manalo about her activities or whereabouts during her leave of absence. Her attendance as a resource speaker at the City of Bacoor seminar, without more, during her leave of absence, did not create a rule of conduct requiring her to obtain office approval to do so. In fact, neither the NAP, the CSC nor the Court of Appeals referred to any law — whether statute, administrative rule, or case law — demanding such office approval.

Further, it was not found as a fact that petitioner actually misrepresented herself at the seminar to be acting on behalf of the NAP. That she was misrepresenting herself as such was only an inference, not a factual finding, by the NAP.

The finding of fact is that the City of Bacoor asked the NAP for a copy of the NAP's official seal as part of the credential-building for the seminar. There is no finding of fact as to what happened to this request. It is not known if the NAP rejected the City of Bacoor's request. If it did, then no misrepresentation could have taken place, whether at petitioner's behest or anyone else's. If it acceded to the request, then the NAP officially acknowledged its participation in the seminar. In this instance, there could have been no misrepresentation by any of the NAP employees thereat including petitioner.

Equally true, petitioner did not violate any rule of conduct when the NAP's materials were disseminated during the seminar. For one, it was not confirmed who directed the dissemination of the NAP materials at the seminar. There is no finding of fact that petitioner was the operating and controlling mind of the dissemination. For another, under Section 176.1 of the *Intellectual Property Code,* the government holds no copyright to its materials:

> **No copyright** shall subsist in **any work of the Government** of the Philippines. However, **prior approval of the government** agency or office wherein the work is created shall be **necessary** for **exploitation** of such work **for profit**. Such agency or office may, among other things, impose as a condition the payment of royalties. **No prior approval or conditions shall be required for the use for any purpose**

of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and **in meetings of public character**. (Emphasis supplied)

Under the law, the NAP materials were free to be disseminated to the City of Bacoor stakeholders. Presenting the NAP materials to the City of Bacoor is not an exploitation of the NAP materials for profit, but for the noble and laudable cause of improving the basic records management of this local government unit.

Notably, there is no finding of fact that petitioner personally materially benefitted from her attendance at the seminar. Except for the fact that she could have created goodwill for her own self, as she admitted to being a resident of the City of Bacoor, there is nothing on record that she obtained a monetary profit from it. In any event, it is an established fact that the goodwill created by petitioner extended to the NAP as an institution as shown by the City of Bacoor's letter dated June 26, 2014 thanking the NAP for its support to the City of Bacoor's efforts at professionalizing its basic records management.

As there could have been no misrepresentation by petitioner at the seminar as to her representative capacity, no evidence having been presented to this effect but only an inference thereof, which inference is actually negated by the City of Bacoor's letter-request to the NAP for the use of its seal at the seminar, there is no basis for the conclusion that petitioner committed serious dishonesty.

Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of honesty, probity, or integrity in principle; lack of fairness and straightforwardness and disposition betray.[38] It is the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his or her duty. It is a serious offense, which reflects on the person's character and exposes the moral decay which virtually destroys his or her honor, virtue and integrity. Its immense

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[38] *Aguirre v. Nieto*, G.R. No. 220224, August 28, 2019.

debilitating effect on the government service cannot be overemphasized.[39]

In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed, but also on the state of mind at the time the offense was committed, the time he might have had at his or her disposal for the purpose of meditating on the consequences of his or her act, and the degree of reasoning he or she could have had at that moment.[40]

To illustrate, acts or omissions considered as dishonesty include: making untruthful statements in the Personal Data Sheet, causing another person to take and pass the Career Service Professional Examination on his or her behalf,[41] use of fake or spurious civil service eligibility,[42] and use of position to make his or her "clients" believe that he or she could give them undue advantage — over others without the same connection — by processing their claims faster.[43] Intent to deceive and defraud then, is evidently present in the enumerated cases.

Here, intent to deceive or defraud are not manifest in the act complained of. There was no showing that petitioner personally benefitted from her attendance as a resource speaker. In fact, she rendered service to another government unit which had already made arrangements and incurred costs for the seminar. More, in petitioner's letter-reply to respondent Manalo's show cause memorandum, she readily apologized and admitted conducting the seminar without prior office approval.

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[39] *Civil Service Commission v. Cayobit*, 457 Phil. 452, 460 (2003).

[40] *Wooden v. Civil Service Commission*, 508 Phil. 500, 512 (2005).

[41] *Nasser v. Civil Service Commission*, G.R. No. 235848 (Notice), March 5, 2018; *Civil Service Commission v. Sta. Ana*, A.M. No. P-03-1696 (Formerly OCA IPI No. 01-1088-P) (Resolution), 450 Phil. 59, 66 (2003).

[42] *Supra* note 39.

[43] *Japson v. Civil Service Commission*, 663 Phil. 665, 677 (2011).

In ***Faeldonea v. Civil Service Commission***,[44] postmaster Faeldonea received an envelope containing the check for Efren's death benefits. He took it to answer for Efren's obligations with the Philippine Postal Corporation (PPC) and deposited it to PPC's account with Landbank. The CSC found Faeldonea liable for grave misconduct and dishonesty. For lack of ill or selfish motives, the Court exonerated Faeldonea from the charge of dishonesty. No proof was presented to show any concealment of the truth on Faeldonea's part.

To conclude, in the absence of evidence proving misrepresentation or any of the other elements above-stated, we cannot hold petitioner liable for serious dishonesty.

Petitioner's participation at the seminar cannot also constitute conduct prejudicial to the best interest of the service. In ***Office of the Ombudsman-Visayas v. Castro***,[45] the nature of this administrative offense was explained as follows:

> The respondent's actions, to my mind, constitute conduct prejudicial to the best interest of the service, **an administrative offense which need not be related to the respondent's official functions**. In *Pia v. Gervacio*, we explained that **acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office**.

The following acts or omissions have been treated as conduct prejudicial to the best interest of the service: misappropriation of public funds; abandonment of office; failure to report back to work without prior notice; failure to safe-keep public records and property; making false entries in public documents; falsification of court orders; a judge's act of brandishing a gun; and threatening the complainants during a traffic altercation.[46]

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[44] 435 Phil. 410 (2002).

[45] 759 Phil. 68, 79 (2015); *Office of the Ombudsman v. Faller*, 786 Phil. 467, 482 (2016).

[46] *Catipon v. Japson*, 761 Phil. 205, 221-222 (2015).

Here, we cannot deduce from the records and circumstances how petitioner's act amounted to conduct prejudicial to the best interest of the service. Petitioner's assailed act did not tarnish the image of her public office, the NAP. Definitely, when petitioner served as resource speaker at the seminar, she shared her expertise before another government unit, the City of Bacoor. The records also do not show that petitioner's failure to inform and secure prior office approval to act as a resource speaker, needlessly as explained above, tarnished the image and integrity of his or her public office that would have eroded the public's trust and confidence in the government. This is evident from the fact that the City of Bacoor sent the NAP a letter after the seminar thanking it and its employees, petitioner and Austria, for their invaluable contribution to the professionalization of its basic records management.

Hence, it cannot be said that petitioner is guilty of conduct prejudicial to the best interest of the service.

Let us be clear about petitioner's acts. She participated at a seminar for the benefit of the local government unit and people of the City of Bacoor. There is no evidence that she disseminated the NAP's materials (to which the NAP did not have proprietary rights to, in any event) at the seminar. She did not materially profit from her attendance thereat. She did not defraud the government of anything — she was in fact on leave of absence when she was there. As there was no perpetration of fraud, there could have been no intent to defraud on her part.

A final word. In terms of operational efficiency, there are lots to say about petitioner's conduct. A government office should be in control of the conduct of seminars in its areas of expertise for other government offices in need of such seminars. This is to allow the use of the office's resources judiciously.

But in the absence of a black-letter law prohibiting the attendance of employees at seminars, even during their leaves of absence, which are otherwise more efficiently conducted at the expert government office's behest, we cannot punish administratively an employee who does so.

In lieu of such black-letter prohibition, a government office and its administrators can deny leaves of absence for purposes of attendance as resource speakers at seminars. They may also coordinate with other government offices to ensure that no such attendance and participation are tolerated.

For purposes however of resolving this petition for review, we cannot acquiesce with the dispositions of the tribunals below. There are no legal bases to affirm their decisions.

ACCORDINGLY, the Court of Appeals' Decision dated June 1, 2017 and Resolution dated November 23, 2017 in CA-G.R. SP No. 141408 is **REVERSED and SET ASIDE**. Petitioner Estrella M. Domingo is **ABSOLVED** of grave misconduct, serious dishonesty, conduct prejudicial to the best interest of the service, and any administrative offenses included therein. The complaint against her is **ORDERED DISMISSED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 239090. June 17, 2020]

RAMONA FAVIS-VELASCO and ELVIRA L. YULO, *petitioners, vs.* **JAYE MARJORIE R. GONZALES,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE RIGHT TO A PRELIMINARY INVESTIGATION IS A SUBSTANTIVE RIGHT SINCE THE ACCUSED IN A CRIMINAL TRIAL IS INEVITABLY EXPOSED

TO PROLONGED ANXIETY, AGGRAVATION, HUMILIATION, AND EXPENSE, AND THE RIGHT TO AN OPPORTUNITY TO AVOID A PAINFUL PROCESS IS A VALUABLE RIGHT. — A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. The right to a preliminary investigation is a substantive right since the accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense, and the right to an opportunity to avoid a painful process is a valuable right. It is meant to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials.

2. **ID.; ID.; ID.; PROBABLE CAUSE; WHILE THE DETERMINATION OF PROBABLE CAUSE IS PRIMARILY AN EXECUTIVE FUNCTION, THE SUPREME COURT WOULD NOT HESITATE TO INTERFERE IF THERE IS A CLEAR SHOWING THAT THE SECRETARY OF JUSTICE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MAKING HIS DETERMINATION AND IN ARRIVING AT THE CONCLUSION HE REACHED. —** The rule is that finding of probable cause is an executive function. It is not a power that rests in courts. Generally, courts do not disturb conclusions made by public prosecutors. This is due to the basic principle of separation of powers. Nonetheless, "grave abuse of discretion taints a public prosecutor's resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause." Thus, while the determination of probable cause is primarily an executive function, the Court would not hesitate to interfere if there is a clear showing that [the] Secretary of Justice gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached.

3. **ID.; ID.; ID.; ID.; THE ELEMENTS OF THE CRIME CHARGED SHOULD BE PRESENT IN ORDER TO ARRIVE AT PROBABLE CAUSE. —** Probable cause has been defined as

such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The determination of 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 constituted the offense charged. In order to arrive at probable cause, the elements of the crime charged should be present. After a careful scrutiny of the case records, the Court rules that there is no probable cause to indict respondent Jaye of the crime of *Estafa* under paragraphs 2(a) and 1(b), Article 315 of the RPC. Not all the elements of the crime of *Estafa* under paragraphs 2(a) and 1(b), Article 315 of the RPC are present in the case at bench.

4. CRIMINAL LAW; *ESTAFA* BY MEANS OF DECEIT; ELEMENTS.— Article 315, paragraph 2(a) of the RPC, as amended, defines the crime of *Estafa* by means of deceit x x x. The elements of *Estafa* under paragraph 2(a), Article 315 of the RPC are: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.

5. ID.; *ESTAFA* THROUGH MISAPPROPRIATION; ELEMENTS.— The Court x x x finds no probable cause for *Estafa* under paragraph 1(b), Article 315 of the RPC x x x. The elements of *Estafa* through misappropriation under Article 315, paragraph 1(b) are: (a) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received.

APPEARANCES OF COUNSEL

Cruz Enverga & Lucero Law Office for petitioners.
Fortun Narvasa & Salazar for respondent.

R E S O L U T I O N

INTING, *J.*:

This is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[2] dated November 23, 2017 and the Resolution[3] dated May 3, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 144600. The assailed CA Decision annulled the Resolution[4] dated July 15, 2015 of the Department of Justice (DOJ) Secretary that reversed and modified the Resolution dated November 13, 2013 issued by Assistant City Prosecutor Gilbert R. Alcala (Prosecutor Alcala) of the Office of City Prosecutor of Makati City (OCP Makati City), dismissing the complaint for *Estafa* filed by Ramona Favis-Velasco and Elvira L. Yulo (petitioners) against Jaye Marjorie Rojas Gonzales (respondent Jaye).

The antecedents of the case are as follows:

The petition stemmed from a Complaint-Affadavit[5] executed by petitioners against respondent Jaye, her husband, Bienvenido Ma. Gonzales III, and Raul Clemente (collectively known as the respondents) for 35 counts of *Estafa* by unfaithfulness and abuse of confidence as defined under Article 315, paragraph 1 (b); and 35 counts of *Estafa* by false pretenses as defined under Article 315, paragraph 2 (a) of the Revised Penal Code (RPC).

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[1] *Rollo*, pp. 9-65.

[2] *Id.* at 67-87; penned by Associate Justice Sesinando E. Villon with Associate Justices Manuel M. Barrios and Renato C. Francisco, concurring.

[3] *Id.* at 89-90.

[4] *Id.* at 372-378; penned by Undersecretary Jose Vicente B. Salazar.

[5] *Id.* at 350-371.

The Complaint-Affidavit was then referred to the OCP of Makati City for preliminary investigation. On November 13, 2013, Prosecutor Alcala issued a Resolution[6] finding no probable cause to hold the respondents liable for the offenses charged, and consequently dismissed the petitioners' complaint.

Undaunted, the petitioners filed a Petition for Review[7] with the DOJ Secretary, who in turn modified the appealed Resolution of Prosecutor Alcala, to wit:

> WHEREFORE, in view of the foregoing, the assailed resolution is hereby MODIFIED. Accordingly, the City Prosecutor of Makati is directed to file the appropriate Informations for estafa under Article 315 pars. 1(b) and 2(a) of the Revised Penal Code against respondent JAYE MARJORIE ROXAS GONZALES and to report the action taken thereon within ten (10) days from receipt hereof. The dismissal of the complaint against the respondents BIENVENIDO MA. GONZALES III and RAUL CLEMENTE stands.
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> SO ORDERED.[8]

The DOJ Secretary found probable cause to indict respondent Jaye of the crime of *Estafa* under paragraphs 1 (b) and 2 (a), Article 315 of the RPC. Subsequently, respondent Jaye filed a Motion for Reconsideration seeking to set aside the DOJ Secretary's Resolution. Thereafter, on September 30, 2015, she filed a motion to defer action before the office of the DOJ Secretary.

On January 11, 2016, four Informations all dated January 6, 2016 were filed by the OCP Makati City against the respondent for the crime of *Estafa* under Article 315, paragraphs 1 (b) and 2 (a) of the RPC. Resultantly, the Informations were consolidated and raffled to Branch 133, Regional Trial Court (RTC) of Makati City. The cases were re-raffled to Branch 60 as a consequence of a failed judicial dispute resolution.

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[6] *Id.* at 34.

[7] *Id.*

[8] *Id.* at 377.

Aggrieved, respondent Jaye filed a Petition for *Certiorari* and Prohibition (with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Investigation)[9] before the CA on March 15, 2016.

In compliance with the CA's Resolution dated September 9, 2016, petitioners filed their Comment dated October 20, 2016 while respondent filed her Reply dated November 4, 2016.[10]

On June 1, 2017, the CA issued a Resolution denying the respondent Jaye's application for the issuance of an injunctive relief for lack of merit and directed the parties to file their respective memoranda. In compliance thereto, the petitioners filed their Memorandum[11] dated July 7, 2017, while respondent Jaye filed her Memorandum[12] dated June 23, 2017.

The petitioners maintained that all the elements of *Estafa* under Article 315, paragraph 1 (b) are present: (1) the amounts of money were received by the respondent under an obligation to make delivery or to return the same; (2) the respondent misappropriated or converted the money of the petitioners; (3) the misappropriation or conversion prejudiced the petitioners; and (4) the demands were made by the petitioners for the respondent to return the money invested by them.[13]

Likewise, the petitioners argued that all the elements of *Estafa* under paragraph 2 (a), Article 315 are present: (1) there were false pretenses or fraudulent means committed by the respondent Jaye when she represented to the petitioners that she is a licensed broker or part-owner of D.A. Market Securities, Inc. (DAMSI); (2) respondent Jaye's false pretenses or fraudulent means were made prior to or simultaneous with the transaction; (3) the petitioners relied on respondent Jaye's false pretenses or

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[9] *Id.* at 379-411.

[10] *Id.* at 35.

[11] *Id.* at 412-443.

[12] *Id.* at 444-475.

[13] *Id.* at 430-435.

fraudulent means, that is they were induced to part with their hard-earned money because of their reliance that respondent Jaye is a licensed broker or part-owner of DAMSI; and (4) as a result of the investment, the petitioners suffered damage by losing millions of pesos.[14]

On the other hand, respondent Jaye asserted that not all the elements of the crimes charged are present in the case. She stressed that the DOJ Secretary committed grave abuse of discretion amounting to lack or in excess of jurisdiction when she directed the filing of Informations for *Estafa* under paragraphs 1 (b) and 2 (a), Article 315 despite lack of probable cause. She also asseverated that there was no evidence that the amounts invested by the petitioners were not actually used in buying and/or selling securities as to conclude that she misappropriated the money. Moreover, the respondent insisted that she did not commit false pretenses as the petitioners were already decided to invest their money even before they met. She highlighted that for *Estafa* under paragraph 2 (a), Article 315 be committed, the deceit should be made prior to or simultaneous with the transaction. Finally, she claimed that the fact that the petitioners gained profits from the investments for several years negated her intention to defraud them.

The Ruling of the CA

On November 23, 2017, the CA promulgated the assailed Decision granting the petition and annulling the earlier Resolution dated July 15, 2015 issued by the DOJ Secretary. The CA disposed the case as follows:

WHEREFORE, the petition is GRANTED. The Resolution dated July 15, 2015 of public respondent, the Secretary of the Department of Justice in NPS No. XV-05-INV-13C-1111 is hereby ANNULLED and SET ASIDE. Resultantly, the Resolution dated November 13, 2013 issued in the said case by Assistant City Prosecutor Gilbert R. Alcala is hereby REINSTATED, and the criminal complaint filed by private

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[14] *Id.* at 435-439.

respondents Ramona Favis-Velasco and Elvira Yulo against petitioner Jaye Marjorie R. Gonzales, ordered DISMISSED.

The warrants of arrest issued by Branch 133 of the Regional Trial Court of Makati City in Criminal Case Nos. 16-027, 16-028, 16-029 and 16-030 are hereby declared NULL and VOID.

SO ORDERED.[15]

The petitioner filed a Motion for Reconsideration,[16] but the CA denied it in its assailed Resolution[17] dated May 3, 2018.

Hence, the petition.

Respondent Jaye filed her Comment[18] dated October 8, 2018. In her Comment, she reiterated that there was no probable cause to charge her of *Estafa* under paragraphs 1(b) and 2(a), Article 315 of the RPC. She insisted that there was no fraud or deceit prior to or simultaneous with the transaction. Likewise, she denied directly receiving money from petitioners. Thus, according to her, the petitioners failed to allege all the elements of the crimes charged.

On February 21, 2019, the petitioners filed their Reply[19] to respondent Jaye's Comment. They argued that all the elements of *Estafa* under paragraphs 2 (a) and 1 (b), Article 315 are present in the case at bar.

The Issues

The petitioners raised the following grounds:

I. THE COURT OF APPEALS ERRED IN FINDING THAT THERE IS NO PROBABLE CAUSE FOR ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A) OF THE REVISED PENAL CODE AGAINST

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[15] *Id.* at 86-87.

[16] *Id.* at 91-121.

[17] *Id.* at 89-90.

[18] *Id.* at 668-678.

[19] *Id.* at 683-699.

RESPONDENT GONZALES. THE PRESENCE OF THE ELEMENTS OF THE SAID CRIME IS AMPLY SUPPORTED BY EVIDENCE IN THE INSTANT CASE.

II. THE COURT OF APPEALS ERRED IN FINDING THAT THERE IS NO PROBABLE CAUSE FOR ESTAFA UNDER ARTICLE 315, PARAGRAPH 1(B) OF THE REVISED PENAL CODE AGAINST RESPONDENT GONZALES. THE PRESENCE OF THE ELEMENTS OF THE SAID CRIME IS AMPLY SUPPORTED BY THE EVIDENCE IN THE INSTANT CASE.

III. THE COURT OF APPEALS ERRED IN RULING THAT THERE IS GRAVE ABUSE OF DISCRETION ON THE PART OF THE SECRETARY OF JUSTICE IN FINDING PROBABLE CAUSE TO INDICT RESPONDENT GONZALES OF ESTAFA.[20]

The main issue in this case hinges on the determination of whether or not there is probable cause to indict the respondent of *Estafa* under paragraphs 2(a) and 1(b), Article 315 of the RPC.

Our Ruling

The petition is not meritorious.

A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof.[21] The right to a preliminary investigation is a substantive right since the accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense, and the right to an opportunity to avoid a painful process is a valuable right.[22] It is meant to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime, from the trouble,

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[20] *Id.* at 36-37.

[21] Section 1, Rule 112 of the Rules of Court.

[22] *Labay v. Sandiganbayan*, G.R. Nos. 235937-40, July 23, 2018, citing *Go v. Court of Appeals*, 283 Phil. 24, 43 (1992).

expenses and anxiety of a public trial.[23] It is also intended to protect the state from having to conduct useless and expensive trials.[24]

The rule is that finding of probable cause is an executive function.[25] It is not a power that rests in courts. Generally, courts do not disturb conclusions made by public prosecutors.[26] This is due to the basic principle of separation of powers.[27] Nonetheless, "grave abuse of discretion taints a public prosecutor's resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause."[28] Thus, while the determination of probable cause is primarily an executive function, the Court would not hesitate to interfere if there is a clear showing that Secretary of Justice gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached.[29]

Probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.[30] The determination of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.[31] It is enough that it is believed that the act or omission complained of constituted the offense charged.[32] In order

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[23] *Id.*, citing *Sales v. Sandiganbayan*, 421 Phil. 176, 186-187 (2001).

[24] *Id.*

[25] *Reynes v. Office of the Ombudsman*, G.R. No. 223405, February 20, 2019.

[26] *Id.*

[27] *Id.*

[28] *Id.*, citing *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013).

[29] *Lanier, et al. v. People*, 730 Phil. 143 (2014).

[30] *Supra* note 25, citing *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 518-519 (2008).

[31] *Id.*

[32] *Sen. De Lima v. Judge Guerrero, et al.*, 819 Phil. 616, 737 (2017), citing *Judge Marcos v. Judge Cabrera-Faller*, 804 Phil. 45, 68 (2017).

to arrive at probable cause, the elements of the crime charged should be present.[33]

After a careful scrutiny of the case records, the Court rules that there is no probable cause to indict respondent Jaye of the crime of *Estafa* under paragraphs 2 (a) and 1 (b), Article 315 of the RPC. Not all the elements of the crime of *Estafa* under paragraphs 2 (a) and 1 (b), Article 315 of the RPC are present in the case at bench. Judicious evaluation of the Complaint-Affidavit and the supporting documents of the parties, reveals that there is no probable cause to charge respondent Jaye. The Complaint-Affidavit does not sufficiently allege the elements of the crime of *Estafa* under paragraphs 2(a) and 1(b), Article 315 of the RPC.

Article 315, paragraph 2 (a) of the RPC, as amended, defines the crime of *Estafa* by means of deceit as follows:

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned herein below x x x:

x x x x x x 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 a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The elements of *Estafa* under paragraph 2 (a), Article 315 of the RPC are: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false

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[33] *Estrada v. Office of the Ombudsman*, G.R. Nos. 212761-62, 213473-74 & 213538-39, July 31, 2018, citing *Hasegawa v. Giron*, 716 Phil. 364, 374 (2013).

pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[34]

The petitioners failed to sufficiently allege all of the foregoing elements in their Complaint-Affidavit. Their allegation that respondent Jaye induced them through fraudulent representations and false pretenses to invest their money is instantly belied by their own statement in their complaint, to wit:

> 1.4 We are formally charging the Respondents co-conspirators with 35 counts of Estafa by unfaithfulness and abuse of confidence as defined under Article 315 paragraph 1 (b) and 35 counts of Estafa by false pretenses as defined by paragraph [2] (a) of the same Article of the Revised Penal Code, to wit:[35]
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> x x x x x x x x x
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> 2.2 We first heard about Respondent Jaye through a mutual friend Marianne Onate ("Ms. Onate") when we asked her who her broker was. She identified her broker as Respondent Jaye who is the wife of Respondent Bienvenido, a very close friend of her brother. We asked for an introduction to Respondent Jaye.[36]

It must be noted that the petitioners were the ones who asked Marianne Onate (Onate) to be introduced to respondent Jaye and it was Onate who introduced respondent Jaye as her broker. Clearly, it was through the representation of Onate that petitioners will earn substantial amount of money in the stock market that induced them to invest their money. Verily, no deceit or fraud could be attributed to respondent Jaye as would induce the petitioners to part with their money or property.

The Court likewise finds no probable cause for *Estafa* under paragraph 1 (b), Article 315 of the RPC, which provides:

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[34] *People v. Sison*, 816 Phil. 8, 26 (2017), citing *Suliman v. People*, 747 Phil. 719, 731 (2014).

[35] *Rollo*, p. 350.

[36] *Id.* at 354.

ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (₱2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusion temporal*, as the case may be.

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1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

The elements of *Estafa* through misappropriation under Article 315, paragraph 1 (b) are: (a) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received.[37]

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[37] *Legaspi v. People*, G.R. Nos. 225753 & 225799, October 15, 2018, citing *Serona v. Court of Appeals*, 440 Phil. 508, 517 (2002).

Paragraph 1 (b) provides liability for *Estafa* committed by misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though that obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.[38]

There is no evidence that respondent Jaye received the petitioners' monies in trust or under any other obligation involving the duty to deliver, or to return them and that upon receiving the amounts respondent Jaye misappropriated or converted them. The pieces of evidence showed that the checks issued by the petitioners were made payable to the order of either the B.A. Securities, Inc. or DAMSI and not in respondent Jaye's name. Also, the amounts of money delivered by the petitioners were deposited to the account of either BASI or DAMSI and never in respondent Jaye's bank account. Thus, contrary to the findings of the DOJ Secretary, there could be no way that respondent Jaye could appropriate the amounts of money invested by the petitioners as these investments were not deposited in respondent Jaye's account.

Evidently, the Court of Appeals is correct in finding grave abuse of discretion on the part of the DOJ Secretary when the latter found probable cause to charge respondent Jaye.

WHEREFORE, the petition is **DENIED**. The Decision dated November 23, 2017 and the Resolution dated May 3, 2018 of the Court of Appeals in CA-G.R. SP No. 144600 is **AFFIRMED**.

SO ORDERED.

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

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[38] *Gamaro, et al. v. People*, 806 Phil. 483, 497-498 (2017).

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. Nos. 240123 & 240125. June 17, 2020]

DOMINGO P. GIMALAY, *petitioner*, *vs.* **COURT OF APPEALS, GRANITE SERVICES INTERNATIONAL, INC., JOSEPH MEDINA, DANIEL SARGEANT,[*] and APRIL ANNE JUNIO,[**]** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE COURT MAY PROCEED TO PROBE AND RESOLVE FACTUAL ISSUES PRESENTED WHERE THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC). —** [T]he Court is not a trier of facts. It is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that findings of fact of the Court of Appeals are conclusive and binding on this Court. The Court, nonetheless, may proceed to probe and resolve factual issues presented herein because the findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC.

2. **ID.; ID.; ID.; ID.; THE PETITION IN CASE AT BAR WAS FILED ON TIME AND WAS ACCOMPANIED BY A CERTIFIED TRUE COPY OF THE CHALLENGED DECISION AND AN ORIGINAL COPY OF THE ASSAILED RESOLUTION. —** Private respondents assert that the assailed Court of Appeals' assailed issuances had already become final and executory because the present petition was filed one (1) day late. This is inaccurate. The petition was actually filed on time. Petitioner received the assailed Court of Appeals Resolution denying his motion for reconsideration on June 21, 2018, and not June 20, 2018 as private respondents erroneously claim. Petitioner,

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[*] Sometimes spelled in the records as "Seargent."

[**] Not included as a party in the cases before the labor tribunals and the Court of Appeals.

therefore, had fifteen (15) days from June 21, 2018 or until July 6, 2018 within which to file the present petition. As private respondents correctly claim, the petition was filed on July 6, 2018, well within the 15-day reglementary period. Another. Contrary to private respondents' claim, the petition was accompanied by a certified true copy of the challenged Decision and an original copy of the assailed Resolution. As for the verification and certification of non-forum shopping, petitioner had already submitted to the Court a notarized verification and certification of non-forum shopping as noted in our Resolution dated November 12, 2018. With regard to the correctness of the remedy availed of, petitioner has labeled this petition as a "Petition/Appeal by *Certiorari*," albeit he cites grave abuse of discretion amounting to lack or excess of jurisdiction. There is nothing wrong with this for so long as it was initiated within fifteen (15) days from receipt of the assailed resolution pursuant to Rule 45.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN TERMINATION CASES, THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW THAT THE DISMISSAL IS FOR A JUST AND VALID CAUSE, AND THE EMPLOYER'S CASE SUCCEEDS OR FAILS ON THE STRENGTH OF ITS EVIDENCE AND NOT ON THE WEAKNESS OF THE EMPLOYEE'S DEFENSE; IF DOUBT EXISTS BETWEEN THE EVIDENCE PRESENTED BY THE EMPLOYER AND THE EMPLOYEE, THE SCALES OF JUSTICE MUST BE TILTED IN FAVOR OF THE LATTER; CHARGES AGAINST THE PETITIONER FOR VIOLATION OF COMPANY SAFETY PROCEDURES, NOT ESTABLISHED. —** Both the labor arbiter and the NLRC held that private respondents failed to substantiate the charge of serious or gross misconduct against petitioner. The Court of Appeals, on the other hand, held that private respondents were able to prove the alleged infractions. In ***Distribution & Control Products, Inc. v. Santos***, the Court reiterated that in termination cases, the burden of proof rests upon the **employer** to show that the dismissal is for just and valid cause. Failure to do so necessarily means that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be

tilted in favor of the latter. To prove petitioner's alleged violations of the safety procedures, respondent company submitted the e-mail of Outage Excellence Leader Carruth, an Incident Report regarding petitioner's supposed failure to sufficiently communicate with the crane operator, and the Termination Letter signed by HR Manager Sargeant. The Court of Appeals considered these documents sufficient to hold that petitioner was dismissed for cause. We disagree.

4. ID.; ID.; ID.; THE ABSENCE OF BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS IN EFFECTING THE EMPLOYEE'S DISMISSAL RENDERS IT ILLEGAL. — As for procedural due process, all three (3) tribunals below were unanimous in declaring that private respondents did not comply with the twin-notice rule. Private respondents did not send a written notice to petitioner informing him of his alleged infractions, nor was there an investigation where petitioner could have been given the chance to explain his side. [T]he absence of both substantive and procedural due process in effecting petitioner's dismissal renders it illegal.

5. ID.; ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES, OR *IN LIEU* THEREOF, SEPARATION PAY, AND TO FULL BACKWAGES. — [A]n illegally dismissed employee is ordinarily entitled to: (a) reinstatement without loss of seniority rights and other privileges, or in lieu thereof, separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of the employee's illegal dismissal up to the finality of the judgment; and (b) full backwages inclusive of allowances and other benefits or their monetary equivalent computed from the time compensation was not paid to the time of his actual reinstatement. As for reinstatement, petitioner has not sought the same way back in the proceedings before the labor arbiter and up until here. x x x Consequently, petitioner is entitled to backwages of one (1) month for every year of service from the time of his illegal dismissal up to finality of this Decision.

6. ID.; ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO RECEIVE NOT THE AMOUNT STIPULATED IN HIS COMPLETED OVERSEAS CONTRACT BUT THE

MONTHLY RETAINER OR WAITING FEE IN THE PHILIPPINES, AS THE BASE AMOUNT FOR THE COMPUTATION OF HIS BACKWAGES. — As regard the amount of petitioner's backwages, the Court agrees with the labor arbiter that petitioner's monthly retainer/waiting fee of Php18,000.00 and not his monthly salary in Ghana (USD900.00 per month) should be used in the computation. ***Philippine National Construction Corporation (PNCC) v. NLRC, et al.*** instructs x x x. **When private respondent prayed for reinstatement, *he meant reinstatement* to his position as a regular member of petitioner's work pool. If private respondent were given local assignments after his stint abroad, he would have received the local wage. This is "loss" which backwages aim to restore.** x x x. Petitioner here was a regular member of private respondents' work pool. He was assigned in Ghana only for a specific period, *i.e.*, January 2012 to March 2012. On March 3, 2012, he returned to the Philippines. Thus, he had already completed his contract in Ghana when Granite Services dismissed him from work. As in ***PNCC***, petitioner already received all the benefits due him under the completed and concluded overseas contract. He returned to the Philippines not as a worker from Ghana but as a member of the regular work pool of Granite Services. As such, he is entitled to receive not the amount stipulated in his Ghana contract but the monthly retainer/waiting fee of ₱18,000.00. Consequently, the same should be the base amount for the computation of his backwages. But petitioner argues that his salary in Ghana should be the basis for the computation of his backwages because he had not actually completed yet his overseas contract. He claims that private respondents prematurely pulled him out from Ghana in the guise of another overseas deployment. Aside from this bare allegation, however, no evidence was adduced to prove that he was actually pulled out from Ghana in the guise of another overseas deployment. In fact, Labor Arbiter Dolosa and the NLRC found that petitioner had already finished his contract in Ghana. This factual finding is binding upon us since even the Court of Appeals did not deviate therefrom. Verily, in accordance with the ruling in ***PNCC***, petitioner's monthly retainer or waiting fee in the Philippines should be the basis for the computation of his backwages.

7. ID.; ID.; ID.; A DISMISSED EMPLOYEE IS ENTITLED TO MORAL DAMAGES WHEN THE DISMISSAL IS ATTENDED BY BAD FAITH OR FRAUD OR CONSTITUTES AN ACT OPPRESSIVE

TO LABOR, OR IS DONE IN A MANNER CONTRARY TO GOOD MORALS, GOOD CUSTOMS OR PUBLIC POLICY; EXEMPLARY DAMAGES IS AWARDED IF DISMISSAL IS EFFECTED IN A WANTON, OPPRESSIVE OR MALEVOLENT MANNER; NOT PRESENT. — On the award of damages, ***Leus v. St. Scholastica's College Westgrove*** bears the ground rules: x x x A dismissed employee is entitled to **moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner**. Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a **dishonest purpose** or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud. **It must be noted that the burden of proving bad faith rests on the one alleging it** since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. *Allegations of bad faith and fraud must be proved by clear and convincing evidence*. x x x. However, the petitioner is entitled to **attorney's fees** in the amount of **10% of the total monetary award** pursuant to Article 111 of the Labor Code. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. As in ***Leus***, petitioner failed to show the requisite elements for the award of damages here. He failed to substantiate that private respondents acted in bad faith, or that his dismissal constitutes an act oppressive to labor, or that his dismissal was done in a manner contrary to good morals, good customs or public policy, or that his dismissal was done in wanton, oppressive, or malevolent manner.

8. **ID.; ID.; ID.; 10% ATTORNEY'S FEES AND SIX PERCENT (6%) LEGAL INTEREST ON ALL MONETARY AWARDS, GRANTED.** — Following both statutory and case law, petitioner should be paid attorney's fees equivalent to ten percent (10%) of the total monetary award. This is because he was forced to litigate and incur expenses to protect his rights and interest. Petitioner is entitled to legal interest at the rate of six percent (6%) on all the monetary awards to him per annum from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Emmanuel De Castro for petitioner.

Gatmaytan Yap Patacsil Gutierrez & Protacio for private 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 following dispositions of the Court of Appeals in CA-G.R. SP No. 130731 and CA-G.R. SP No. 134905:

1. Decision[2] dated August 18, 2017 reversing the decision of the National Labor Relations Commission (NLRC) and declaring as valid the dismissal of petitioner Domingo P. Gimalay; and

2. Resolution[3] dated May 29, 2018 denying petitioner's motion for reconsideration.

Antecedents

On February 2, 2004, private respondent Granite Services International, Inc. (Granite Services) hired petitioner Domingo P. Gimalay as mechanical technician/rigger on a project-based employment. On January 1, 2007, petitioner was hired as a regular member of the company's work pool.

Petitioner's contract with Granite Services required him to work on various projects at different locations here and abroad.

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[1] *Rollo*, pp. 3-19.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Pedro B. Corales, *rollo*, pp. 20-45.

[3] *Id.* at 47-50.

For his assignment abroad, he would receive compensation based on the stipulated rates. For the periods that he was out of assignments, he would be entitled to ₱15,000.00 as monthly retainer or waiting fee. This amount was later increased to ₱18,000.00 on January 1, 2009.[4]

On January 25, 2012, petitioner was deployed to Ghana, Africa for a two (2) month contract on a monthly salary of USD900.00.[5]

Private respondents alleged that on February 23 and 24, 2012, petitioner repeatedly violated Granite Services' safety code. First, he was allegedly spotted working on top of a compressor casing at the back of a trailer instead of working *from* the trailer. Second, petitioner allegedly did not give proper clearance to the crane operator causing a compressor casing to swing towards an employee which could have caused serious danger to the latter's life. Lastly, petitioner allegedly stood on top of a turbine without a safety harness. Outage Excellence Leader Alan Carruth saw and reported these transgressions *via* e-mail to Granite Services' Human Resource Manager, private respondent Daniel Sargeant. A few days later, Service Manager Bonifacio Quedi launched a formal investigation. Meanwhile, petitioner completed his overseas contract and returned to the Philippines on March 3, 2012.[6]

On March 5, 2012, Service Manager Quedi called petitioner to a meeting and asked him to explain why he should not be dismissed for gross misconduct. Another meeting took place between them together with HR Manager Sargeant. On March 7, 2012, a formal notice of termination was served on petitioner.[7]

Petitioner averred that on March 7, 2012, Granite Services' security guard prevented him from entering its premises. He claimed that even assuming that the alleged incidents were

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[4] *Id.* at 450-451.

[5] *Id.* at 232 and 451.

[6] *Id.* at 451.

[7] *Id.* at 451-452.

true, the penalty of dismissal was not commensurate to his so-called infractions.

The Labor Arbiter's Ruling

By Decision[8] dated August 31, 2012, Labor Arbiter Alberto B. Dolosa granted the relief prayed for and declared petitioner to have been illegally dismissed:

> **WHEREFORE**, premises considered, judgment is hereby entered declaring that the dismissal of complainant ILLEGAL for failure of the respondents to substantially prove just cause and observance of due process. Consequently, respondents GRANITE SERVICES INTERNATIONAL, INC. is hereby ordered to pay complainant DOMINGO P. GIMALAY, as of the date of this Decision, the following judgment awards:
>
> | | |
> |---|---|
> | 1. Backwages | - ₱126,000.00 |
> | 2. Separation Pay, in lieu of reinstatement | - 162,000.00 |
> | 3. 10% Attorney's Fees | - 28,800.00 |
> | TOTAL | ₱316,800.00 |
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[9]

Labor Arbiter Dolosa held that there was no concrete and credible evidence to substantially prove the incidents attributed to petitioner. There was also no concrete and credible evidence that the company launched a formal investigation affording petitioner a chance to explain his side. In any case, the infractions were for "near misses." The labor arbiter found that no actual accident happened, no one was injured, and no damage was inflicted. Hence, the labor arbiter opined that admonition or reprimand would have been the commensurate penalty, not dismissal.[10]

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[8] *Id.* at 449-460.

[9] *Id.* at 459-460.

[10] *Id.* at 455-456.

The labor arbiter, however, ruled that since petitioner had already completed his contract abroad at the time he was dismissed from his work, his backwages should be based on his monthly retainer or waiting fee of ₱18,000.00 and not on his monthly salary of USD900.00 when the alleged incidents happened.[11] Further, labor arbiter Dolosa ordered payment of separation pay in lieu of reinstatement because:

> x x x reinstatement is no longer feasible because of the existence of strained relation between the parties and the respondent's lack of intention to reinstate the complainant by their offer, by way of amicable settlement, of separation pay during the mandatory conference. Notably, the settlement through payment of separation pay failed to materialize because of the parties' disagreement as to the rate of pay to be used.[12]

Both parties appealed to the NRLC. On one hand, private respondents argued that petitioner was dismissed for cause; on the other, petitioner claimed that the basis for his backwages should be his latest monthly salary in Ghana in the amount of USD900.00. He did not anymore question the directive to pay separation benefits in lieu of reinstatement. His appeal, in fact, was only focused on the amount of separation benefits awarded him.

The NLRC's Ruling

Through its Decision[13] dated March 7, 2013, the NLRC affirmed with modification:

> **Having established the illegality of the dismissal**, We sustain the grant of full backwages computed from the date the Complaint was dismissed up (to) the finality of this Decision, on top of the separation pay computed from January 1, 2007 likewise up to the finality of this Decision.

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[11] *Id.* at 457-458.

[12] *Id.* at 457.

[13] Penned by Commissioner Numeriano D. Villena and concurred in by Presiding Commissioner Herminio V. Suelo and Commissioner Angelo Ang Palaña, *id.* at 51-61.

Both awards are based on his latest monthly salary of ₱264,867.17 per pay slip marked as Annexes "6-C" and "6-D", broken down as follows:

Salary from February 1 to 15, 2012 = ₱106,997.73 per Annex 6-C
Salary from February 16 to 28, 2012 = ₱157,869.44 per (A)nnex 6-D

Total ₱264,867.17

Simple logic made it clear that the Complainant was hired to work, not to stand-by and do nothing. He was hired to work as Rigger and Mechanical Technician abroad whose latest monthly salary paid to him on February 29, 2012 as such was, as computed above, ₱264,867.17 for the month of February, 2012 (Annexes 6-C and 6(-)D/Complainant's Position Paper) therefore it should be the basis of his backwages and separation pay. The "waiting fee or retainer fee" cannot be considered as his monthly salary as Rigger and Mechanical Technician because during the waiting period, he was not doing the work for which he was being employed.

Forced to litigate to protect his rights, the Complainant is entitled to an award of attorney's fees not exceeding 10% of the judgment award. Accordingly, the Decision is MODIFIED in that the Respondents are ordered to pay the Complainant, tentatively, the following:

1. Backwages: —
    1. Basic
    3/7/2012 (date dismissed) up to 2/7/2012 (date of this Decision)
    ₱264,867.17 x 11 months = ₱2,913,538.87
    2. 13th Month Pay: —
    ₱2,913,538.87/12 = ₱242,794.906
    3. Service Incentive Leave Pay

    $$\frac{₱264,867.17}{26}$$

    = ₱10,187.20 x 11/12 x 11 months
    = ₱102,720.90 (SILP)

2. Separation Pay: —

1/1/2007 up to 2/7/2012

₱264,867.17 x 6 years	= ₱1,587,403.02
TOTAL	= ₱4,846,457.70
3. Attorney's fees of 10%	= ₱484,645.77
Total Award	= ₱5,331,103.47

SO ORDERED.[14]

The NLRC agreed with the labor arbiter that there was no concrete and credible evidence to substantially prove the "near miss" incidents attributed to petitioner. There was also no proof that Outage Excellence Leader Carruth was petitioner's supervisor, and therefore, he could not be considered a competent witness. There was similarly no hard evidence to prove that a formal investigation was held and that petitioner was given the chance to explain his side. In the absence of substantial and procedural due process, petitioner was illegally dismissed.[15]

The NLRC, however, ruled that for purposes of computing the backwages, petitioner's salaries abroad must be considered. Hence, petitioner's *average monthly salary*, taking into account his retainer fee and monthly salaries abroad, should be the basis for the computation of the award of backwages.[16]

In its Resolution[17] dated May 15, 2013, the NLRC denied private respondents' motion for reconsideration.[18]

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

[15] *Id.* at 57-58.

[16] *Id.* at 57.

[17] Penned by Commissioner Numeriano D. Villena and concurred in by Presiding Commissioner Herminio V. Suelo and Commissioner Angelo Ang Palaña, *id.* at 217-220.

[18] *Id.* at 550-565.

Proceedings Before the Court of Appeals

Private respondents assailed the NLRC's Decision and Resolution *via* petition for *certiorari* before the Court of Appeals under **CA-G.R. SP No. 130731**.

Meantime, the NLRC issued an Entry of Judgment on June 25, 2013.[19] Pursuant thereto, the labor arbiter issued the Writ of Execution dated August 29, 2013. In the implementation thereof, the bank accounts and appeal bond of Granite Services were garnished. Even then, private respondents voluntarily complied with the Writ of Execution and deposited the amount of ₱5,014,303.47 constituting the judgment award less the amount covered by the appeal bond (₱316,800.00).[20] Following the release of the full amount of ₱5,014,303.47, private respondents moved to lift the notices of garnishment. Under Order dated September 30, 2013, the labor arbiter denied the motion to lift the notices of garnishment. He also directed the NLRC Cashier to release the ₱5,014,303.47 to petitioner.[21]

Petitioner then sought an *alias* writ of execution to cover his additional claim of ₱2,872,450.52. Meantime, private respondents filed second motion to lift the notice of garnishment which the labor arbiter Dolosa granted per Order dated October 21, 2013.[22] Petitioner thus filed a Petition for Extraordinary Remedy with the NLRC to annul the aforesaid order and grant his monetary award of ₱3,188,083.87.

Under Resolution dated January 28, 2014, the NLRC granted petitioner's claim but only to the extent of ₱1,359,651.45 and directed labor arbiter to issue the corresponding *Alias* Writ of Execution for collection of petitioner's remaining monetary awards.[23]

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[19] *Id.* at 24.

[20] *Id.* at 25.

[21] *Id.*

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

[23] *Id.* at 26-27.

In its subsequent Order dated February 25, 2014, the NLRC denied private respondents' motion for reconsideration.[24]

Private respondents, too, went back to the Court of Appeals *via* **CA-G.R. SP No. 134905** to question the NLRC Resolution dated January 28, 2014 granting petitioner's claim and Order dated February 25, 2014 denying their motion for reconsideration. This petition was consolidated with **CA-G.R. SP No. 130731**.

Proceedings Before the Court of Appeals

CA-G.R. SP No. 130731

Private respondents argued that petitioner was validly dismissed for serious misconduct and willful disobedience of company safety rules. They claimed that petitioner himself did not deny the incidents.

In the alternative, private respondents claimed that, if at all, petitioner was entitled to his additional money claims, the NLRC should have pegged it at ₱18,000.00, petitioner's monthly retainer/waiting fee. It was the amount he was receiving as salary when he got terminated. The stipulated salary for his overseas work in Ghana had become *functus oficio* because it was already a terminated and completed contract.[25]

CA-G.R. SP No. 134905

Private respondents claimed that the NLRC should not have entertained petitioner's Petition for Extraordinary Remedy because Section 15, Rule XII of the 2011 NLRC Rules of Procedure expressly stated that no appeal from the order or resolution issued by the labor arbiter during the execution proceedings shall be allowed or acted upon by the NLRC. They also stressed that petitioner was no longer entitled to any additional award due to the full satisfaction of the writ of execution.[26]

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[24] *Id.*

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

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

The Court of Appeals' Ruling

In its assailed Decision[27] dated August 18, 2017, the Court of Appeals reversed the NLRC rulings:

> **WHEREFORE**, premises considered, the twin Petitions are GRANTED.
>
> Accordingly, the assailed Decision of the NLRC on March 7, 2013 and Resolution on January 28, 2014 are hereby REVERSED. Necessarily, private respondent Domingo Gimalay is hereby ordered to return to petitioners whatever amount he received pursuant to the Writ of Execution dated August 29, 2013 and the Updated Writ of Execution issued pursuant to the Order of the NLRC dated March 10, 2014, in conformity with Section 14, Rule XI of the 2011 NLRC Rules of Procedure. Nevertheless, petitioner-company is hereby ordered to pay private respondent nominal damages in the amount of ₱30,000.00 on account of its failure to observe procedural due process.
>
> **SO ORDERED.**[28]

The Court of Appeals held that petitioner was validly dismissed on ground of gross misconduct for flagrantly disregarding safety processes and procedures which endangered not only himself but others. Petitioner's infractions were personally witnessed by Outage Excellence Leader Carruth.[29] By signing Granite Services' Personal Safety Pledge, petitioner acknowledged that his employment might be terminated for grave misconduct or willful neglect in the discharge of duties.[30]

The Court of Appeals nonetheless agreed with both the labor arbiter and the NLRC that petitioner was denied due process. It held that private respondents failed to comply with the twin requirements of notice and hearing. It noted that there was no

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[27] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Pedro B. Corales, *id.* at 20-45.

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

[29] *Id.* at 37-39.

[30] *Id.* at 41.

written notice of infraction served on petitioner nor proof of the alleged meeting where petitioner was supposed to have been afforded the opportunity to explain himself. For these deficiencies, entitled petitioner to nominal damages of ₱30,000.00.[31]

The Court of Appeals also held that petitioner is not entitled to the relief of extraordinary remedy and the issuance of an *alias* writ of execution. This flowed from his non-entitlement to backwages, separation pay, attorney's fees, and additional compensation and benefits.[32]

Under its assailed Resolution[33] dated May 29, 2018, the Court of Appeals denied petitioner's motion for reconsideration.

The Present Petition

Petitioner now faults the Court of Appeals for finding he was validly dismissed. He reiterates the factual findings of the labor arbiter and the NLRC that he did not violate Granite Services' safety procedures. He cites these tribunals' conclusion that there is no concrete and credible evidence to substantiate the alleged infractions charged against him.

Petitioner further asserts that it was in fact Granite Services which provided an unsafe environment for its workers. He did not wear a harness during the third incident in question because there was no hangers or knobs to which a harness could be hooked. But even assuming his act was a violation of the safety code, this did not actually result in any damage to life or property, aside from the fact that it was only his first offense in his eight (8) years of service. This infraction does not call for the harshest penalty of dismissal from service.[34]

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[31] *Id.* at 41-43.

[32] *Id.* at 43.

[33] *Id.* at 47-50.

[34] *Id.* at 12-13 and 16.

More, petitioner avers that private respondents misled the Court of Appeals and the labor tribunals when they insisted that his employment contract in Ghana had been completed. He was, in fact, repatriated to the Philippines to pave the way for his next deployment to another country. His repatriation, nonetheless, was just the start of the grand scheme to dismiss him.[35]

In their Comment[36] dated February 8, 2019, private respondents seek to dismiss the petition on procedural and substantial grounds.

On procedural grounds, private respondents stress that the petition was filed one (1) day late. Petitioner received the copy of the Court of Appeal's Resolution denying his motion for reconsideration on June 20, 2018, thus, giving him only until July 5, 2018 to file the present petition. Since the petition was filed only on July 6, 2018, or one (1) day late, the dispositions of the Court of Appeals had therefore become final and executory. Hence, this Court no longer has jurisdiction to review these rulings.

Private respondents bewail petitioner's availment of Rule 65 instead of Rule 45 of the Revised Rules of Court. They too observe that the petition was not verified. Neither was it accompanied by certified true copies of the assailed Court of Appeals' rulings and pertinent pleadings.[37]

In any event, private respondents assert that sufficient evidence was presented to substantiate the charge of serious misconduct against petitioner. They cite the e-mail of Outage Excellence Leader Carruth detailing petitioner's infractions of Granite Services' safety code. There was also an incident report which documented petitioner's misconduct. Petitioner never contested the authenticity and accuracy of the contents of these documents.[38] Also, petitioner willfully and deliberately disregarded

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

[36] *Id.* at 112-162.

[37] *Id.* at 116-131.

[38] *Id.* at 132-136.

the safety procedures laid out by Granite Services: (a) he was aware that the compressor casings could not support substantial weight and could not be used as a platform; (b) he failed to give the proper signal to the crane operator which almost caused injury to his co-worker; and (c) he willfully did not wear a safety harness while working on top of a turbine though there was a line in place for a harness, which was the same line used by his co-workers to attach their own safety harnesses.[39]

Private respondents conclude that petitioner's repeated violations of safety precautions showed his indifference to and disregard of Granite Services' policies and as a result, he must be dismissed from work.[40]

Issues

1. Should the petition be dismissed for its alleged procedural lapses?

2. Did the Court of Appeals err in holding that petitioner was dismissed for a valid cause?

Ruling

To begin with, the Court is not a trier of facts. It is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that findings of fact of the Court of Appeals are conclusive and binding on this Court. The Court, nonetheless, may proceed to probe and resolve factual issues presented herein because the findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC.[41]

Procedural Issues

Private respondents assert that the assailed Court of Appeals' assailed issuances had already become final and executory because the present petition was filed one (1) day late.

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[39] *Id.* at 137-138.

[40] *Id.* at 144.

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

This is inaccurate.

The petition was actually filed on time. Petitioner received the assailed Court of Appeals Resolution denying his motion for reconsideration on June 21, 2018,[42] and not June 20, 2018 as private respondents erroneously claim. Petitioner, therefore, had fifteen (15) days from June 21, 2018 or until July 6, 2018 within which to file the present petition. As private respondents correctly claim, the petition was filed on July 6, 2018, well within the 15-day reglementary period.

Another. Contrary to private respondents' claim, the petition was accompanied by a certified true copy of the challenged Decision[43] and an original copy of the assailed Resolution.[44]

As for the verification and certification of non-forum shopping, petitioner had already submitted to the Court a notarized verification and certification of non-forum shopping[45] as noted in our Resolution dated November 12, 2018.[46]

With regard to the correctness of the remedy availed of, petitioner has labeled this petition as a "Petition/Appeal by *Certiorari*," albeit he cites grave abuse of discretion amounting to lack or excess of jurisdiction. There is nothing wrong with this for so long as it was initiated within fifteen (15) days from receipt of the assailed resolution pursuant to Rule 45.

Substantial Issue

Both the labor arbiter and the NLRC held that private respondents failed to substantiate the charge of serious or gross misconduct against petitioner. The Court of Appeals, on the other hand, held that private respondents were able to prove the alleged infractions.

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[42] *Rollo*, p. 3.

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

[44] *Id.* at 47-50.

[45] *Id.* at 87.

[46] *Id.* at 110-111.

In ***Distribution & Control Products, Inc. v. Santos***,[47] the Court reiterated that in termination cases, the burden of proof rests upon the **employer** to show that the dismissal is for just and valid cause. Failure to do so necessarily means that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.

To prove petitioner's alleged violations of the safety procedures, respondent company submitted the e-mail of Outage Excellence Leader Carruth,[48] an Incident Report[49] regarding petitioner's supposed failure to sufficiently communicate with the crane operator, and the Termination Letter[50] signed by HR Manager Sargeant. The Court of Appeals considered these documents sufficient to hold that petitioner was dismissed for cause.

We disagree.

Petitioner was charged with three (3) violations of safety procedures, *viz.*:

(a) He stood on top of the compressor casing on the back of a trailer, when he should have been working *from* the trailer;

(b) He was responsible for unclear communication between him and the crane operator which caused a casing to swing towards another employee; and

(c) He stood on top of a turbine with no safety harness.

As for the *first infraction*, no evidence other than Outage Excellence Leader Carruth's e-mail and the termination letter

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[47] 813 Phil. 423, 433 (2017), citing *Agusan Del Norte Electric Cooperative, Inc., et al. v. Cagampang, et al.*, 589 Phil. 306, 313 (2008).

[48] *Rollo*, p. 233.

[49] *Id.* at 585-587.

[50] *Id.* at 234-235.

was presented to show that petitioner indeed stood on top of the compressor. Would a reasonably prudent person accept these documents as sufficient to prove the charge and on the basis thereof dismiss the employee from work? Certainly not. These pieces of evidence are self-serving documents which private respondents or any other person could have easily drafted. As it was not impossible for private respondents to access other witnesses, they should have secured the statements of other workers on site to corroborate their claim.

With regard to the *second infraction*, private respondents aver that petitioner failed to clearly communicate with the crane operator before signaling for the release of the casing. The Incident Report itself, however, states that he blew his whistle and gave the signal to the crane operator only after he "*finished checking casing alignment/center of gravity*." It shows that petitioner took the necessary precautions before he gave the signal to the crane operator. When the crane operator hoisted up the casing, the casing swung to the left and narrowly missed another worker.

True, an accident could have occurred, but this does not necessarily mean that petitioner failed to take the proper precautions or that the incident was due to his fault. A lot of factors could have caused the casing to swerve to the left. It could have been caused by the crane operator. It could have also been caused by the mechanics of the crane itself. It was also possible that the employee who was nearly hit by the casing was not there when petitioner gave the signal. In fine, there are several circumstances which could have led to the incident. Private respondents did not investigate these factors; neither were they able to rule them out, like any reasonably prudent person would have done. Without any investigation to support private respondents' claim, it cannot be reasonably concluded that the incident was due solely to petitioner's negligence.

As for the *third and last incident*, petitioner repeatedly avers that there was no available line to which the safety harness could be attached; private respondents insists such available line was in place.

Once again, private respondents did not present any evidence to support this allegation. They could have produced photos showing that a line was available for the harness which petitioner could have used at that time. They could have easily produced these photos, but they failed to do so. Too, they could have secured the statements of other workers on site who were allegedly able to use the line for their own safety harness. But still, private respondents failed on this score. Instead, they relied solely on the self-serving, nay, unverified report of Outage Excellence Leader Carruth.

Verily, therefore, the Court of Appeals erred when it ruled that the charges against petitioner for violation of company safety procedures were substantiated by concrete and substantial evidence.

As for procedural due process, all three (3) tribunals below were unanimous in declaring that private respondents did not comply with the twin-notice rule. Private respondents did not send a written notice to petitioner informing him of his alleged infractions, nor was there an investigation where petitioner could have been given the chance to explain his side.

All told, the absence of both substantive and procedural due process in effecting petitioner's dismissal renders it illegal.

On the consequences of the illegality of petitioner's dismissal, ***Noblado v. Alfonso***[51] held:

> In fine, respondent's lack of just cause and non-compliance with the procedural requisites in terminating petitioners' employment taints the latter's dismissal with illegality.
>
> **Where the dismissal was without just or authorized cause and there was no due process**, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to **reinstatement without loss of seniority rights** and other privileges and **full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the**

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[51] 773 Phil. 271, 286 (2015).

time of actual reinstatement. However, **if reinstatement is no longer possible, the backwages shall be computed from the time of the employee's illegal termination up to the finality of the decision**.

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In addition to payment of backwages, petitioners are also entitled to **separation pay** equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of their illegal dismissal up to the finality of this judgment, as an alternative to reinstatement.

Also, in accordance with prevailing jurisprudence, **legal interest** shall be imposed on the monetary awards herein granted at the rate of six percent (6%) per annum from the finality of this Decision until fully paid. (Emphasis supplied)

Thus, an illegally dismissed employee is ordinarily entitled to: (a) reinstatement without loss of seniority rights and other privileges, or in lieu thereof, separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of the employee's illegal dismissal up to the finality of the judgment; and (b) full backwages inclusive of allowances and other benefits or their monetary equivalent computed from the time compensation was not paid to the time of his actual reinstatement.

As for reinstatement, petitioner has not sought the same way back in the proceedings before the labor arbiter and up until here. On this score, we reckon with the pronouncement of the labor arbiter:

x x x this Labor Arbitration Court finds that reinstatement is no longer feasible because of the existence of strained relation between the parties and the respondent's lack of intention to reinstate the complainant by their offer, by way of amicable settlement, of separation pay during the mandatory conference. Notably, the settlement through payment of separation pay failed to materialize because of the parties' disagreement as to the rate of pay to be used.[52]

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[52] *Rollo*, p. 457.

Consequently, petitioner is entitled to backwages of one (1) month for every year of service from the time of his illegal dismissal up to finality of this Decision.

As regard the amount of petitioner's backwages, the Court agrees with the labor arbiter that petitioner's monthly retainer/ waiting fee of Php18,000.00 and not his monthly salary in Ghana (USD900.00 per month) should be used in the computation.

Philippine National Construction Corporation (PNCC) v. NLRC, et al.,[53] instructs:

> An illegally dismissed employee is usually reinstated to his former position without loss of seniority rights and paid backwages from the time he was separated from work up to his actual reinstatement. The purpose of reinstatement is to restore the employee to the state or condition from which he has been removed or separated. Backwages aim to replenish the income that was lost by reason of the unlawful dismissal.
>
> In the case at bar, we hold that the NLRC gravely abused its discretion in computing private respondent's backwages based on his salary abroad. The records show that ***private respondent was not illegally dismissed while working in the Middle East project*** **of the petitioner. His overseas assignment was a specific project and for a definite period**. Upon the completion of the project in 1984, he received all the benefits due him under the overseas contract. He then voluntarily returned to the Philippines to await his deployment in the local projects of the petitioner. Clearly, he was not illegally dismissed while working in the Middle East.
>
> **When private respondent prayed for reinstatement, he meant reinstatement to his position as a regular member of petitioner's work pool. If private respondent were given local assignments after his stint abroad, he would have received the local wage. This is the "loss" which backwages aim to restore.**
>
> In making this ruling, we take into account the principle that salary scales reflect the standard of living prevailing in the country and the purchasing power of the domestic currency. Private respondent received a higher salary rate for his work in the Middle East because

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[53] 349 Phil. 986, 992 (1998).

the cost of living and the standard of living in that country are different from those in the Philippines. (Emphasis supplied)

Petitioner here was a regular member of private respondents' work pool. He was assigned in Ghana only for a specific period, *i.e.*, January 2012 to March 2012. On March 3, 2012, he returned to the Philippines. Thus, he had already completed his contract in Ghana when Granite Services dismissed him from work.

As in ***PNCC***, petitioner already received all the benefits due him under the completed and concluded overseas contract. He returned to the Philippines not as a worker from Ghana but as a member of the regular work pool of Granite Services. As such, he is entitled to receive not the amount stipulated in his Ghana contract but the monthly retainer/waiting fee of ₱18,000.00. Consequently, the same should be the base amount for the computation of his backwages.

But petitioner argues that his salary in Ghana should be the basis for the computation of his backwages because he had not actually completed yet his overseas contract. He claims that private respondents prematurely pulled him out from Ghana in the guise of another overseas deployment.

Aside from this bare allegation, however, no evidence was adduced to prove that he was actually pulled out from Ghana in the guise of another overseas deployment. In fact, Labor Arbiter Dolosa and the NLRC found that petitioner had already finished his contract in Ghana. This factual finding is binding upon us since even the Court of Appeals did not deviate therefrom.

Verily, in accordance with the ruling in ***PNCC***, petitioner's monthly retainer or waiting fee in the Philippines should be the basis for the computation of his backwages.

On the award of damages, ***Leus v. St. Scholastica's College Westgrove***[54] bears the ground rules:

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[54] 752 Phil. 186, 218-220 (2015).

x x x A dismissed employee is entitled to **moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner**.

Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a **dishonest purpose** or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.

It must be noted that the burden of proving bad faith rests on the one alleging it since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. *Allegations of bad faith and fraud must be proved by clear and convincing evidence*.

The records of this case are bereft of any clear and convincing evidence showing that the respondents acted in bad faith or in a wanton or fraudulent manner in dismissing the petitioner. That the petitioner was illegally dismissed is insufficient to prove bad faith. A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without cause.

However, the petitioner is entitled to **attorney's fees** in the amount of **10% of the total monetary award** pursuant to Article 111 of the Labor Code. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. (Emphasis supplied)

As in ***Leus***, petitioner failed to show the requisite elements for the award of damages here. He failed to substantiate that private respondents acted in bad faith, or that his dismissal constitutes an act oppressive to labor, or that his dismissal was done in a manner contrary to good morals, good customs or public policy, or that his dismissal was done in wanton, oppressive, or malevolent manner.

Following both statutory and case law, petitioner should be paid attorney's fees equivalent to ten percent (10%) of the total monetary award. This is because he was forced to litigate and incur expenses to protect his rights and interest.

Petitioner is entitled to legal interest at the rate of six percent (6%) on all the monetary awards to him per annum from the finality of this Decision until fully paid.[55]

Notably, however, the NLRC's judgment, which fixed a higher amount of backwages had already been executed. The only question is whether there was a full or partial satisfaction of the correct amount. On this score, there is a need for the labor arbiter to recompute the executed amount *vis-à-vis* the judgment amount. Whatever amount may still be deficient or paid in excess should be satisfied by or refunded to private respondents, as the case may be.

One final point. There is no proof that private respondents Joseph Medina, Daniel Sargeant, and April Anne Junio acted with malice or bad faith. They cannot be held solidarily liable with Granite Services.[56] This is especially true for private respondent April Anne Junio who was not even impleaded as party respondent before the labor tribunals.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated August 18, 2017 and Resolution dated May 29, 2018 of the Court of Appeals in CA-G.R. SP No. 130731 and CA-G.R. SP No. 134905 are **REVERSED** and **SET ASIDE**. Private respondent Granite Services International, Inc. is ordered to **PAY** petitioner Domingo P. Gimalay the following:

1) Full backwages computed at Php18,000.00 per month, inclusive of allowances and other benefits, including but not limited to service incentive leave pay and 13th month pay, from the time of his dismissal on March 7, 2012 up to the finality of this Decision;

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[55] *Noblado, et al. v. Alfonso, supra* note 51, at 287.

[56] See *Dimson v. Chua*, 801 Phil. 778, 792 (2016).

2) Separation pay equivalent to one (1) month pay of Php18,000.00 for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, computed from the date he got hired as a regular member of the company's work pool on January 1, 2007 up to the finality of this Decision; and

3) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

These monetary awards shall earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

The case is **REMANDED** to Labor Arbiter Alberto B. Dolosa for the determination of whether the total monetary award has already been fully or partially satisfied. Any unpaid amount should be further satisfied or any excess payment returned to Granite Services International, Inc.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 240229. June 17, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **NIEL RAYMOND A. NOCIDO,** *accused-appellant*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDING PRINCIPLES. — The Supreme Court is guided by jurisprudence in addressing the issue of credibility of witnesses. *First*, **the credibility of witnesses is best addressed by the trial**

court, considering that it is in a unique position to directly observe the demeanor of a witness on the stand. Since the trial judge is in the best position to determine the truthfulness of witnesses, the judge's evaluation of the witnesses' testimonies is given the highest respect, on appeal. *Second*, **in the absence of substantial reason to justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's finding,** particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been disregarded. *Third*, **the rule is even more stringently applied if the CA concurred with the RTC**.

2. **ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCY ON TRIVIAL MATTER. —** The alleged inconsistency [as to who were holding AAA's arms when she was pulled into a vacant house] is a trivial matter which cannot be a basis for acquittal. This is because the inconsistency does not hinge on any essential element of the crime of rape or lascivious conduct. The fact is that, AAA was pulled and led by appellant, together with the other two co-accused, in a vacant house, where AAA was raped and sexually abused. For as long as the testimonies of AAA are coherent and intrinsically believable, the minor inconsistencies in her narration of facts do not detract from their essential credibility. Rather, the minor inconsistencies enhance credibility as they manifest spontaneity and lack of scheming.

3. **CRIMINAL LAW; RAPE; NOT NEGATED BY FAILURE OF THE VICTIM TO SHOUT AND RESIST. —** The failure of AAA to shout and resist while the three accused committed rape and acts of lasciviousness, is not tantamount to her consent. Neither tenacious resistance nor a determined or a persistent physical struggle on the part the victim of rape and/or lascivious conduct, is necessary. Moreover, failure to cry for help or attempt to escape during the rape and/or sexual abuse, is not fatal to the charge of rape or lascivious conduct. It does not make voluntary the victim's submission to the lusts of the perpetrators. For as long as threats and intimidation are employed, and the victim submits herself to her perpetrators because of fear, her physical resistance need not be established in the said crimes. Here, AAA did not scream or offered tenacious resistance because of the threat and intimidation employed against her. AAA

testified that whenever she struggled to get free from the three accused, the latter beat her up, and when she was about to scream for help, Bagon covered her mouth and threatened to kill her.

4. ID.; ID.; NOT NEGATED BY THE ABSENCE OF HYMENAL LACERATION. — On the issue that the results of the medical examination conducted on AAA did not show hymenal laceration, this did not negate the commission of rape. The element of rape does not include hymenal laceration. Jurisprudence has established that, "mere touching, no matter how slight of the *labia* or lips of the female organ by the male genital, even without rupture or laceration of the hymen, is sufficient to consummate rape." In the prosecution of rape, the foremost consideration is the victim's testimony, and not the findings of the medico-legal officer. A medico-legal report is not indispensable in rape cases, as it is merely corroborative. The sole testimony of the victim if found to be credible, is sufficient to convict a person accused of rape.

5. ID.; ID.; PRINCIPLES LAID DOWN TO DETERMINE WHETHER RAPE CHARGE AGAINST A TWELVE (12)-YEAR-OLD VICTIM SHOULD BE PROSECUTED UNDER THE REVISED PENAL CODE (RPC) OR THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (RA 7610). — The Court takes into consideration that AAA was twelve (12) years old at the time of the commission of the crimes; and that when the sexual acts and sexual intercourse were committed, these were done without her consent and by force, threat and intimidation. In *People v. Salvador Tulagan*, the Court clarified the principles laid down in jurisprudence, with respect to the need to examine the evidence of the prosecution to determine whether the person accused of rape should be prosecuted under the Revised Penal Code (*RPC*) or Republic Act No. 7610, or the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (R.A. 7610)*, to wit: *First*, if sexual intercourse is committed with an offended party who is a child less than 12 years old or is demented, whether or not exploited in prostitution, it is always a crime of statutory rape; more so when the child is below 7 years old, in which case the crime is always qualified rape. *Second*, **when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge**

through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A (1) (a) of the RPC. In contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed "exploited in prostitution or other sexual abuse," the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," which deemed the child as one "exploited in prostitution or other sexual abuse." Applying these principles to the case at bar, the Court affirms the ruling of the CA in convicting Nocido of rape under Article 266-A(1)(a) of the RPC. Under Article 266-A(1)(a), rape through sexual intercourse is committed: (1) by a man; (2) who shall have carnal knowledge of a woman; (3) through force, threat or intimidation. On the other hand, the proper designation of the crime of rape by sexual assault committed against a victim who is twelve (12) years old or below eighteen (18) or eighteen (18) under special circumstances, is lascivious conduct under Section 5(b) of R.A. 7610, to wit: x x x x (b) Those **who commit the act of** sexual intercourse or **lascivious conduct with a child exploited in prostitution or subject to other sexual abuse;** Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period. The penalty for Lascivious conduct under Section 5(b) of R.A. 7610 is *reclusion temporal* medium to *reclusion perpetua*, which is higher than the prescribed penalty of *prision mayor* to *reclusion temporal* as provided under Article 266-B of the RPC, for the crime of rape by sexual assault committed by two (2) or more persons. This is consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; FAILURE TO DESIGNATE THE OFFENSE BY STATUTE; THE ACTUAL FACTS RECITED IN THE INFORMATION ARE

CONTROLLING AND NOT THE TITLE OF THE INFORMATION. — It is emphasized that the failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged. The actual facts recited in the information are controlling and not the title of the information or the designation of the offense. Nevertheless, the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly. Here, the Court finds it proper to convict the accused for Lascivious Conduct under Section 5(b) of R.A. 7610, even if the designation of the crime alleged in the Information is Rape by Sexual Assault.

7. **CRIMINAL LAW; CONSPIRACY; IT EXISTS WHEN THE PERSONS ACCUSED OF A CRIME DEMONSTRATE A COMMON DESIGN TOWARDS THE ACCOMPLISHMENT OF THE SAME UNLAWFUL PURPOSE. —** The prosecution has proven beyond reasonable doubt that Nocido, together with his co-accused Bagon and Ventura, sexually abused and raped AAA. AAA's testimonies established that Nocido personally committed lascivious conduct under Section 5(b) of R.A. 7610, and rape through sexual intercourse under Article 266-A(1) of the RPC, in conspiracy with Bagon and Ventura. x x x Conspiracy exists when the persons accused of a crime demonstrate a common design towards the accomplishment of the same unlawful purpose. The Court finds Nocido guilty as a co-conspirator in the crime of rape through sexual intercourse committed by others. Likewise, he is also guilty of lascivious conduct under Section 5(b) of R.A. 7610, that he personally committed.

8. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; UNLESS THE AGGRAVATING CIRCUMSTANCE OF IGNOMINY IS ALLEGED IN THE INFORMATION, IT IS NOT APPRECIATED FOR PURPOSES OF IMPOSING A HEAVIER PENALTY; WHEN ESTABLISHED, HOWEVER, IT CAN STILL BE CONSIDERED FOR AWARDING EXEMPLARY DAMAGES. —** Under Rule 110 of the Revised Rules of Criminal Procedure, qualifying or generic circumstances will not be appreciated by the Court unless alleged

in the information. It is in order not to trample on the constitutional right of an accused to be informed of the nature of the alleged offense that he committed. In this case, the aggravating circumstance of ignominy was proved before the RTC. Since it was not alleged in the Information, it cannot be appreciated for purposes of imposing a heavier penalty. However, it can still be considered for purposes of awarding exemplary damages.

9. ID.; RAPE THROUGH SEXUAL INTERCOURSE UNDER ARTICLE 266(A) IN RELATION TO ARTICLE 266-B; PENALTY AND DAMAGES. — In Criminal Case No. 09-1772, Rape through Sexual Intercourse, under Article 266(A), in relation to Article 266-B, was committed by two or more persons, the penalty of which shall be *reclusion perpetua* to death. There being no aggravating or mitigating circumstances attendant in the commission of the crime, the lesser penalty of *reclusion perpetua* shall be imposed. x x x Jurisprudence has settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. The award of exemplary damages is also proper to set a public example and to protect the young from sexual abuse. For the crime of Rape under Article 266-A(1), in relation to Article 266-B of the RPC, where it was committed by two (2) or more persons, the penalty to be imposed is *reclusion perpetua*, with civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00; in accordance with *People v. Jugueta*. x x x In consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

10. ID.; LASCIVIOUS CONDUCT UNDER SECTION 5(B) OF RA 7610; PENALTY AND DAMAGES. — In Criminal Case No. 09-1773, Lascivious Conduct under Section 5(b) of R.A. 7610 has a penalty of *reclusion temporal* medium to *reclusion perpetua*. The Indeterminate Sentence Law is applicable because *reclusion perpetua* is merely used as the maximum period consisting of a range starting from *reclusion temporal* medium, a divisible penalty. Further, since none of the circumstances under Section 31 of R.A. 7610 are attendant, and applying the Indeterminate Sentence Law, the minimum terms

shall be taken from the penalty next lower in degree which is *prision mayor* medium to *reclusion temporal* minimum, and the maximum term to be taken from *reclusion temporal* maximum, there being no other modifying circumstances attending the commission of the crime. x x x [As to damages] in the crime of Lascivious Conduct under Section 5 (b) of R.A. 7610, if the penalty imposed is within the range of *reclusion temporal* medium, then the award of civil indemnity of ₱50,000.00, moral damages of ₱50,000.00 and exemplary damages of ₱50,000.00, are proper; following the ruling in *People v. Tulagan*. In consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

CAGUIOA, *J.*, *concurring and dissenting opinion*:

CRIMINAL LAW; RA 7610 AND THE REVISED PENAL CODE (RPC), AS AMENDED BY RA 8353, HAVE DIFFERENT SPHERES OF APPLICATION. — I concur with the *ponencia* insofar as it affirms the guilt of the accused-appellant Niel Raymond A. Nocido (Nocido) for the crimes he was charged with. I disagree, however, that the nomenclature of the crime should be modified from "rape by sexual assault" to "lascivious conduct under Section 5 (b), Republic Act No. 7610," and the penalty increased from "*prision mayor* to *reclusion temporal*" to "*reclusion temporal* in its medium period to *reclusion perpetua*." I reiterate and maintain my position in *People v. Tulagan* that Republic Act No. (RA) 7610 and the Revised Penal Code (RPC), as amended by RA 8353, "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors." Section 5(b) of RA 7610 applies only to the **specific** and **limited instances** where the child-victim is "exploited in prostitution or subjected to other sexual abuse" (EPSOSA). x x x In this case, the Information only alleged that the victim was a 12-year-old minor, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in sexual intercourse of lascivious conduct either for a consideration, or due to the coercion or influence of any adult. Thus, while I agree that

Nocido's guilt was proven beyond reasonable doubt, it is my view that his conviction in Criminal Case No. 09-1773 should be for Rape by Sexual Assault, defined and punished under Article 266-A(2), in relation to Article 266-B, of the RPC, as amended by RA 8353 — not Lascivious Conduct under Section 5(b), RA 7610. Accordingly, the penalty that ought to be imposed on him should be within the range of *prision correccional* to *reclusion temporal* instead of the one imposed by the *ponencia* which is within the range of *prision mayor* to *reclusion temporal*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

For consideration of the Court is the appeal of the Court of Appeals *(CA)* Decision[1] dated April 25, 2017, which affirmed with modification the Partial Decision[2] dated August 5, 2015 of the Regional Trial Court *(RTC)*, Makati City, Branch 136, finding accused-appellant Niel Raymond A. Nocido *(Nocido)* guilty of the crimes of Rape through Sexual Intercourse and Rape by Sexual Assault. The accusatory portions of the two (2) Amended Informations state:

Criminal Case No. 09-1772

On the 3rd stay of August 2009, in the [C]ity of Makati, the Philippines, accused conspiring and confederating with Paul Justin Ventura and Marianito Bagon @ Bok, whose whereabouts are still unknown, by means of force, violence and intimidation did then and

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[1] Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court), with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, concurring; *rollo*, pp. 2-22.

[2] Penned by Presiding Judge Rico Sebastian D. Liwanag; CA *rollo*, pp. 47-54.

there willfully, unlawfully and feloniously have carnal knowledge of complainant [AAA],[3] 12 years old, minor, against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 09-1773

On the 3rd day of August 2009, in the [C]ity of [redacted], the Philippines, accused conspiring and confederating with Paul Justin Ventura and Marianito Bagon @ Bok, whose whereabouts are still unknown, by means of force, violence and intimidation did then and there willfully, unlawfully, and feloniously insert his finger and penis into the anal orifice and mouth of [the] complainant [AAA], 12 years old, minor, against her will and consent.

CONTRARY TO LAW.[4]

Nocido pleaded not guilty[5] to both charges. Trial on the merits proceeded even in the absence of co-accused Marianito Bagon *(Bagon)* and Paul Justin Ventura *(Ventura)*, who are both at-large.

The facts, as established by the prosecution, and as culled from the CA Decision, are as follows:

The prosecution presented three witnesses, namely: (1) PO2 Maria Cecilia Fajardo *[PO2 Fajardo]*, (2) Police Chief Inspector Joseph Palmero, M.D. *[PCI Palmero]*; and (3) the victim AAA.

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[3] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "*An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes*"; *Republic Act No. 9262*, "*An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes*"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, 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.

[4] Records, pp. 2-6.

[5] *Id.* at 53.

PO2 Fajardo was the police investigator assigned at the Women's Desk, who interviewed AAA. Private complainant AAA narrated what transpired; and while she answered some questions, she looked tired, scared and worried. On the other hand, it was PCI Palmero who conducted a medico-legal examination on AAA on August 4, 2009 and concluded that the contusions and other injuries AAA suffered suggest sexual and/or physical abuse.

The victim, AAA, a 12-year[-]old lass. She narrated that on August 3, 2009, she and her friends attended a wake. At around 3:00 o'clock in the morning, her friends walked her home until they reached [redacted] St. While walking along [redacted] St. accused [Bagon] suddenly accosted and pointed a fan knife at her. As soon as [Bagon] got hold of her, accused-appellant Nocido and accused [Ventura] approached her. Fearing for her life, she struggled to free herself. Unfortunately, [Ventura] and [Bagon] were able to forcibly bring her to an alley that leads to a vacant house. It was accused-appellant who guided them to the secluded area.

Inside the vacant house, all of the accused simultaneously hit AAA. Accused-appellant slapped her several times while [Ventura] punched her in the stomach to stop her from further resisting. As a consequence, AAA fell down. To prevent them from further harming her, AAA pretended to have fainted. At that point, [Bagon] pinned her down. Taking advantage of the situation, [Bagon] and accused-appellant removed her clothes, while [Ventura] held a lighter to illuminate the area. [Bagon] removed AAA's shorts and panties, kissed her lips, and proceeded downwards her body to lick her vagina. Afterwards, [Ventura] lifted AAA and mounted her on top of [Bagon]. After [Bagon] inserted his finger into AAA's vagina, he pushed his penis inside AAA's vagina. While [Bagon] was mashing AAA's breasts, accused-appellant also tried to insert his penis into AAA's vagina. Accused-appellant then tried to enter (sic) his penis into AAA's anus, but failed; he used his finger instead. Thereafter, [Bagon] tried to insert his penis into the mouth of AAA, but since AAA feigned unconsciousness, he was not able to open her mouth.

Since dawn was already breaking, the three accused transferred AAA to the comfort room as someone might see her. Afterwards, they put on her jumper and gave her a t-shirt. [Bagon] carried her towards an alley. x x x. She attempted to shout for help but [Bagon] covered her mouth. [Bagon] threatened to kill her if she would tell

anybody of what just happened. Thereafter, she immediately gathered her clothes and ran away without wearing any bra. She proceeded to the house of [redacted], a friend in [redacted] Street. There, she recounted and relayed her nightmare in the hands of the felons to [redacted]'s mother. In no time, they went to the *barangay* hall to lodge a complaint against accused-appellant Nocido, accused [Bagon] and accused [Ventura]. At around 1:30 in the afternoon, AAA's father was informed by one [redacted] that his daughter was in the *barangay* hall looking for him. AAA's father immediately proceeded to the place. When he arrived thereat, his daughter told him of her horrible ordeal.[6]

For the Defense

On the other hand, Nocido raised the defense of denial, and placed the blame on his co-accused Bagon and Ventura, to wit:

> x x x According to him, on August 3, 2009, he, [Bagon], and [Ventura] borrowed a speaker and a DVD from a certain [redacted]. While they were walking along [redacted] St., they met AAA. [Bagon] and [Ventura] talked to her and were able to convince her to go to an alley that leads to a vacant house. After some time, AAA tried to leave but she was prevented by [Bagon] and [Ventura]. When she tried to escape, [Bagon] held her and pushed her to a wall causing her to fall down. Accused-appellant tried to stop [Bagon] and [Ventura] but the latter prevailed. [Ventura] then carried AAA to the vacant house. [Ventura] lit his lighter and watched [Bagon] having sexual intercourse with AAA. Thereafter, [Bagon] and [Ventura] switched places. Accused-appellant further alleged that out of fear, he was not able to leave the place and seek help; and that the door was also blocked by [Bagon] and [Ventura]. Later on, [Ventura] brought AAA outside the house, while [Bagon] threatened her not to tell the incident to anybody. Accused-appellant slightly slapped AAA's face to awaken her. When she regained consciousness, he assisted her to the nearest store. He left the place, went home and slept until 8:00 o'clock in the evening. Upon waking up, he was surprised about the presence of police officers in his house. They forcibly boarded him to a van and told him that he was being charged

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[6] *Rollo*, pp. 4-5. (Citations omitted)

with the rape of AAA. Subsequently, he was brought to the police station and incarcerated.[7]

RTC Ruling

On August 5, 2015, the RTC issued a Partial Decision, the dispositive portion of which reads:

> **WHEREFORE**, the Court renders judgment finding accused Niel Raymond A. Nocido **GUILTY** beyond reasonable doubt [of] the crime of Rape [t]hrough Sexual Intercourse in Criminal Case No. 09-1772 and Rape [by] Sexual Assault in Criminal Case No. 09-1773.
>
> In Criminal Case No. 09-1772, he is sentenced to suffer the penalty of imprisonment of *reclusion perpetua*. In Criminal Case No. 09-1773, he is sentenced to suffer the indeterminate penalty of imprisonment of six years of *prision correccional* to ten years of *prision mayor*.
>
> For each case, the Court orders him to pay the complainant the amounts of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages.
>
> No costs.
>
> Pending their apprehension, these cases shall remain **ARCHIVED** insofar as accused Bagon and Ventura are concerned.
>
> **IT IS SO ORDERED.**[8]

The RTC convicted Nocido for rape by sexual assault, which he personally committed. He was also held liable for rape through sexual intercourse committed by the other two accused. The RTC explained that Nocido's cooperation in the consummation of the rape through sexual intercourse made him a co-conspirator.

The RTC gave full weight and credit to the testimony of AAA, a minor victim. The categorical testimony of a minor victim as to how she was physically and sexually abused and raped, deserves full credit. The RTC saw for itself how traumatic it was for a minor to testify in court of the abuse done to her.

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

[8] CA *rollo*, p. 53.

With her willingness to undergo the trouble and the humiliation of a public trial, she could only have been impelled to tell the truth.

With regard to the circumstance affecting criminal liability, the RTC considered the aggravating circumstance of ignominy as attendant in this case, even if it was not alleged in the Informations. With ignominy as an aggravating circumstance, the RTC awarded ₱25,000.00 as exemplary damages.

Nocido filed his appeal with the CA. The accused-appellant, and the plaintiff-appellee filed their respective Briefs.

CA Ruling

On April 25, 2017, the CA rendered its assailed Decision affirming accused-appellant Nocido's conviction. The dispositive portion of the Decision reads:

> WHEREFORE, the instant appeal is hereby DENIED.
>
> The Decision dated August 5, 2015 of the Regional Trial Court, Branch 136, Makati City, in Criminal Case Nos. 09-1772 to 09-1773 finding accused-appellant Niel Raym[o]nd A. Nocido, guilty beyond reasonable doubt of the crimes of Rape through Sexual Intercourse and Rape [by] Sexual Assault defined under Article 266-A (1) and Article 266-A (2), respectively, of the Revised Penal Code and punishable under Republic Act No. 7659, as amended by Republic Act No. 8353, is AFFIRMED with the following MODIFICATIONS:
>
> a) In Criminal Case No. 09-1772, accused-appellant is not eligible for parole;
>
> b) In Criminal Case No. 09-1773, accused-appellant is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years of *prision correccional*[,] as minimum[,] to seventeen (17) years and four (4) months of *reclusion temporal*[,] as maximum; and
>
> c) Accused-appellant is ordered to pay the victim One Hundred Thousand Pesos (Php100,000.00) as moral damages, One Hundred Thousand Pesos (Php100,000.00) as civil indemnity, and One Hundred Thousand Pesos (Php100,000.00) as exemplary damages.

The monetary awards shall earn interest of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.[9]

The CA affirmed the conviction of Nocido. According to the CA, the credibility of AAA's testimony is not affected by minor inconsistencies.[10] The alleged inconsistencies in AAA's testimony with respect to who held her arms when she was forcibly taken at the alley, and her failure to scream despite the presence of neighbors which allegedly made her testimony contrary to human experience, are minor details which have nothing to do with the elements of the crime of rape.[11] There was nothing substantial on the records that will warrant a reversal of the assessment made by the RTC on AAA's narration of the incident.[12]

As regards the crimes of rape through sexual intercourse, and by sexual assault, all the elements of these crimes were proven beyond reasonable doubt.[13] In a clear, candid, and straightforward manner, AAA narrated to the trial court how Nocido and Bagon forcibly penetrated her vagina and anus.[14]

Further, AAA's convincing narration of facts and her positive identification of Nocido prevail over Nocido's weak defense of denial.[15] It was also established that the three accused acted in concert in raping AAA, to wit:[16]

(1) accused [Bagon] poked [the] knife at AAA's neck;
(2) accused-appellant and accused [Bagon] held her arms and dragged her to a secluded area;

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[9] *Rollo*, pp. 21-22.

[10] *Id.* at 8.

[11] *Id.* at 9.

[12] *Id.*

[13] *Id.* at 10.

[14] *Id.* at 12.

[15] *Id.*

[16] *Id.* at 17.

(3) all of the accused slapped and punched AAA to overpower her;
(4) accused-appellant and accused [Bagon] removed AAA's clothes while accused [Ventura] was holding a lighter to illuminate the place;
(5) all the accused simultaneously abused her until they were satisfied.

On the issue of the absence of proof of hymenal laceration, this does not negate the commission of rape, as the slightest penetration of the male organ within the *labia* or *pudendum* of the female organ is sufficient to convict the rapist.[17]

For the aggravating circumstance of ignominy, the CA ruled that it cannot be appreciated because it was not alleged in the Informations.[18]

Hence, this petition for review.

Issues

1. Whether the CA erred in giving due weight and credence to AAA's testimony.

2. Whether the CA erred in convicting Nocido guilty beyond reasonable doubt of the crimes of rape through sexual intercourse and rape by sexual assault under Articles 266-A (1) (A) and 266-A (2), respectively.

   a. Whether Nocido is guilty as a conspirator.

Nocido faults the CA for affirming his conviction on the basis of AAA's inconsistent and incredible testimony. According to Nocido, a closer scrutiny of AAA's testimony would show that there are discernible improbabilities that strongly militate against being accorded the full credit it was given by the CA.[19]

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[17] *Id.* at 19.

[18] *Id.*

[19] CA *rollo*, p. 36.

Aside from the improbabilities in AAA's testimony, Nocido posits that the prosecution failed to establish the element of carnal knowledge based on the remaining evidence, which is the Medico-Legal Report.[20] According to Nocido, the Medico-Legal Report belies a finding of rape through sexual intercourse or by sexual assault because PCI Palmero failed to see any laceration, or genital wound that support a finding of penetration of any blunt object.[21]

As regards being a conspirator in the crime of rape by sexual assault, Nocido interposed the defense that mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate, is not enough to establish that a person is a party to the conspiracy.[22] According to Nocido, the evidence failed to establish that his acts, and that of his co-accused's were motivated by a common purpose to commit the crime.[23]

Our Ruling

The appeal has no merit. However, there are modifications as regards the damages to be awarded in Criminal Case No. 09-1772; and the nomenclature, the penalty, and the damages to be awarded for the crime charged in Criminal Case No. 09-1773.

AAA's testimony must be given due weight and credence.

As to whether AAA's testimony should be given due weight and credence, it is important to take into consideration the *Women's Honor* doctrine. The doctrine recognizes the "well-known fact that women, especially Filipinos, would not admit

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[20] *Id.* at 39.

[21] *Id.*

[22] *Id.* at 41.

[23] *Id.*

that they have been abused unless that abuse had actually happened, [because it is] their natural instinct to protect their honor."[24]

However, as discussed in *People v. Amarela*,[25] the opinion enshrined under the *Women's Honor* doctrine borders on the fallacy of *non-sequitur*, to wit:

> While the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.[26]

Through this, the Court can evaluate the weight and credibility of a private complainant of rape without gender bias or cultural misconception.[27]

It is a settled rule that rape may be proven by the sole and uncorroborated testimony of the offended party, provided that her testimony is clear, positive, and probable.[28]

The Supreme Court is guided by jurisprudence in addressing the issue of credibility of witnesses. *First*, **the credibility of witnesses is best addressed by the trial court**, considering that it is in a unique position to directly observe the demeanor of a witness on the stand.[29] Since the trial judge is in the best position to determine the truthfulness of witnesses, the judge's evaluation of the witnesses' testimonies is given the highest

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[24] *People v. Taño*, 109 Phil. 912, 915 (1960).

[25] G.R. Nos. 225642-43, January 17, 2018.

[26] *Id.*

[27] *Id.*

[28] *People v. Barberan, et al.*, 788 Phil. 103, 109 (2016).

[29] *People v. XXX*, G.R. No. 225793, August 14, 2019.

respect, on appeal.[30] *Second*, **in the absence of substantial reason to justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's finding**, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been disregarded.[31] *Third*, **the rule is even more stringently applied if the CA concurred with the RTC**.[32]

In this case, according to accused-appellant Nocido, there were discernible improbabilities in AAA's testimony which would militate against giving full credit to AAA's testimony.

According to Nocido, the discrepancies lie in regard to AAA's testimony, as to who were holding AAA's arms when she was pulled into a vacant house. During her direct examination, she testified that Ventura and Bagon were holding her:

> Q: Will you please tell the Honorable Court how you were brought to that vacant house from that alley you were mentioning before?
> A: [Ventura] and [Bagon] were holding me sir.
>
> x x x x x x x x x
>
> Q: You mentioned that the two held you, how about the other, what did he do while the two you mentioned here [were] holding you?
> A: He was holding a speaker because he was walking ahead of us, sir.
>
> x x x x x x x x x
>
> Q: So both your hands or arms were being held by the two, [Bagon] and [Ventura] and you were pulled, correct?
> A: It was [Bagon] who was pulling me, sir.
>
> Q: How about [Ventura]? He was, just holding your hand?
> A: Yes, sir.

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[30] *Id.*

[31] *Id.*

[32] *Id.*

Q: How about Neil Raymond Nocido alias Arabo, what was his participation in transferring or in bringing you to the vacant house from there?
A: He was going ahead of us and he was the one who opened the door, sir.[33]

However, during her cross-examination AAA testified that it was Bagon and Nocido who held her arms:

Q: Nung naglalakad na kayo hawak-hawak ka ba nila?
A: Si [Bagon] po.

Q: Si [Bagon] lang ang naghahawak sa iyo?
A: At saka po si [Nocido].

Q: Silang dalawa ang naghahawak sa iyo?
A: Opo tapos nasa likod po si [Ventura].

Q: Ano ang ginagawa ni [Ventura] kung alam mo?
A: Nasa likod lang po siya sumusunod.[34]

The alleged inconsistency is a trivial matter which cannot be a basis for acquittal. This is because the inconsistency does not hinge on any essential element of the crime of rape or lascivious conduct.[35] The fact is that, AAA was pulled and led by appellant, together with the other two co-accused, in a vacant house, where AAA was raped and sexually abused.

For as long as the testimonies of AAA are coherent and intrinsically believable, the minor inconsistencies in her narration of facts do not detract from their essential credibility.[36] Rather, the minor inconsistencies enhance credibility as they manifest spontaneity and lack of scheming.[37]

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[33] TSN, July 26, 2012, pp. 4-7.

[34] TSN, September 20, 2013, pp. 22-23.

[35] *People v. XXX*, G.R. No. 229836, July 17, 2019.

[36] *People v. Camat, et al.*, 692 Phil. 55, 74 (2012).

[37] *Id.* at 74-75.

Nocido also pointed out AAA's testimony when she mentioned that during her ordeal, she neither screamed nor offered any tenacious resistance. According to Nocido, AAA did not seek help or resisted, even if she was capable of doing so:

Q: How far is the nearest neighbor of that vacant house?
A: *Dikit-dikit po ang mga bahay*.[38]

x x x x x x x x x

Q: *Pero sa itaas noon may tao*?
A: Opo.

Q: Habang ikaw ay hin[a]h[a]lay nila hindi sila nagsalita?
A: Opo.

Q: Hindi ka rin nagsalita?
A: Opo.[39]

The failure of AAA to shout and resist while the three accused committed rape and acts of lasciviousness, is not tantamount to her consent.

Neither tenacious resistance nor a determined or a persistent physical struggle on the part the victim of rape and/or lascivious conduct, is necessary.[40] Moreover, failure to cry for help or attempt to escape during the rape and/or sexual abuse, is not fatal to the charge of rape or lascivious conduct.[41] It does not make voluntary the victim's submission to the lusts of the perpetrators.[42] For as long as threats and intimidation are employed, and the victim submits herself to her perpetrators because of fear, her physical resistance need not be established in the said crimes.[43]

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[38] TSN, July 26, 2012, pp. 10-11.

[39] TSN, September 20, 2013, p. 26.

[40] *People v. Ballacillo*, 792 Phil. 404, 418 (2016).

[41] *Id.*

[42] *Id.*

[43] *People v. Joson*, 751 Phil. 450, 460 (2015).

Here, AAA did not scream or offered tenacious resistance because of the threat and intimidation employed against her. AAA testified that whenever she struggled to get free from the three accused, the latter beat her up, and when she was about to scream for help, Bagon covered her mouth and threatened to kill her, *viz.*:

Q: Tapos nung nilapitan ka nya, ano ang nangyari?
A: Tinutukan nya po ko.

Q: Tinutukan ka ng?
A: Kutsilyo po.

Q: Saan ka tinutukan?
A: Sa leeg po una.

Q: Sinabi mo una. Bakit, meron pa bang sumunod na pangyayari?
A: Meron po, sa tagiliran po.

Q: So ang ibig mo bang sabihin pagkatapos ka nyang tutukan sa leeg ay inilipat nya yung tutok nya sa iyong bewang, ano ang nangyari?
A: Pagtutok nya po sa tagiliran ko, bigla pong lumapit si [Ventura] at si [Nocido].

x x x x x x x x x

Q: So anong ginawa mo nung tinutukan ka?
A: Nanlaban po ako.

Q: Nasabi mo rin sa ilang mga testimonya mo na ikaw ay sinaktan nung tatlo. Maaari mo bang sabihin kung paano ka sinaktan at kung sino ang nanakit sayo?

A: Sinampal po ako ni [Nocido] tapos pinagsusuntok po ako ni [Bagon].

Q: So si [Nocido], pinagsasampal ka? Mga ilang beses?
A: Mga tatlo po o apat.

Q: Sino ang nagsuntok sayo?
A: Si [Bagon] po, saka si [Ventura] po.

Q: Saan ka sinuntok?
A: Sa mukha po.

Q: Pareho sila, sa mukha ka sinuntok?
A: [S]i [Ventura] po sinikmuraan po ako.[44]

x x x x x x x x x

Q: So ikaw, yung ibabaw lang ang merong kasuotan. Sabi mo rin nung mag-uumaga na nun, merong babae na dumaan sa harap ng bahay kung saan kayo naroroon, bakit hindi ka sumigaw at humingi ng tulong?
A: Sumigaw po ako nun, sabi ko po "Ate tulungan mo ko." Tapos po hinawakan po ni [Bagon] ang bunganga ko.

Q: Tapos?
A: Sabi nya po, "Subukan mong magtawag," madadamay po siya.[45]

Based on the foregoing, Nocido and the two co-accused employed force, threat, intimidation and violence against AAA, in satisfying their carnal desires.

As regards the failure of the prosecution to offer in evidence the knife Bagon used to threaten AAA, this is immaterial.

On the issue that the results of the medical examination conducted on AAA did not show hymenal laceration, this did not negate the commission of rape. The element of rape does not include hymenal laceration.[46] Jurisprudence has established that, "mere touching, no matter how slight of the *labia* or lips of the female organ by the male genital, even without rupture or laceration of the hymen, is sufficient to consummate rape."[47] In the prosecution of rape, the foremost consideration is the victim's testimony, and not the findings of the medico-legal officer.[48] A medico-legal report is not indispensable in rape cases, as it is merely corroborative.[49] The sole testimony of

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[44] TSN, June 26, 2013, pp. 3-4.

[45] *Id.* at 7.

[46] *People v. ZZZ*, G.R. No. 229862, June 19, 2019.

[47] *Id.*

[48] *Id.*

[49] *People v. YYY*, G.R. No. 224626, June 27, 2018.

the victim if found to be credible, is sufficient to convict a person accused of rape.[50]

Nocido is guilty of the crimes of Rape under Article 266-A (1), in relation to Article 266-B of the Revised Penal Code (RPC), and Lascivious Conduct under Section 5 (b) of Republic Act No. 7610, as amended.

The Court takes into consideration that AAA was twelve (12) years old at the time of the commission of the crimes; and that when the sexual acts and sexual intercourse were committed, these were done without her consent and by force, threat and intimidation.

In *People v. Salvador Tulagan*,[51] the Court clarified the principles laid down in jurisprudence, with respect to the need to examine the evidence of the prosecution to determine whether the person accused of rape should be prosecuted under the Revised Penal Code *(RPC)* or Republic Act No. 7610, or the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (R.A. 7610)*, to wit:

First, if sexual intercourse is committed with an offended party who is a child less than 12 years old or is demented, whether or not exploited in prostitution, it is always a crime of statutory rape; more so when the child is below 7 years old, in which case the crime is always qualified rape.

Second, **when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under**

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[50] *Id.*

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

Article 266-A (1) (a) of the RPC. In contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed "exploited in prostitution or other sexual abuse," the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," which deemed the child as one "exploited in prostitution or other sexual abuse."

Applying these principles to the case at bar, the Court affirms the ruling of the CA in convicting Nocido of rape under Article 266-A (1) (a) of the RPC.

Under Article 266-A (1) (a), rape through sexual intercourse is committed: (1) by a man; (2) who shall have carnal knowledge of a woman; (3) through force, threat or intimidation.

On the other hand, the proper designation of the crime of rape by sexual assault committed against a victim who is twelve (12) years old or below eighteen (18) or eighteen (18) under special circumstances, is lascivious conduct under Section 5 (b) of R.A. 7610, to wit:

x x x x x x x x x

(b) Those **who commit the act of** sexual intercourse or **lascivious conduct with a child exploited in prostitution <u>or subject to other sexual abuse</u>;** Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

The penalty for Lascivious conduct under Section 5 (b) of R.A. 7610 is *reclusion temporal* medium to *reclusion perpetua*, which is higher than the prescribed penalty of *prision mayor* to *reclusion temporal* as provided under Article 266-B of the RPC, for the crime of rape by sexual assault committed by two (2) or more persons. This is consistent with the declared policy of the State to provide special protection to children

from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development.[52]

It is emphasized that the failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged.[53] The actual facts recited in the information are controlling and not the title of the information or the designation of the offense.[54] Nevertheless, the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.[55]

Here, the Court finds it proper to convict the accused for Lascivious Conduct under Section 5 (b) of R.A. 7610, even if the designation of the crime alleged in the Information is Rape by Sexual Assault.

The prosecution has proven beyond reasonable doubt that Nocido, together with his co-accused Bagon and Ventura, sexually abused and raped AAA. AAA's testimonies established that Nocido personally committed lascivious conduct under Section 5 (b) of R.A. 7610, and rape through sexual intercourse under Article 266-A (1) of the RPC, in conspiracy with Bagon and Ventura. AAA clearly and candidly narrated to the court how Nocido and Bagon forcibly penetrated her vagina and anus, *viz.*:

> Q: And after they were able to lower your short pants together with your panty, what else happened?
> A: [Bagon] was kissing me *tapos po ano* . . .

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[52] *Id.*

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

[54] *Id.*

[55] *Id.*

INTERPRETER
Let it be put on record that the witness is finding hard to complete her answer due to her emotional state.

FISCAL MATIRA
Q: Do you want to continue?
A: Yes, sir.

Q: Okay, please continue with your answer.
A: [Bagon] was kissing me on my lips moving downward and trying to insert his private part into my private part, sir.

Q: So he started kissing your lips downward, did [Bagon] able to touch your breast?
A: Yes, from my lips downward, sir.

Q: Up to your private part?
A: Yes, sir.

Q: Were you able to feel that he touched your clitoris by means of his tongue or lips?
A: Yes, sir.

Q: By lips or by tongue?
A: By lips, sir.

Q: While [Bagon] was doing that act, what did [Ventura] and [Nocido] do?
A: [Ventura] was keeping the lighter lighted at the time while [Nocido] was mashing my breast at *inilawan din po ni [Ventura] habang nagpapalitan sina [Bagon] at [Nocido] sa akin*.

Q: You mentioned *nagpapapalitan*, what do you mean by that?
A: *Ginawa po nila akong palaman . . . nakahiga po si [Bagon] tapos nakapatong po ako sa kanya tapos nakapatong po so akin si [Nocido].*

Q: Of the three again, who kissed your lips first?
A: It was *[Bagon]*, sir.

Q: So [Bagon,] after kissing your lips downward up to your vagina . . . question: what did he do after that?
A: He inserted his finger first into my vagina before inserting his penis into my vagina, sir.

x x x x x x x x x

Q: So [Ventura] did not even attempt to insert his penis into your vagina?
A: No, Sir.

Q: And while [Nocido] was able to insert his penis into your vagina, the two others were there acting in concert?
A: [Bagon] was there mashing my breast and **[Nocido] did not insert his penis into my vagina instead he tried to insert his penis into my anus, sir**.

Q: Was [Nocido] able to insert his penis into your anus?
A: No sir, only his finger.

Q: Because you said the penis was not able to penetrate into your anus, he used his finger?
A: Yes, sir.

Q: Let us clear the facts of the case, [Bagon was] the one who kissed your lips up to your vagina was able to insert his penis into your vagina, correct?
A: Yes, sir.

x x x x x x x x x

Q: Then followed by the act attempting to insert his penis into your anus but was not able to do so and instead using his finger to penetrate your anus?
A: Yes, sir.

Q: [Ventura] did not insert or attempt to insert his penis into your anus or into your vagina?
A: Yes, sir.

Q: He was there using light lighting the acts?
A: Yes, sir.

Q: Did he touch any part of your body while keeping the light lighted?
A: He only kissed me on my lips, sir.

Q: The first who kissed you and was able to insert his penis into your vagina for the first time, did he attempt for the second time?
A: *Opo, yun nga po yung ginawa po nila akong palaman*.[56]

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[56] TSN, July 26, 2012, pp. 14-18.

During AAA's cross-examination on September 20, 2013, it was clarified that Nocido did not personally commit the crime of rape through sexual intercourse:

> Atty. Aldovino
> Q: Binanggit mo rin [AAA] na itong si [Nocido] ay ipinasok din niya ang ari nya sa ari mo? Kinukumpirma mo pa rin ba iyon na pinasok ni [Nocido] ang ari niya sa ari mo?
> A: Hindi po.
>
> Q: Hindi niya ipinasok?
> A: Opo.
>
> Q: Walang naganap na pagpasok ng ari niya sa ari mo?
> A: Wala po kasi po sa likod.
>
> Interpreter: Sa likod?
>
> Court: Sa puwit.[57]
>
> x x x x x x x x x
>
> Q: Sabi mo habang ikaw ay nakadapa kay [Bagon] nakapatong na noon sa iyo si [Nocido], tama?
> A: Opo.
>
> Q: Ano naman ang ginagawa ni [Nocido]?
> A: Pinipilit nya pong ipasok ang ari nya po.
>
> Q: Doon sa?
> A: Sa puwit po.
>
> Q: Hindi niya ipinapasok sa "pepe" mo?
> A: Hindi po.
>
> Q: [Noong] pinapasok nya naramdaman mo na matigas ang ari niya?
> A: Opo.
>
> Q: At sabi mo pilit nyang pinapasok doon sa puwet mo?
> A: Opo.[58]

In summary, AAA categorically described before the RTC how Nocido and the other two accused took advantage of her.

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[57] TSN, September 20, 2013, p. 31.

[58] *Id.* at 35-36.

The Court finds that conspiracy was established in this case. Conspiracy exists when the acts of the accused demonstrate a common design of accomplishing the same unlawful purpose.[59]

Here, Nocido, Bagon and Ventura's acts demonstrated a common design to have carnal knowledge of AAA, to wit: *First*, before AAA was brought to the secluded area, Bagon poked the knife at AAA's neck, while Nocido and Ventura cornered her. *Second*, Nocido and Bagon held her arms and dragged her to a secluded area. *Third*, prior to raping AAA, the three accused slapped and punched her. *Fourth*, while Nocido and Bagon were removing AAA's clothes, Ventura held the lighter to illuminate the secluded area. *Lastly*, the three accused simultaneously abused AAA to satisfy their carnal desires.

The Court finds that conspiracy was established in this case. Conspiracy exists when the persons accused of a crime demonstrate a common design towards the accomplishment of the same unlawful purpose. [60] The Court finds Nocido guilty as a co-conspirator in the crime of rape through sexual intercourse committed by others. Likewise, he is also guilty of lascivious conduct under Section 5 (b) of R.A. 7610, that he personally committed.

Ignominy cannot be appreciated as an aggravating circumstance.

Under Rule 110 of the Revised Rules of Criminal Procedure, qualifying or generic circumstances will not be appreciated by the Court unless alleged in the information.[61] It is in order not

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[59] *People v. Pal*, G.R. No. 223565, June 18, 2018.

[60] *Id.*

[61] SEC. 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

to trample on the constitutional right of an accused to be informed of the nature of the alleged offense that he committed.[62]

In this case, the aggravating circumstance of ignominy was proved before the RTC. Since it was not alleged in the Information, it cannot be appreciated for purposes of imposing a heavier penalty. However, it can still be considered for purposes of awarding exemplary damages.

The Penalties

In Criminal Case No. 09-1772, Rape through Sexual Intercourse, under Article 266 (A), in relation to Article 266-B, was committed by two or more persons, the penalty of which shall be *reclusion perpetua* to death. There being no aggravating or mitigating circumstances attendant in the commission of the crime, the lesser penalty of *reclusion perpetua* shall be imposed.[63]

In Criminal Case No. 09-1773, Lascivious Conduct under Section 5 (b) of R.A. 7610 has a penalty of *reclusion temporal* medium to *reclusion perpetua*. The Indeterminate Sentence

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SEC. 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[62] *People v. Lapore*, G.R. No. 191197, June 22, 2015.

[63] Article 63 (2) of the RPC provides:

Article 63. *Rules for the Application of Indivisible Penalties.* —

x x x x x x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

Law is applicable because *reclusion perpetua* is merely used as the maximum period consisting of a range starting from *reclusion temporal* medium, a divisible penalty. Further, since none of the circumstances under Section 31[64] of R.A. 7610 are attendant, and applying the Indeterminate Sentence Law, the minimum terms shall be taken from the penalty next lower in degree which is *prision mayor* medium to *reclusion temporal* minimum, and the maximum term to be taken from *reclusion temporal* maximum,[65] there being no other modifying circumstances attending the commission of the crime.[66]

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[64] R.A. 7610, §31.

Section 31. *Common Penal Provisions.* —

(a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;

(b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

(d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is *reclusion perpetua* or *reclusion temporal*, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is *prision correccional* or *arresto mayor*, the penalty of suspension shall also be imposed; and

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[65] Article 64 (1) of the Revised Penal Code provides:

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

[66] Art. 64, RPC.

The Damages

In both cases, the award of civil indemnities, moral and exemplary damages are proper.

Jurisprudence has settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.[67] The award of exemplary damages is also proper to set a public example and to protect the young from sexual abuse.[68]

For the crime of Rape under Article 266-A (1), in relation to Article 266-B of the RPC, where it was committed by two (2) or more persons, the penalty to be imposed is *reclusion perpetua*, with civil indemnity of ₱75,000.00, moral damages

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

[68] *Id.*

In summary, the award of civil indemnity, moral damages and exemplary damages in Acts of Lasciviousness under Article 336 of the RPC, Acts of Lasciviousness in relation to Section 5 (b) of R.A. No. 7610, Lascivious Conduct under Section 5 (b) of R.A. No. 7610, Sexual Assault under paragraph 2, Article 266-A of the RPC, and Sexual Assault in relation to Section 5 (b) of R.A. No. 7610, are as follows:

Crime	Civil Indemnity	Moral Damages	Exemplary Damages
xxx	xxx		xxx
Sexual Abuse or Lascivious Conduct under Section 5 (b) of R.A. No. 7610 [Victim is a child 12 years old and below 18, or above 18 under special circumstances]	₱75,000.00 (If penalty imposed is *reclusion perpetua*)	₱75,000.00 (If penalty imposed is *reclusion perpetua*)	₱75,000.00 (If penalty imposed is *reclusion perpetua*)
	₱50,000.00 (If penalty imposed is within the range of *reclusion temporal* medium)	**₱50,000.00 (If penalty imposed is within the range of *reclusion temporal* medium)**	**₱50,000.00 (If penalty imposed is within the range of *reclusion temporal* medium)**
xxx	xxx		xxx

of ₱75,000.00, and exemplary damages of ₱75,000.00; in accordance with *People v. Jugueta*.[69]

On the other hand, in the crime of Lascivious Conduct under Section 5 (b) of R.A. 7610, if the penalty imposed is within the range of *reclusion temporal* medium, then the award of civil indemnity of ₱50,000.00, moral damages of ₱50,000.00 and exemplary damages of ₱50,000.00, are proper; following the ruling in *People v. Tulagan*.[70]

In consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

WHEREFORE, PREMISES CONSIDERED, the appeal is **DISMISSED**. The Decision dated August 5, 2015 of the Regional Trial Court, Makati City, Branch 136, in Criminal Case Nos. 09-1772 to 09-1773, as affirmed and modified by the Court of Appeals Decision dated April 25, 2017 in CA-G.R. CR-HC No. 07686, is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant Niel Raymond A. Nocido:

1. Guilty beyond reasonable doubt of **Rape under Article 266-A (1) (a) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case No. 09-1772, and is sentenced to suffer the penalty of *reclusion perpetua*, and with modification as to the award of damages. Accused-appellant is **ORDERED** to **PAY**

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[69] *People v. Jugueta*, 783 Phil. 806 (2016).

II. For Simple Rape/Qualified Rape:

2.1 Where the penalty imposed is *reclusion perpetua*[;] other than [where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346, or where the crime committed was not consummated but merely attempted] x x x:

a. Civil indemnity — ₱75,000.00
b. Moral damages — ₱75,000.00
c. Exemplary damages — ₱75,000.00

[70] *Id.*

AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

2. Guilty beyond reasonable doubt of **Lascivious Conduct under Section 5 (b) of Republic Act No. 7610**, in Criminal Case No. 09-1773, and is sentenced to suffer the penalty of eight (8) years and one (1) day of *prision mayor medium* as the minimum term, to twenty (20) years of *reclusion temporal* maximum, as the maximum term, with modification as to the award of damages. Accused-appellant is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

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

SO ORDERED.

Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

Caguioa, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* insofar as it affirms the guilt of the accused-appellant Niel Raymond A. Nocido (Nocido) for the crimes he was charged with.

I disagree, however, that the nomenclature of the crime should be modified from "rape by sexual assault" to "lascivious conduct under Section 5 (b), Republic Act No. 7610," and the penalty increased from "*prision mayor* to *reclusion temporal*"[1] to

[1] Penalty imposed under Article 266-B, Republic Act No. 3815, as amended by Section 2, Republic Act No. 8353, for Rape by Sexual Assault committed by two or more persons.

"*reclusion temporal* in its medium period to *reclusion perpetua*."[2]

I reiterate and maintain my position in *People v. Tulagan*[3] that Republic Act No. (RA) 7610 and the Revised Penal Code (RPC), as amended by RA 8353, "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors."[4] Section 5 (b) of RA 7610 applies only to the **specific** and **limited instances** where the child-victim is "exploited in prostitution or subjected to other sexual abuse" (EPSOSA).

In other words, for an act to be considered under the purview of Section 5 (b), RA 7610, so as to trigger the higher penalty provided therein, "the following essential elements need to be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child 'exploited in prostitution or subjected to other sexual abuse'; and (3) the child whether male or female, is below 18 years of age."[5] Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA — *a separate and distinct element* — must first be both alleged and proved before a conviction under Section 5 (b), RA 7610 may be reached.

Specifically, in order to impose the higher penalty provided in Section 5 (b) as compared to Article 266-B of the RPC, as amended by RA 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2)

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[2] Penalty imposed under Section 5 (b), Republic Act No. 7610 for Lascivious Conduct.

[3] G.R. No. 227363, March 12, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>.

[4] Dissenting Opinion of Justice Caguioa in *People v. Tulagan, id.*

[5] *Id.*, citing *People v. Abello*, 601 Phil. 373, 392 (2009).

due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.[6]

In this case, the Information only alleged that the victim was a 12-year-old minor, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in sexual intercourse or lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

Thus, while I agree that Nocido's guilt was proven beyond reasonable doubt, it is my view that his conviction in Criminal Case No. 09-1773 should be for Rape by Sexual Assault, defined and punished under Article 266-A (2), in relation to Article 266-B, of the RPC, as amended by RA 8353 — not Lascivious Conduct under Section 5 (b), RA 7610. Accordingly, the penalty that ought to be imposed on him should be within the range of *prision correccional* to *reclusion temporal*[7] instead of the one imposed by the *ponencia* which is within the range of *prision mayor* to *reclusion temporal*.

Meanwhile, I fully concur with the *ponencia* as regards its affirmance of his conviction in Criminal Case No. 09-1772 for Rape by Sexual Intercourse, defined and punished under Article 266-A (1) (a), in relation to Article 266-B, of the RPC, as amended by RA 8353.

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[6] *Id.*

[7] After the application of the Indeterminate Sentence Law.

SECOND DIVISION

[G.R. No. 246012. June 17, 2020]

ISMAEL G. LOMARDA and CRISPINA RASO, *petitioners*, *vs.* **ENGR. ELMER T. FUDALAN,** *respondent*,

BOHOL I ELECTRIC COOPERATIVE, INC., *defendant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. —** [F]actual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect, unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case. Hence, finding no cogent reason to the contrary, their factual findings in this case are sustained.

2. **CIVIL LAW; TORTS AND DAMAGES; ARTICLE 19 IN RELATION TO ARTICLE 21 OF THE CIVIL CODE; DISCUSSED. —** In this case, petitioners were found liable by both the RTC and CA for abuse of rights under Article 19, in relation to Article 21, of the Civil Code. "Article 19, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties." In this regard, case law states that "[a] right, though by itself legal because [it is] recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible." "Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21." x x x [Thus,] Article 19 of the New Civil Code

provides: Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. On the other hand, Article 21 of the New Civil Code provides: Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damages. x x x In *Mata v. Agravante*, the Court pointed out that Article 21 of the Civil Code "refers to acts *contra bonos mores* and has the following elements: (1) an act which is legal; (2) but which is contrary to morals, good customs, public order or public policy; and (3) is done with intent to injure."

3. ID.; ID.; ID.; VIOLATION IN CASE AT BAR NEGATED THE APPLICATION OF THE CLEAN HANDS DOCTRINE. — Under the circumstances, petitioners should be held liable for damages under Article 19, in relation to Article 21, of the Civil Code. While it appears that petitioners were engaged in a legal act, *i.e.*, exacting compliance with the requirements for the installation of respondent's electricity in his farmhouse, the circumstances of this case show that the same was conducted contrary to morals and good customs, and were in fact done with the intent to cause injury to respondent. Petitioners did not only fail to apprise respondent of the proper procedure to expedite compliance with the requirements, they also misled him to believe that everything can be settled, extorted money from him when only a meager amount was due, and worse, publicly humiliated him in front of many people which ended up in the disconnection of his electricity altogether. To be sure, the clean hands doctrine — which was invoked by petitioners herein — should not apply in their favor, considering that while respondent may have technically failed to procure the required Barangay Power Association (BAPA) certification and proceeded with the tapping, the same was not due to his lack of effort or intention in complying with the rules in good faith. [I]t was, in fact, petitioners' own acts which made compliance with the rules impossible. Hence, respondent was actually free from fault, negating the application of the clean hands doctrine, to wit: Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into

repose, thereby obstructing and preventing vigilance on the part of the latter."

4. **ID.; DAMAGES; ACTUAL DAMAGES; CONSTRUED. —** Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. To justify an award of actual damages, there must be competent proof of the actual amount of loss.

5. **ID.; ID.; MORAL DAMAGES; AWARDED FOR MORAL SUFFERING CAUSED BY MALICIOUS ACTS. —** [T]he amounts of moral and exemplary damages may be discretionary upon the court depending on the attendant circumstances of the case. Under Article 2219 of the Civil Code, moral damages may be recovered, among others, in acts and actions referred to in Article 21 of the same Code. "[A]n award of moral damages must be anchored on a clear showing that the party claiming the same actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury." In this case, the malicious acts, as proven through the evidence presented by respondent, clearly caused moral suffering to the latter, for which petitioners should be made liable. As intimated in one case, although mental anguish and emotional sufferings of a person are not quantifiable with mathematical precision, the Court must nonetheless strive to set an amount that would restore respondent to his moral *status quo ante*. In this regard, the Court finds it reasonable to award the amount of ₱50,000.00 as moral damages, considering the meager amount of actual damages awarded despite the public humiliation and distress suffered by respondent throughout his ordeal.

6. **ID.; ID.; EXEMPLARY DAMAGES; IMPOSED BY WAY OF EXAMPLE OR CORRECTION FOR THE PUBLIC GOOD. —** [C]ase law states that "exemplary or corrective damages are imposed by way of example or correction for the public good, *in addition to* moral, temperate, liquidated, or compensatory damages. **The award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions.**" In this case, the Court finds the award of exemplary damages in the amount of ₱50,000.00 reasonable in order to serve as a reminder against

unscrupulous persons — as herein petitioners — who take undue advantage of their positions to the detriment of the consuming public.

7. ID.; ID.; IN VIEW OF THE AWARD OF EXEMPLARY DAMAGES, THE COURT FINDS IT PROPER TO AWARD ATTORNEY'S FEES AND LITIGATION COSTS. — As regards attorney's fees and litigation costs, "Article 2208 of the New Civil Code of the Philippines states the policy that should guide the courts when awarding attorney's fees to a litigant. As a general rule, the parties may stipulate the recovery of attorney's fees. In the absence of such stipulation, this article restrictively enumerates the instances when these fees may be recovered," to wit: 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; x x x In view of the award of exemplary damages, the Court finds it proper to award attorney's fees and litigation costs but in the reduced amount of ₱25,000.00.

APPEARANCES OF COUNSEL

Elmer Salus B. Pozon for petitioners.
Cirilo N. Viodor for respondent Elmer Fudalan.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 9, 2017 and the Resolution[3] dated May 19, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 04480, which affirmed the Decision[4] dated May 15, 2012

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[1] *Rollo*, pp. 7-15.

[2] *Id.* at 18-33. Penned by Associate Justice Pamela Ann Abella Maximo with Associate Justices Pablito A. Perez and Gabriel T. Robeniol, concurring.

[3] *Id.* at 34-38.

[4] See *id.* at 22-23, 58-60.

of the Regional Trial Court of Tagbilaran City, Bohol, Branch 49 (RTC) in Civil Case No. 7476, granting the complaint for damages filed by respondent Engr. Elmer T. Fudalan (respondent) against petitioners Ismael D. Lomarda (Lomarda) and Crispina Raso (Raso; collectively, petitioners).

The Facts

On September 27, 2006, respondent, through his wife, Alma Fudalan, applied for electrical service from BOHECO I Electric Cooperative, Inc. (BOHECO I) to illuminate their farmhouse located in Cambanac, Baclayon, Bohol. At the pre-membership seminar, respondent paid the amount of ₱48.12 as membership fee and was advised to employ the services of an authorized electrician from BOHECO I.[5] Accordingly, on October 7, 2006, respondent employed the services of Sabino Albelda Sr. (Albelda), a BOHECO I authorized electrician, who informed him that the electrical connection could only be installed in his farmhouse if he procures a certification from Raso, the Barangay Power Association (BAPA)[6] Chairperson. Respondent then instructed his farmhand to get a certification from Raso but despite efforts to reach Raso, the latter was unavailable. Thus, respondent consented to the tapping of his electrical line to that of BAPA upon the assurance of Albelda that he would not be charged with pilferage of electricity because his electric usage shall be determined by the check meter of BOHECO I at the base of the drop line and shall be billed accordingly.[7]

In the morning of October 8, 2006, respondent still tried again to obtain Raso's certification. However, during their meeting, Raso allegedly got mad, vowed to never issue the said certification, and eventually then reported the matter to BOHECO I for disconnection.[8]

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

[6] Formerly Electric Consumers Association (see *id.* at 19).

[7] *Id.*

[8] *Id.*

Feeling aggrieved, respondent and his wife went to BOHECO I on October 17, 2006 to complain about Raso's malicious actuations. They were attended to by the receiving clerk, petitioner Lomarda, who, after reviewing their documents, told them that he would conduct an ocular inspection of their farmhouse. The next day, respondent, together with his farmhand, went looking for Raso and confronted her about the latter's threat of disconnection. To appease them, Raso guaranteed not to order the disconnection of respondent's electricity; nevertheless, she still refused to issue the certification on the premise that respondent's farmhouse already had electricity. In the course of their conversation, Raso uttered, "*Sabut sabuton lang ni nato*," which translates to "let us just settle this."[9]

On November 5, 2006, respondent and his wife once more went to Raso to follow up on the issuance of such certification. They met at the *purok* center, where Raso was conducting a meeting with several *purok* members. Thereat, Raso asked why respondent's electricity has not yet been installed. Respondent took this to be a sarcastic and rhetorical remark because Raso was, in fact, the one withholding the issuance of the BAPA certification which was precisely the cause of the delay of the aforesaid installation.[10]

In another confrontation, Raso explained that she was about to issue the certification but was prevented by Lomarda, who allegedly apprised her of a pending complaint for premature tapping against respondent. To settle the misunderstanding, Raso directed respondent to discuss the matter with Lomarda at his house, and again uttered "*Sabut sabuton lang ni nato*." During their conversation, Lomarda told respondent that he earlier received a disconnection order issued a long time ago but misplaced the document, and that an ocular inspection of respondent's farmhouse will be conducted on November 6, 2006. When

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[9] See *id.* at 19-20.

[10] See *id.* at 20.

respondent informed Raso of the date of inspection, the latter once again remarked, "*Sabut sabuton lang ni nato*."[11]

On the day of inspection, or on November 6, 2006, respondent was assured that his electricity will not be disconnected and that Raso will issue the certification, provided he would pay the amount of ₱1,750.00 or sign a promissory note. Respondent, however, refused to comply with the said conditions, reasoning that there was no official order from the concerned office. After respondent refused to pay, Lomarda allegedly posed in front of a camera and while pointing at the slot provided for the electric meter, shouted, "This is an illegal tapping." Thereafter, Lomarda, in the presence of policemen, the barangay treasurer, and other several passersby, ordered his linemen to cut off respondent's electricity.[12]

On November 9, 2006, respondent communicated with BOHECO I, through phone, and inquired about his electric dues. He was informed that there was no system loss or excess billed to the cooperative, and that his electric usage amounted only to ₱20.00.

Claiming that petitioners' acts tarnished his image, besmirched his reputation, and defamed his honor and dignity, respondent filed a complaint for damages before the RTC. Respondent alleged that petitioners confederated with one another to purposely delay the approval of his application for electric connection by: (*a*) withholding the issuance of the BAPA certification; (*b*) falsely accusing him of premature tapping and pilferage of electricity; and (*c*) demanding the payment of ₱1,750.00, when what was due him was only ₱20.00.[13]

For their part, petitioners contended that respondent committed premature tapping of electricity, when the latter consented to the tapping of his line to the service line of BAPA without a

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[11] *Id.*

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

[13] *Id.* at 21.

"turn-on" order from BOHECO I. Moreover, they claim that they cannot be faulted for the disconnection, since they gave respondent the option to pay the penalty or sign a promissory note, which the latter refused.[14]

The RTC Ruling

In a Decision[15] dated May 15, 2012, the RTC found petitioners liable for damages under Article 21 of the Civil Code,[16] and accordingly, ordered them to jointly and severally pay respondent the following amounts: (*a*) ₱451.65 as actual damages; (*b*) ₱200,000.00 as moral damages; (*c*) ₱100,000.00 as exemplary damages; *(d)* ₱50,000.00 as attorney's fees; and (*e*) ₱20,000.00 as litigation expenses.[17]

In so ruling, the RTC held that respondent could not have committed premature electrical connection or electric pilferage in violation of the existing rules and regulations of BOHECO I, considering that the installation of respondent's electrical connection was only done upon the advice of Albelda, who is an authorized electrician of BOHECO I. Moreover, the RTC pointed out that respondent was in good faith and exerted all his efforts to comply with the requirements of BOHECO I, while petitioners performed acts that are malicious, dishonest, and in gross bad faith. In particular, petitioners intentionally withheld the issuance of the required BAPA certification and worse, demanded the payment of ₱1,750.00, when what was due from respondent was only ₱20.00. Consequently, the RTC ruled that petitioners are liable under Article 21 of the Civil Code.[18]

Aggrieved, petitioners appealed to the Court of Appeals (CA).

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[14] See *id.* at 21-22.

[15] The RTC Decision is not attached. See *id.* at 22-23, 58-60.

[16] See *id.* at 59-60.

[17] See *id.* at 22-23.

[18] See *id.* at 58-60.

The CA Ruling

In a Decision[19] dated February 9, 2017, the CA affirmed the RTC Decision.[20]

At the onset, the CA observed that respondent exerted all efforts to comply with the prescribed requirements in good faith. Moreover, it pointed out that respondent was not caught *in flagrante delicto* of premature tapping because he was the one who reported to Raso the fact of tapping, which was only done under the context that the approving authority was then unavailable to issue the certification despite respondent's efforts.[21] On the other hand, the CA ruled that petitioners acted with malice and bad faith, as exhibited by their conduct before, during, and after the disconnection, which is contrary to morals, good customs, or public policy.

Undaunted, petitioners moved for reconsideration but was denied in a Resolution[22] dated May 19, 2017; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld the award of damages under Article 21 of the Civil Code.

The Court's Ruling

At the outset, it bears stressing that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect, unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case.[23] Hence, finding no cogent

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[19] *Id.* at 18-33.

[20] *Id.* at 32.

[21] See *id.* at 25-27.

[22] *Id.* at 34-38.

[23] *Almojuela v. People*, 734 Phil. 636, 651 (2014).

reason to the contrary, their factual findings in this case are sustained.

Petitioners mainly argue that they should not be held liable for damages, considering that respondent made a premature and unauthorized tapping of his electrical connection. In this regard, they invoke the principle that he who comes to court must come with clean hands. Moreover, petitioners allege that respondent is not entitled to moral damages in the absence of evidence to show that the acts imputed against them caused respondent moral suffering.

The arguments of petitioners are untenable.

In this case, petitioners were found liable by both the RTC and CA for abuse of rights under Article 19, in relation to Article 21, of the Civil Code.

"Article 19, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties." In this regard, case law states that "[a] right, though by itself legal because [it is] recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible."[24]

"Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21."[25] In *Saudi Arabian Airlines v. CA*,[26]

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[24] *Albenson Enterprises Corp. v. CA*, 291 Phil. 17, 27 (1993).

[25] *Arco Pulp and Paper Co. v. Lim*, 737 Phil. 133, 149 (2014).

[26] 358 Phil. 105 (1998).

the Court explained the relation of Article 19 and Article 21 of the Civil Code:

> On one hand, Article 19 of the New Civil Code provides:
>
> Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
>
> On the other hand, Article 21 of the New Civil Code provides:
>
> Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damages.
>
> Thus, in *Philippine National Bank vs. CA*, this Court held that:
>
> > The aforecited provisions on human relations were intended to expand the concept of torts in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically provide in the statutes.
> >
> > Although Article 19 merely declares a principle of law, Article 21 gives flesh to its provisions. Thus, we agree with private respondent's assertion that violations of Articles 19 and 21 are actionable, with judicially enforceable remedies in the municipal forum.[27]

In *Mata v. Agravante*,[28] the Court pointed out that Article 21 of the Civil Code "refers to acts *contra bonos mores* and has the following elements: (1) an act which is legal; (2) but which is contrary to morals, good customs, public order or public policy; and (3) is done with intent to injure."[29]

In this case, records show that respondent had consistently pursued all reasonable efforts to comply with the prescribed requirements for the installation of electrical connection at his farmhouse. As part of his application for electrical service

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[27] *Id.* at 120.

[28] 583 Phil. 64 (2008).

[29] *Id.* at 70.

with BOHECO I, he attended a pre-membership seminar wherein he duly paid the amount of ₱48.12 as membership fee. At the seminar, he was advised to employ the services of a BOHECO I authorized electrician, which he did by employing Albelda. As the CA pointed out, there were certain advantages to this course of action, considering that: (*a*) the said electrician is familiar with the rules and regulations of BOHECO I; (*b*) an inspection fee will not be charged if the wiring is done by him; and *(c)* BOHECO I shall provide a 30-meter service drop wire, and electric meter, free of charge, upon payment of the bill deposit.[30]

Eventually, Albelda informed respondent that he could only install the electrical connection in respondent's farmhouse if the latter becomes a BAPA member and if he can obtain a certification as such from BAPA Chairperson Raso. Again, respondent took no time in obtaining this certification by instructing his farmhand to reach the aforesaid chairperson. Unfortunately, Raso was unavailable despite the farmhand's diligent efforts. Respondent, who was then put into a precarious situation, sought the advice of Albelda, the cooperative's authorized electrician, on how to deal with the matter. Albelda then assured him that if he will proceed with the tapping of his electrical line to that of BAPA, he would not be charged with pilferage of electricity and would be billed accordingly. Relying in good faith on the authorized electrician's advice on the matter, respondent then consented to the tapping but nonetheless, still instructed his farmhand to secure the certification from Raso to ensure compliance with the requirements for proper installation. Upon meeting with Raso, respondent, by his own volition, candidly brought to her attention the tapping of BAPA's line and duly explained to her the situation. This notwithstanding, Raso was quick to impute malicious actuations against respondent for proceeding with the tapping and reported the matter to BOHECO I for disconnection.

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[30] See *rollo*, p. 19.

Faced with this predicament, respondent and his wife went to the cooperative to report Raso's actions. They were then attended by the receiving clerk, Lomarda, who told them that he would conduct an ocular inspection of the farmhouse. In the course of trying to comply with the requirements, both Raso and Lomarda gave respondent the roundabout by consistently assuring him that they were settling the matter ("*Sabot sabuton lang ni nato*"). The following excerpt of respondent's testimony during trial is instructive on this score:

Q. Now, did Mrs. Raso tell you while that controversy was between you during that time that rather Mrs. Raso told you in visayan vernacular "Sabut saboton lang ni nato"? (sic)

A. Oh! Ye[s] (sic) she mentioned that p[hrase] (sic) which disturb me so much for 3 three (3) times (sic), 1.) when I went together with my farm help I went to her house on October 18 her parting words (sic) was don't worry you will not be disconnected "Sabut saboton lang ni nato" and the other two (2) was on November 5 when I again look (sic) her which I found her at the *purok* center to ask for my certification again and her parting words is (sic) "Sabut saboton lang ni nato" and then she told me to go (sic) Mr. Lomarda because Mr. Lomarda has the final say whether she will give me my certification or not. And the 3rd, was again on the same date November 5 already night time when Mr. Lomarda told me that he is going to inspect the house on Monday so that I went back to Mrs. Raso to inform her that Mr. Lomarda is going to inspect the house on Monday and again Mrs. Raso told me that "Sabut saboton lang ni nato."

Q. Now, after hearing that statement "Sabut saboton lang ni nato," what did you ask Mrs. Raso what (sic) was that meaning of "Sabut saboton lang ni nato?"

A. I did not bother to ask her but in my mind it means money that Mrs. Raso together with Mr. Lomarda is out to victimize me to please me (sic) "[pangkwartahan] ko" (sic) because of that premature connection.[31]

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[31] *Rollo*, pp. 27-28.

In this regard, the CA aptly observed that "[c]onfronted with the crisis presented by [respondent], it is only proper for [petitioners] to tell him what corrective or remedial measures must be done to avoid the commission of any further infraction. Instead of doing so, x x x Raso made herself unavailable, which delayed the issuance of the certification. For his part, x x x Lomarda failed to immediately disclose the notice of disconnection to [respondent], under the pretext that he is yet to conduct an ocular inspection on the subject farmhouse."[32]

Worse than their inaction and lack of forthrightness, petitioners even tried to extort from respondent the amount of ₱1,792.00 in exchange for the issuance of a certification and for the continued availment of their electrical services. However, respondent refused to accede to this condition since there was no official issuance coming from BOHECO I itself. In fact, upon reporting the matter to the cooperative, respondent, to his dismay, discovered that his electric usage amounted to only ₱20.00. Indeed, as the CA ruled, "[b]y setting these conditions, it is evident that [petitioners] were induced by an ill motive."

To further exacerbate the situation, petitioner Lomarda even caused a scene in the public's view which made it appear that respondent was an unscrupulous violator and thereupon, proceeded to disconnect his electricity that caused him embarrassment and humiliation. As the testimony of respondent during trial shows:

Q. Now, Mr. witness to refresh your memory according to you on November 6, 2006 Mr. Ismale (sic) Lomarda went to your house at Cambanac, Baclayon, Bohol what did Mr. Lomardo do when he reached at (sic) your house?

A. It was in the afternoon of November 6 Mr. Lomarda bringing with him 2 Policemen (sic) they were also bringing with them camera taking pictures on the post where the electrical line was connected and there were many people around.

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[32] *Id.* at 28.

Q. Then after that what did Mr. Lomarda do?

A. **Mr. Lomarda in hearing the window (sic) with all the people shouted that "kita mo ha" "kita mo ha" in our vernacular, "kita mo ha" at the same time pointing to the post where the electrical connection is made "kita mo ha" witness "ka ha" witness "ka ha" at the same time taking pictures.**

Q. So, after that what did Mr. Lomarda do?

A. Mr. Lomarda demanded to (sic) me an amount of One Thousand Pesos (₱1,750.00) (sic) according to him as payment of an allege penalty so that I will not be disconnected.

Q. Did you give that amount?

A. No.

Q. Then considering that you did not give that amount One Thousand (₱1,750.00) (sic) what did Mr. Lomarda do?

A. Mr. Lomarda demanded or insisting (sic) that he is going to inspect the house and when I let him in inside the house he refuse (sic) and told me to sign first his report before he will enter the house.

Q. Did you sign the report?

A. I did not sign the report.

Q. Now considering that you did not sign the report, what did Mr. Lomarda do?

A. Mr. Lomarda instructed his line men because he was also bringing linemen to finally cut (sic). Days after I ask Mrs. Raso whether she will allow the disconnection which Mrs. Raso answered in the affirmative and after that Mr. Lomarda instructed his line man to finally cut (sic).

Q. And that was on November 6, 2006?

A. November 6, in the afternoon.

Q. Will (sic) Mrs. Raso present during the time when the line man of Mr. Lomarda cut your electrical connection?

A. Yes. **Mrs. Raso was also present because she wanted me to sign a promissory note that if I have no cash to pay that ₱1,750.00**

allege (sic) penalty then I should sign her promissory note so that I will not also be disconnected.[33] (Emphases supplied)

Under the foregoing circumstances, it is clear that petitioners should be held liable for damages under Article 19, in relation to Article 21, of the Civil Code.While it appears that petitioners were engaged in a legal act, *i.e.*, exacting compliance with the requirements for the installation of respondent's electricity in his farmhouse, the circumstances of this case show that the same was conducted contrary to morals and good customs, and were in fact done with the intent to cause injury to respondent. Petitioners did not only fail to apprise respondent of the proper procedure to expedite compliance with the requirements, they also misled him to believe that everything can be settled, extorted money from him when only a meager amount was due, and worse, publicly humiliated him in front of many people which ended up in the disconnection of his electricity altogether. To be sure, the clean hands doctrine — which was invoked by petitioners herein — should not apply in their favor, considering that while respondent may have technically failed to procure the required BAPA certification and proceeded with the tapping, the same was not due to his lack of effort or intention in complying with the rules in good faith. As exhibited above, it was, in fact, petitioners' own acts which made compliance with the rules impossible. Hence, respondent was actually free from fault, negating the application of the clean hands doctrine, to wit:[34]

> Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter."[35]

That being said, the awards of damages in favor of respondent are therefore warranted. In this case, both the RTC and the

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

[34] *DPWH v. Quiwa (Resolution)*, 681 Phil. 485 (2012).

[35] *Id.* at 489-490.

CA awarded actual, moral, and exemplary damages, including attorney's fees and litigation expenses.

Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. To justify an award of actual damages, there must be competent proof of the actual amount of loss.[36] In this case, the award of actual damages in the amount of ₱451.65 was based on the evidence presented as found by both the RTC and CA. Hence, finding no cogent reason to the contrary, and given that the same was supported by receipts,[37] the said award is sustained.

However, the Court finds otherwise with respect to the awards of moral and exemplary damages, as well as attorney's fees and litigation expenses (in the amounts of ₱200,000.00, ₱100,000.00, ₱50,000.00, and ₱20,000.00, respectively) which appear to be excessive considering the circumstances of this case. Notably, the amounts of moral and exemplary damages may be discretionary upon the court depending on the attendant circumstances of the case.[38]

Under Article 2219[39] of the Civil Code, moral damages may be recovered, among others, in acts and actions referred to in

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[36] *B.F. Metal Corporation v. Spouses Lomotan*, 574 Phil. 740, 749 (2008).

[37] *(a)* Official Receipt dated September 27, 2006, in the amount of ₱48.12 (see Exhibit "A", *records*, p. 16); *(b)* Receipt dated November 9, 2006, in the amount of ₱20.00 (see Exhibit "G", *id.* at 22); *(c)* Receipt dated November 8, 2006, in the amount of ₱350.00 (see Exhibit "N", *id.* at 140); and *(d)* Receipt dated April 29, 2007, in the amount of ₱33.53 (see Exhibit "O", *id.* at 141).

[38] See *Monzon v. IAC*, 251 Phil. 695, 703-704 (1989).

[39] Art. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x x x x x x

(10) Acts and actions referred to **in Articles 21**, 26, 27, 28, 29, 30, 32, 34 and 35.

x x x x x x x x x

Article 21 of the same Code. "[A]n award of moral damages must be anchored on a clear showing that the party claiming the same actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury."[40] In this case, the aforementioned malicious acts, as proven through the evidence presented by respondent, clearly caused moral suffering to the latter, for which petitioners should be made liable. As intimated in one case,[41] although mental anguish and emotional sufferings of a person are not quantifiable with mathematical precision, the Court must nonetheless strive to set an amount that would restore respondent to his moral *status quo ante*.[42] In this regard, the Court finds it reasonable to award the amount of ₱50,000.00 as moral damages, considering the meager amount of actual damages awarded despite the public humiliation and distress suffered by respondent throughout his ordeal.

Meanwhile, case law states that "exemplary or corrective damages are imposed by way of example or correction for the public good, *in addition to* moral, temperate, liquidated, or compensatory damages. **The award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions.**" In this case, the Court finds the award of exemplary damages in the amount of ₱50,000.00 reasonable in order to serve as a reminder against unscrupulous persons — as herein petitioners — who take undue advantage of their positions to the detriment of the consuming public.

As regards attorney's fees and litigation costs, "Article 2208 of the New Civil Code of the Philippines states the policy that should guide the courts when awarding attorney's fees to a litigant. As a general rule, the parties may stipulate the recovery

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[40] *International Container Terminal Services, Inc. v. Chua*, 730 Phil. 475, 495 (2014).

[41] *People v. Salafranca*, 682 Phil. 470 (2012).

[42] *Id.* at 484.

of attorney's fees. In the absence of such stipulation, this article restrictively enumerates the instances when these fees may be recovered," to wit:

> 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; x x x

In view of the award of exemplary damages, the Court finds it proper to award attorney's fees and litigation costs but in the reduced amount of ₱25,000.00.

In fine, the Court holds that petitioners, as joint tortfeasors under Article 21 of the Civil Code, are jointly and severally liable to pay respondent the following amounts: (*a*) ₱451.65 as actual damages; (*b*) ₱50,000.00 as moral damages; (*c*) ₱50,000.00 as exemplary damages; and (*d*) attorney's fees and litigation expenses in the amount of ₱25,000.00.

WHEREFORE, the petition is **DENIED**. The Decision dated February 9, 2017 and the Resolution dated May 19, 2017 of the Court of Appeals in CA-G.R. CV No. 04480 are hereby **AFFIRMED WITH MODIFICATION** in that petitioners Ismael G. Lomarda and Crispina Raso are ordered to jointly and severally pay respondent Elmer Fudalan the following amounts: *(a)* ₱451.65 as actual damages; *(b)* ₱50,000.00 as moral damages; *(c)* ₱50,000.00 as exemplary damages; and *(d)* attorney's fees and litigation expenses in the amount of ₱25,000.00.

SO ORDERED.

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

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[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[A.C. No. 11892. June 22, 2020]

MARY JANE D. YUCHENGCO, *complainant*, *vs.* **ATTY. ANATHALIA B. ANGARE,** *respondent*.

SYLLABUS

1. **LEGAL ETHICS; NOTARIES PUBLIC; NOTARIZATION IS NOT AN EMPTY, MEANINGLESS ROUTINARY ACT BUT ONE INVESTED WITH SUBSTANTIVE PUBLIC INTEREST; THUS, LAWYERS COMMISSIONED AS NOTARY PUBLIC MUST OBSERVE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES WITH UTMOST CARE; OTHERWISE, THE PUBLIC'S CONFIDENCE IN THE INTEGRITY OF A NOTARIZED DOCUMENT WOULD BE UNDERMINED. —** In *Lustestica v. Atty. Bernabe*, the Court had the occasion to reiterate that notarization is not an empty, meaningless routinary act; thus, lawyers commissioned as notary public must observe the basic requirements in the performance of their duties with utmost care. The Court declared: x x x We cannot overemphasize the important role a notary public performs. In *Gonzales v. Ramos*, we stressed that notarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.

2. **ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; TWO DIFFERENT DOCUMENTS CANNOT BEAR THE SAME NOTARIAL DETAILS, AND THE DOCUMENT TO BE NOTARIZED MUST CONTAIN THE COMPETENT EVIDENCE OF IDENTITIES OF THE PARTIES-SIGNATORIES THERETO; VIOLATED.—** As correctly ruled by the IBP Investigating Commissioner, respondent failed to appreciate the formalities required by the notarial rules and/or was careless in

implementing the rules. Records show that respondent notarized two documents, *i.e.*, the Answer which was filed in Civil Case No. 5436 and the Deed which was attached as part of the Answer in Civil Case No. 5436. However, both documents were identified as "Doc. No. 733, Page No. 158, Book No. 02, series of 2016." It is clear from the 2004 Rules on Notarial Practice that two different documents cannot bear the same notarial details. Specifically, Section 2, Rule VI of the 2004 Rules on Notarial Practice provides: SEC. 2. *Entries in the Notarial Register*.— (a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following: (1) **the entry number and page number;** x x x. (e) **The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register,** x x x. Further, the Deed appeared to be notarized despite the fact that it did not contain the competent evidence of identities of the parties-signatories thereto. Specifically, there were blanks allotted for the competent evidence of identities of the signatories to the Deed, but these blanks were unfilled.

3. ID.; ID.; ID.; THE NOTARY PUBLIC IS REQUIRED TO IDENTIFY AND RECORD IN THE NOTARIAL REGISTER THE TITLE OR DESCRIPTION OF THE INSTRUMENT, DOCUMENT OR PROCEEDING FOR WHICH THE NOTARIAL ACT IS BEING PERFORMED; VIOLATED. — In an effort to excuse herself from failing to observe the requirements under the 2004 Rules on Notarial Practice, respondent harped on her defense that she only mistakenly notarized the Deed as part of the Answer in Civil Case No. 5436 and that the notarization was supposed to pertain to the Answer only. However, the Certification dated June 19, 2017 from the Office of the Clerk of Court, RTC, Fourth Judicial Region, Puerto Princesa City militates against her claim. x x x. Even assuming for the sake of argument that respondent only mistakenly notarized the Deed, such excuse would not exculpate her from being disciplined by the Court. If at all, her "mistake" only shows her negligence and her failure to appreciate the gravity of her duties as a notary public. Specifically, respondent could not have missed that she was notarizing the Deed if only she was diligent in performing her duties. Section 2, Rule VI of the 2004 Rules on Notarial Practice requires the notary public to identify and record in the notarial register the title or description of the instrument, document or proceeding for which the notarial act is being performed.

4. ID.; ID.; ID.; PENALTY OF REVOCATION OF THE NOTARIAL REGISTER, DISQUALIFICATION FROM APPOINTMENT AS NOTARY PUBLIC FOR TWO YEARS, AND SUSPENSION FROM THE PRACTICE OF LAW FOR SIX MONTHS, IMPOSED UPON THE RESPONDENT FOR VIOLATION OF THE 2004 RULES ON NOTARIAL PRACTICE. — As for the penalty to be imposed, the Court in *Dr. Malvar v. Atty. Baleros* imposed upon Atty. Cora Jane P. Baleros (respondent Baleros) therein the penalty of revocation of her notarial commission if still existing, disqualification from appointment as a notary public for two years, and suspension from the practice of law for six months. x x x. [D]r. *Malvar v. Atty. Baleros* is a case where the notary public failed to appreciate the importance of his role as a notary public by exhibiting an utter disregard of the notarial rules. Here, considering that respondent similarly exhibited a lack of basic understanding of the notarial rules, the Court deems it proper to revoke the notarial register of respondent if still existing and to disqualify respondent from being appointed as notary public for two years. She should also be suspended from the practice of law for six months.

APPEARANCES OF COUNSEL

Allan Christian F. Mendoza for complainant.

D E C I S I O N

INTING, *J.*:

Before the Court is a Verified Complaint[1] dated October 16, 2017 filed by Mary Jane D. Yuchengco (complainant) praying that Atty. Anathalia B. Angare (respondent) be disbarred and barred permanently from being commissioned as Notary Public.

In the Resolution[2] dated January 29, 2018, the Court referred the matter to the Integrated Bar of the Philippines (IBP)

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

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

Commission on Bar Discipline for investigation, report, and recommendation.

The Antecedents

In the Verified Complaint,[3] complainant alleged the following:

She was the duly elected President and authorized representative of Amendoza Palawan Corporation, a domestic corporation, and the complainant in *Amendoza Palawan Corporation v. Johnny R. Mendoza* which was a civil case for recovery of possession with damages. The complaint was docketed as Civil Case No. 5436, and raffled to Branch 95, Regional Trial Court (RTC) of Palawan, Puerto Princesa City.[4]

Respondent notarized a falsified and defective "Deed of Extrajudicial Settlement of Estate of Late Cristituto Dandal, Sr. with Absolute Sale"[5] (Deed) identified as "Doc. No. 733, Page No. 158, Book No. 02, Series of 2016."[6] Further, the Deed was attached to the Answer filed by Johnny R. Mendoza in Civil Case No. 5436.[7]

The Deed suffers from the following defects: (1) it was not dated; (2) it lacked the names and signatures of the required witnesses; (3) it lacked the details of the required competent identification cards of the parties thereto; (4) it was notarized without the presence of the parties and without verifying whether their signatures were genuine;[8] and (5) while respondent was commissioned as notary public for the City of Puerto Princesa for the period beginning April 20, 2016 and ending December 31, 2017 as shown by a Certification from the Office of the Executive Judge, another certification indicates that the Deed

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

[4] *Id.* at 1.

[5] *Id.* at 12-16.

[6] *Id.* at 16.

[7] *Id.* at 1.

[8] *Id.*

notarized by respondent was identified as "Doc. No. 733; Page No. 158; Book No. 02; Series of 2014, and not "Series of 2016" as indicated in the Deed.[9]

Further, complainant surmised that respondent anticipated the filing of a disbarment complaint against her. Thus, respondent filed a Motion to Correct before the RTC in Civil Case No. 5436, claiming that the Deed was yet to be notarized and that she unwittingly notarized it.[10]

Respondent appeared as collaborating counsel of Atty. Ryan Maristaza, defendant's counsel in Civil Case No. 5436. Thus, they had a reason or interest to falsify said documents in order to protect and advance the interest of their client.[11]

On the other hand, respondent, in her Answer,[12] argued that she inadvertently notarized the Deed as part of the Answer filed in Civil Case No. 5436, and insisted that the notarization of the Deed was a pure and honest mistake.[13]

Respondent also emphasized that the Deed had the same docket number as that of the Answer filed before the RTC in Civil Case No. 5436. Thus, had she intended to falsify the Deed as averred by complainant, the Deed should have had a separate docket number. Further, her notarial register showed that the said docket number for the Answer was in the name of LTCOL Rumpon, a senior military officer/lawyer.[14]

As to the accusation that she had no authority to notarize documents in 2014, respondent clarified that the Deed bearing the notarial docket is actually 2016, only that it looked like 2014. Thus, respondent suggested that there might have been a mistake

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[9] *Id.* at 3.

[10] *Id.*

[11] *Id.*

[12] Temporary *rollo*, pp. 29-31.

[13] *Id.* at 29.

[14] *Id.*

in the Certification by the Clerk of Court which indicated 2014 as the year the Deed was supposedly notarized.[15]

Subsequently, on November 16, 2018, the IBP Commission on Bar Discipline conducted a mandatory conference with both parties present.[16] The parties then agreed to simultaneously prepare and submit their respective position papers.[17]

On November 29, 2018[18] and December 7, 2018,[19] the IBP Commission on Bar Discipline received complainant's Position Paper and Respondent's Position Paper, respectively.

Report and Recommendation of the IBP Investigating Commissioner

In the Report and Recommendation[20] dated January 22, 2019, the IBP Investigating Commissioner Jose Alfonso M. Gomos (IBP Investigating Commissioner) ruled that while there was not enough evidence to support the suggestion that respondent falsified any of the documents involved, it was clear that either respondent did not appreciate the formalities required by the notarial rules or was careless in observing them, or both.[21]

The IBP Investigating Commissioner submitted the following findings:

First, there was an irregularity with the notarial docket "Doc. No. 733; Page No. 158; Book No. 02; Series of 2017 (6)." The two documents: (1) the Answer dated March 30, 2017 supposedly notarized on even date and filed in Civil Case No. 5436; and (2) the Deed, which was an attachment to the Answer, bear

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[15] *Id.*

[16] *Id.* at 70.

[17] *Id.* at 72.

[18] *Id.* at 73-79.

[19] *Id.* at 85-87.

[20] *Id.* at 106-113.

[21] *Id.* at 112.

the same notarial docket. While respondent explained that the notarization of the Deed was an honest mistake and that she was thinking of the Answer when she affixed her signature on the Deed, the IBP Investigating Commissioner ruled that the notarization of the Deed did not merely involve affixing her signature because there was a handwritten effort of indicating "Series of 2016 (4)" which respondent failed to explain.[22]

Second, respondent's assertion that the notarial detail of the Deed is "Series of 2016" was puzzling since the Certification from the Office of the Clerk of Court, RTC, Fourth Judicial Region, Puerto Princesa City indicated that the Deed which had the notarial docket number "Doc. No. 733; Page No. 158, Book No. 02; Series of 2014" was included in the O/SJA White Book 2017 submitted by respondent to the Office of the Clerk of Court. Further, while respondent claimed that she erroneously notarized the Deed as part of the Answer, the Answer which was filed in Civil Case No. 5436 was dated March 30, 2017 and appeared to have been notarized by respondent on the same day.[23]

Third, while respondent attached to her Position Paper her notarial log to prove that she only notarized the Answer and not the Deed, a perusal of the notarial log showed not the name of the affiant or the person who subscribed and swore to before her but a certain "LTCOL RUMPON JAGS (PAF)" who appeared to be a complete stranger to the Answer.[24]

Fourth, a perusal of the Answer showed that its verification was made by defendant in Civil Case No. 5436 and was duly notarized by a certain Atty. Henry T. Adaza. Thus, the IBP Investigating Commissioner was wondering as to the purpose of the *jurat* which respondent made on the Answer. In any case, respondent's notarization of the Answer was not compliant with the requirement under the 2004 Rules on Notarial Practice

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[22] *Id.* at 110.

[23] *Id.* at 110-111.

[24] *Id.* at 111.

since there were no details of the supposed competent evidence of identity referred to in the notarization. Also, while the records indicate that the Answer was prepared on March 30, 2017 and notarized by respondent on the same date, its verification appeared to have been notarized a day earlier, *i.e.*, March 29, 2017.[25]

However, the IBP Investigating Commissioner ruled that respondent was not guilty of misconduct in having appeared as co-counsel for defendant in Civil Case No. 5436 despite being a member of the Armed Forces of the Philippines (AFP). He explained that respondent presented a Certification from the Office of the Judge Advocate General, AFP, indicating that she was granted limited authority to practice law.[26]

Thus, the IBP Investigating Commissioner recommended that respondent's notarial commission be revoked if still subsisting, and that she be barred from being commissioned as notary public for two years.[27]

IBP Board of Governors' Ruling

In the Resolution[28] dated February 16, 2019, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the IBP Investigating Commissioner, thus:

> RESOLVED, to ADOPT the findings of fact and recommendation of the Investigating Commissioner and impose upon the Respondent the penalty of IMMEDIATE REVOCATION of his notarial commission, if subsisting, DISQUALIFICATION from being appointed as notary public for two (2) years.[29]

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[25] *Id.* at 111-112.

[26] *Id.* at 112.

[27] *Id.* at 113.

[28] *Id.* at 104-105.

[29] *Id.* at 104. Italics omitted.

The Court's Ruling

The Court adopts and affirms the IBP Board of Governors' Resolution dated February 16, 2019 with modification only as to the penalty imposed.

At the outset, the Court settles any confusion as to the notarial details of the Deed. While respondent asserts that the Deed bears the detail "Series of 2016," the Certification dated June 19, 2017 from the Office of the Clerk of Court, RTC, Fourth Judicial Region, Puerto Princesa City is to the effect that the Deed bears the detail "Series of 2014." However, the Court finds that the seeming discrepancy was due to the fact that the notarial details were partly handwritten such that the numerical figure "2016" appears to be "2014" in the copy of the Deed submitted to the Office of the Clerk of Court. In fact, a perusal of the Deed attached to the Answer which in turn was attached by complainant to her Complaint shows that the notarial detail of the Deed is in fact "Series of 2016." Thus, the Court is inclined to believe respondent's claim that the notarial detail of the Deed is 2016 and not 2014.

Now, as to respondent's liability.

In *Lustestica v. Atty. Bernabe*,[30] the Court had the occasion to reiterate that notarization is not an empty, meaningless routinary act; thus, lawyers commissioned as notary public must observe the basic requirements in the performance of their duties with utmost care. The Court declared:

> x x x We cannot overemphasize the important role a notary public performs. In *Gonzales v. Ramos*, we stressed that notarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic

[30] 643 Phil. 1 (2010).

requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[31]

As correctly ruled by the IBP Investigating Commissioner, respondent failed to appreciate the formalities required by the notarial rules and/or was careless in implementing the rules.

Records show that respondent notarized two documents, *i.e.*, the Answer[32] which was filed in Civil Case No. 5436 and the Deed which was attached as part of the Answer in Civil Case No. 5436. However, both documents were identified as "Doc. No. 733, Page No. 158, Book No. 02, series of 2016."

It is clear from the 2004 Rules on Notarial Practice that two different documents cannot bear the same notarial details. Specifically, Section 2, Rule VI of the 2004 Rules on Notarial Practice provides:

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

(1) **the entry number and page number**;

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

(3) the type of notarial act;

(4) the title or description of the instrument, document or proceeding;

(5) the name and address of each principal;

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

(7) the name and address of each credible witness swearing to or affirming the person's identity;

(8) the fee charged for the notarial act;

(9) the address where the notarization was performed if not in the notary's regular place of work or business; and

(10) any other circumstance the notary public may deem of significance or relevance.

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[31] *Id.* at 8-9, citing *Gonzales v. Ramos*, 499 Phil. 345, 347 (2005).

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

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(d) When the instrument or document is a contract, the notary public shall keep an original copy thereof as part of his records and enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. He shall also retain a duplicate original copy for the Clerk of Court.

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

Further, the Deed appeared to be notarized despite the fact that it did not contain the competent evidence of identities of the parties-signatories thereto. Specifically, there were blanks allotted for the competent evidence of identities of the signatories to the Deed, but these blanks were unfilled.

In an effort to excuse herself from failing to observe the requirements under the 2004 Rules on Notarial Practice, respondent harped on her defense that she only mistakenly notarized the Deed as part of the Answer in Civil Case No. 5436 and that the notarization was supposed to pertain to the Answer only.

However, the Certification[33] dated June 19, 2017 from the Office of the Clerk of Court, RTC, Fourth Judicial Region, Puerto Princesa City militates against her claim. It indicates that what respondent submitted before the court is not a copy of the Answer, but of the Deed. The Certification provides in part:

THIS IS TO CERTIFY that **based on records, the Deed of Extrajudicial Settlement of Estate of Late Cristituto Dandal, Sr. with Absolute Sale executed by Thelma Dandal, et al. in favor of Johnny Mendoza, with Doc. No. 733, Page No. 158, Book No. 02, Series of**

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[33] *Id.* at 19.

2014 and notarized by Atty. Anathalia B. Angare exist in our files. This is to certify further, that the 5-page document is a mere photocopy except for the signature of Atty. Anathalia B. Angare on the last page and the corresponding numbers for document number, page number, book number and series of 2014. Furthermore, the said document was included in the O/SJA White Book 2017 submitted to this office by Atty. Anathalia B. Angare.[34]

Unfortunately, considering that respondent denied intentionally notarizing the Deed, she miserably failed to explain as to why she submitted a copy of the Deed to the Office of the Clerk of Court. The Court finds it unbelievable that after allegedly notarizing the Deed by mistake, respondent would again mistakenly submit a copy of the Deed as a duly notarized document to the Office of the Clerk of Court.

In another attempt to establish that what she intentionally notarized was the Answer in Civil Case No. 5436 and not the Deed, she presented her notarial log with the following emphasized details:[35]

Doc	Page	Number	Name	Purpose	Date
xxx	xxx	xxx	xxx		30-03-17
733	**158**	**1**	**Notary/LTCOL RUMPON JAGS (PAF), Answer**		**-do-**

However, the Court finds that such notarial log failed to establish that "Doc. No. 733, Page No. 158, Book No. 02, series of 2016" corresponded to the Answer in Civil Case No. 5436 which she notarized. As correctly pointed out by the IBP Investigating Commissioner, the notarial log shows the name of a certain "LTCOL RUMPON JAGS (PAF)" who appears to be a complete stranger to the Answer.

Further, while complainant was only questioning the notarization of the Deed, the Court cannot help but notice

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[34] Temporary *rollo*, p. 75.

[35] *Id.* at 45.

respondent's notarization of the Answer in Civil Case No. 5436. Specifically, respondent's notarial act appeared right after the prayer and the signature of defendant's counsel. However, the Court is at a loss as to the purpose of said notarial act of respondent. As correctly explained by the IBP Investigating Commissioner, the verification of the Answer was made by defendant in Civil Case No. 5436 and was duly notarized by a certain Atty. Henry T. Adaza. Thus, aside from the Deed, respondent was left with nothing to notarize.

Even assuming for the sake of argument that respondent only mistakenly notarized the Deed, such excuse would not exculpate her from being disciplined by the Court. If at all, her "mistake" only shows her negligence and her failure to appreciate the gravity of her duties as a notary public.

Specifically, respondent could not have missed that she was notarizing the Deed if only she was diligent in performing her duties. Section 2, Rule VI of the 2004 Rules on Notarial Practice requires the notary public to identify and record in the notarial register the title or description of the instrument, document or proceeding for which the notarial act is being performed.

However, the Court finds that respondent is not guilty of unauthorized practice of law in having appeared as co-counsel for defendant in Civil Case No. 5436. Suffice it to state that as explained by the IBP Investigating Commissioner and based on the records, the Office of the Judge Advocate General, AFP issued a Certification[36] dated October 12, 2018 to the effect that respondent was granted limited authority to practice law by the Acting Judge Advocate General.

As for the penalty to be imposed, the Court in *Dr. Malvar v. Atty. Baleros*[37] imposed upon Atty. Cora Jane P. Baleros (respondent Baleros) therein the penalty of revocation of her notarial commission if still existing, disqualification from appointment as a notary public for two years, and suspension

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[36] *Id.* at 90.

[37] 807 Phil. 16 (2017).

from the practice of law for six months.[38] In that case, Dr. Basilio Malvar (complainant Malvar) alleged that an Application for Certification of Alienable Land and Disposable Land was filed using her name and without her knowledge, and that such document was notarized by respondent Baleros.[39] The Court found respondent Baleros guilty of notarizing a document without the presence of complainant Malvar who was purportedly the affiant. The Court also ruled that even assuming the presence of complainant before the notary public at the time of notarization, the notary public remained unjustified in not requiring complainant Malvar to show a competent proof of identity. The Court further observed that respondent assigned the same notarial details to two distinct documents, one of them being the aforementioned application. However, respondent Baleros indubitably failed to record the assailed document in her notarial register.[40]

Clearly, *Dr. Malvar v. Atty. Baleros*[41] is a case where the notary public failed to appreciate the importance of his role as a notary public by exhibiting an utter disregard of the notarial rules.

Here, considering that respondent similarly exhibited a lack of basic understanding of the notarial rules, the Court deems it proper to revoke the notarial register of respondent if still existing and to disqualify respondent from being appointed as notary public for two years. She should also be suspended from the practice of law for six months.

WHEREFORE, respondent Atty. Anathalia B. Angare is found **GUILTY** of violating the 2004 Rules on Notarial Practice. Her notarial commission, if existing is **REVOKED**, and she is hereby **DISQUALIFIED** from reappointment as Notary Public for a period of two (2) years. She is likewise **SUSPENDED** from the practice of law for six (6) months effective immediately.

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[38] *Id.* at 31.

[39] *Id.* at 21.

[40] *Id.* at 24-29.

[41] *Supra* note 37.

Further, she is **WARNED** 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), Hernando, and *Delos Santos, JJ.*, concur.

Gaerlan,[*] *J.*, on leave.

SECOND DIVISION

[A.C. No. 12076. June 22, 2020]

DR. MARIA ENCARNACION R. LEGASPI,[1] *complainant*, *vs.* **ATTY. FLORENCIO D. GONZALES,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYER-CLIENT RELATIONSHIP; BEGINS FROM THE MOMENT A CLIENT SEEKS THE LAWYER'S ADVISE UPON A LEGAL CONCERN AND FROM THAT MOMENT ON, THE LAWYER IS BOUND TO RESPECT THE RELATIONSHIP AND TO MAINTAIN THE TRUST AND CONFIDENCE OF HIS CLIENT. — The lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other *fora*. From that moment on, the lawyer is bound to respect

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[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

[1] Also referred to as "Dr. Ma. Encarnacion R. Legaspi" and "Dr. Ma. Encarnacion R. Legaspi-Vicerra" in some parts of the *rollo*.

the relationship and to maintain the trust and confidence of his client.

2. **ID.; ID.; ID.; RULE ON CONFLICT OF INTEREST; MATTERS DISCLOSED BY A PROSPECTIVE CLIENT TO A LAWYER ARE PROTECTED BY THE RULE ON PRIVILEGED COMMUNICATION EVEN IF THE PROSPECTIVE CLIENT DOES NOT THEREAFTER RETAIN THE LAWYER OR THE LATTER DECLINES THE EMPLOYMENT. —** After careful review of the records, We find that lawyer-client relationship between the parties already attached during their meeting on June 13, 2013. It must be noted that said consultation was intended for Legaspi to seek legal advice which also included inquiry on the rates to be paid. The information received by Atty. Gonzales are material to the issues against Aguarino which are intended by Legaspi to be confidential. In *Mercado v. Atty. Vitriolo*, it was held that matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client. Thus, we find that Atty. Gonzales violated the rule on conflict of interest, when he represented Aguarino in the unlawful detainer case filed by Legaspi's company. The fact that no fees was paid by Legaspi during their previous meeting do not excuse Atty. Gonzales in observing the foregoing rule. It is also of no moment that the said case was filed by the sister of Legaspi, Atty. Felomina Legaspi-Rosales, who happened to be the President of Rafel Realty.

3. **ID.; ID.; ID.; ID.; A LAWYER IS DUTY BOUND TO DECLINE PROFESSIONAL EMPLOYMENT IF ITS ACCEPTANCE INVOLVES A VIOLATION OF THE PROSCRIPTION AGAINST CONFLICT OF INTEREST, OR ANY OF THE RULES OF PROFESSIONAL CONDUCT. —** The relationship between a lawyer and his client should ideally be imbued with the highest level of trust and confidence. Necessity and public interest require that this be so. Part of the lawyer's duty to his client is to avoid representing conflicting interests. He is duty bound to decline professional employment, no matter how attractive

> the fee offered may be, if its acceptance involves a violation of the proscription against conflict of interest, or any of the rules of professional conduct. Thus, a lawyer may not accept a retainer from a defendant after he has given professional advice to the plaintiff concerning his claim; nor can he accept employment from another in a matter adversely affecting any interest of his former client. It is his duty to decline employment in any of these and similar circumstances in view of the rule prohibiting representation of conflicting interests.

APPEARANCES OF COUNSEL

M.K. Bote-Veguillas Law Office for complainant.

R E S O L U T I O N

DELOS SANTOS, *J.*:

Antecedents

In her Complaint,[2] Maria Encarnacion R. Legaspi (Legaspi) alleged that on June 13, 2013, she went to the residence of respondent Atty. Florencio D. Gonzales (Atty. Gonzales) in New Buswang, Kalibo, Aklan to consult him about the presence of an illegal settler in a parcel of land owned by Legaspi and her family. According to Legaspi, she related to Atty. Gonzales that a certain Romeo Aguarino (Aguarino) squatted on their property and despite the demand letters for him to leave, the latter kept staying. In this regard, Legaspi asked Atty. Gonzales how much legal fees would be charged in order that Aguarino may be removed from the property. Atty. Gonzales said that his fee is ₱20,000.00 and that another ₱100,000.00 will be needed as initial expense to talk to the people who would have influence over Aguarino. Atty. Gonzales allegedly said that if his services are not engaged, the illegal settler would likely get another lawyer and try to get millions from the Legaspis. After a few days, Legaspi found out that Atty. Gonzales had become the

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

legal counsel of Aguarino in the unlawful detainer case filed by Rafel Realty and Development Corporation (Rafel Realty; the company of the Legaspis) against the latter. The said case was amicably settled, whereby Aguarino was given money and a parcel of land owned by Legaspi. According to Legaspi, she felt obligated to the company to give up her property to Aguarino since she was the one who consulted with Atty. Gonzales, who later betrayed them to the detriment of the company. Lastly, Legaspi alleged that Atty. Gonzales received a portion of the settlement money from Aguarino. Accordingly, Legaspi accused Atty. Gonzales of violating Paragraph 6 of the Canons of Professional Ethics, and Canons 17 and 21 of the Code of Professional Responsibility (CPR) because of his unethical behavior in accepting Aguarino's case after she had narrated to him confidential facts that he thereafter used to their disadvantage.[3]

In his Answer,[4] Atty. Gonzales countered that no lawyer-client relationship was established between him and Legaspi because no fee or charges have been paid. Further, Atty. Gonzales added that Legaspi cannot claim that there is conflict of interest as she was not the same party who signed the compromise agreement with Aguarino but Atty. Ma. Felomina Legaspi-Rosales,[5] who represented Rafel Realty.[6]

Integrated Bar of the Philippines (IBP) Report and Recommendation

In his Report and Recommendation[7] dated April 10, 2015, IBP Investigating Commissioner Cecilio A. C. Villanueva (Commissioner Villanueva) recommended for the suspension

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[3] *Id.* at 53.

[4] *Id.* at 9-13.

[5] Also referred to as "Atty. Ma. Filomena Legaspi-Rosales" in some parts of the *rollo*.

[6] *Id.* at 66.

[7] *Id.* at 144-150.

of Atty. Gonzales from the practice of law for two (2) years. According to Commissioner Villanueva, it was undisputed that (1) Atty. Gonzales had a meeting with Legaspi regarding the issue of the illegal settler, Romeo Aguarino; and (2) he later on represented the same illegal settler in an unlawful detainer case which has the same issue with what was brought upon him by Legaspi. It was ruled that Atty. Gonzales violated the CPR, particularly the rules on conflict of interest.

In its Resolution No. XXII-2016-270[8] dated April 29, 2016, the IBP Board of Governors resolved to adopt with modification the report and recommendation of Commissioner Villanueva, lowering the penalty to suspension of Atty. Gonzales from practice of law for a period of one (1) year. Atty. Gonzales sought reconsideration, but the IBP Board of Governors denied his motion in its Resolution No. XXII-2017-1312[9] dated April 20, 2017.

Issues

Did Atty. Gonzales violate the rule on conflict of interest?

Ruling

We adopt and sustain the findings and recommendation of the IBP Board of Governors.

Complainant Legaspi alleged that client-lawyer relationship was created when she consulted Atty. Gonzales and shared confidential matters during their meeting on June 13, 2013.[10] For this reason, Legaspi claimed that Atty. Gonzales violated the rule on conflict of interest when he represented Aguarino in the unlawful detainer case filed by them (Legaspis). On the other hand, Atty. Gonzales argued that there was no conflict of interest for the following reasons: (1) no lawyer-client relationship was established because no fees or charges have

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[8] *Id.* at 193-194.

[9] *Id.* at 191-192.

[10] *Id.* at 135.

been paid by Legaspi;[11] (2) it was Atty. Felomina Legaspi-Rosales who filed the case against Aguarino and not complainant Legaspi herself; and (3) he was not a party to the compromise agreement.[12]

The lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other *fora*. From that moment on, the lawyer is bound to respect the relationship and to maintain the trust and confidence of his client.[13]

Meanwhile, Canon 15 and Rule 15.02 of the CPR provide:

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 15.02. — A lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client. (Emphasis supplied)

After careful review of the records, We find that lawyer-client relationship between the parties already attached during their meeting on June 13, 2013. It must be noted that said consultation was intended for Legaspi to seek legal advice which also included inquiry on the rates to be paid. The information received by Atty. Gonzales are material to the issues against Aguarino which are intended by Legaspi to be confidential.

In *Mercado v. Atty. Vitriolo*,[14] it was held that matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective

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[11] *Id.* at 9.

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

[13] *Diongzon v. Mirano*, 793 Phil. 200, 206 (2016).

[14] 498 Phil. 49, 58 (2005).

client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client.

Thus, we find that Atty. Gonzales violated the rule on conflict of interest, when he represented Aguarino in the unlawful detainer case filed by Legaspi's company. The fact that no fees was paid by Legaspi during their previous meeting do not excuse Atty. Gonzales in observing the foregoing rule. It is also of no moment that the said case was filed by the sister of Legaspi, Atty. Felomina Legaspi-Rosales, who happened to be the President of Rafel Realty.

The relationship between a lawyer and his client should ideally be imbued with the highest level of trust and confidence. Necessity and public interest require that this be so. Part of the lawyer's duty to his client is to avoid representing conflicting interests. He is duty bound to decline professional employment, no matter how attractive the fee offered may be, if its acceptance involves a violation of the proscription against conflict of interest, or any of the rules of professional conduct. Thus, a lawyer may not accept a retainer from a defendant after he has given professional advice to the plaintiff concerning his claim; nor can he accept employment from another in a matter adversely affecting any interest of his former client. It is his duty to decline employment in any of these and similar circumstances in view of the rule prohibiting representation of conflicting interests.[15]

Applying the foregoing rules to the instant case, We hold that Atty. Gonzales violated Canon 15 of the CPR. While the Court cannot allow a lawyer to represent conflicting interests, the Court deems disbarment a much too harsh penalty under the circumstances.[16] Thusly, the Court finds the imposition of

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[15] *Ylaya v. Atty. Gacott*, 702 Phil. 390, 415 (2013).

[16] *Palacios v. Atty. Amora, Jr.*, 815 Phil. 9, 25 (2017).

the one (1)-year suspension from the practice of law against Atty. Gonzales proper.

WHEREFORE, the Court **AFFIRMS** the April 29, 2016 Resolution of the Integrated Bar of the Philippines Board of Governors. **ATTY. FLORENCIO D. GONZALES** is found **GUILTY** of violating Rule 15.02, Canon 15 of the Code of Professional Responsibility, and is hereby **SUSPENDED** from the practice of law for a period of **ONE (1) YEAR**, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

Atty. Gonzales' suspension from the practice of law shall take effect immediately upon his receipt of this Resolution. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be served on the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for proper dissemination to all courts in the country for their information and guidance and be attached to the respondent's personal record as attorney.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Inting, and *Gaerlan,*[*] *JJ.*, concur.

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[*] Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. Nos. 220045-48. June 22, 2020]

WYETH PHILIPPINES, INC., *petitioner*, *vs.* **CONSTRUCTION INDUSTRY ARBITRATION COMMISSION ("CIAC"), CIAC ARBITRATORS VICTOR P. LAZATIN, SALVADOR P. CASTRO, JR. and MARIO E. VALDERRAMA; SKI CONSTRUCTION GROUP, INC.; and MAPFRE INSULAR INSURANCE CORPORATION,** *respondents*.

SYLLABUS

1. MERCANTILE LAW; EXECUTIVE ORDER NO. 1008 (CONSTRUCTION INDUSTRY ARBITRATION LAW); CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); CREATED TO ENCOURAGE THE EARLY AND EXPEDITIOUS SETTLEMENT OF DISPUTES IN THE PHILIPPINE CONSTRUCTION INDUSTRY; CIAC'S AUTHORITY, EXPOUNDED. — "[T]o encourage the early and expeditious settlement of disputes in the Philippine construction industry[,]" Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law created the Construction Industry Arbitration Commission (Commission). Section 4 of the Construction Industry Arbitration Law lays down the jurisdiction of the Commission. x x x The Commission's authority is expounded in *CE Construction Corp. v. Araneta Center, Inc.*: The CIAC does not only serve the interest of speedy dispute resolution, it also facilitates *authoritative* dispute resolution. Its authority proceeds not only from juridical legitimacy but equally from technical expertise. The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation,

erection and assembly and installation of components and equipment."

2. ID.; ID.; ID.; ARBITRATORS; QUALIFICATIONS. — The authority of the Commission proceeds from its technical expertise. The Construction Industry Arbitration Law states that arbitrators shall be persons of distinction in whom the business sector, "particularly the stake holders [sic] of the construction industry[,]" and the government can have confidence. "They shall possess the competence, integrity, and leadership qualities to resolve any construction dispute expeditiously and equitably. The Arbitrators shall come from different professions. They may include engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry and lawyers who are experienced in construction disputes." Technical experts may also aid the arbitrators in resolving the disputes if requested by the parties.

3. ID.; ID.; ID.; ARBITRAL AWARDS; FINAL AND INAPPEALABLE, EXCEPT ONLY ON PURE QUESTIONS OF LAW; EXCEPTIONS. — Due to the highly "technical nature of the proceedings" before the Commission, and the voluntariness of the parties to submit to its proceedings, "the Construction Industry Arbitration Law provides for a narrow ground by which the arbitral award can be questioned[.]" The Construction Industry Arbitration Law provides that arbitral awards are final and inappealable, except only on pure questions of law. x x x The general rule then is that the awards of the Arbitral Tribunal may be appealed only on pure questions of law, and its factual findings should be respected and upheld. Since the Construction Industry Arbitration Law does not provide when an arbitral award may be vacated, we can glean the exceptions from *Spouses David v. Construction Industry and Arbitration Commission*: We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified

to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

4. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF LAW DISTINGUISHED FROM QUESTIONS OF FACT.— A question of law arises when there is "doubt. . . as to what the law is on a certain set 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, there must be no doubt as to the veracity or falsehood of the facts alleged, but if it involves an "examination of the probative value of the evidence presented[,]" then the question posed is one of fact.

5. ID.; EVIDENCE; CREDIBILITY; COURTS SHOULD DEFER TO THE FACTUAL FINDINGS OF THE ARBITRAL TRIBUNAL WHICH HAS TECHNICAL COMPETENCE AND IRREPLACEABLE EXPERIENCE OF HEARING THE DISPUTE.— Courts should thus defer to the factual findings of the Arbitral Tribunal as held in *CE Construction Corp. v. Araneta Center, Inc.*: In appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it. The CIAC Arbitral Tribunal perused each of the parties' voluminous pieces of evidence. Its members personally heard, observed, tested, and propounded questions to each of the witnesses. Having been constituted solely and precisely for the purpose of resolving the dispute between ACI and CECON for 19 months, the CIAC Arbitral Tribunal devoted itself to no other task than resolving that controversy. This Court has the benefit neither of the CIAC Arbitral Tribunal's technical competence nor of its irreplaceable experience of hearing the case, scrutinizing every piece of evidence, and probing the witnesses.

6. MERCANTILE LAW; EXECUTIVE ORDER NO. 1008 (CONSTRUCTION INDUSTRY ARBITRATION LAW); CIAC;

ARBITRATION CLAUSE IN A CONSTRUCTION CONTRACT IS DEEMED AN AGREEMENT TO SUBMIT TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL IN CASE OF CONTROVERSY. — [T]he parties voluntarily submitted to arbitration any dispute arising from their contract and acknowledged that an Arbitral Tribunal constituted under the Commission has full competence to rule on the dispute presented to it. "An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction[.]"

7. REMEDIAL LAW; APPEALS; ISSUES NOT RAISED ON APPEAL ARE ALREADY FINAL AND CANNOT BE DISTURBED; CASE AT BAR. — Both the Arbitral Tribunal and Court of Appeals held that since respondent SKI delayed in the fulfilment of its obligation, petitioner validly terminated the contract. Considering that respondent SKI did not appeal the findings of the Arbitral Tribunal and Court of Appeals as to the issues of termination and delay, the findings on these issues are deemed final as to respondent SKI. "Issues not raised on appeal are already final and cannot be disturbed."

8. CIVIL LAW; CONTRACTS; A CONTRACT IS THE LAW BETWEEN THE PARTIES AND, ABSENT ANY SHOWING THAT ITS PROVISIONS ARE WHOLLY OR IN PART CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER, OR PUBLIC POLICY, IT SHALL BE ENFORCED TO THE LETTER BY THE COURTS, WITHOUT THE NEED TO RESORT TO OTHER AIDS IN INTERPRETATION; CASE AT BAR. — "[A] contract is the law between the parties and, absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts[,]" without the need to resort to other aids in interpretation. Thus, there is basis in finding petitioner and respondent SKI entitled to some of its claims.

9. ID.; DAMAGES; ACTUAL DAMAGES; MUST BE PROVEN WITH A REASONABLE DEGREE OF CERTAINTY, PREMISED UPON COMPETENT PROOF OR THE BEST EVIDENCE OBTAINABLE. — "[E]xcept as provided by law or by stipulation, [a claimant] is entitled to an adequate compensation only for

pecuniary loss" duly proven. Thus, actual damages must be proven "with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable" like official receipts and invoices, as explained in *Metro Rail Transit Development Corp. v. Gammon Philippines*: Actual damages constitute compensation for sustained measurable losses. It must be proven "with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable." It is never presumed or based on personal knowledge of the court.

10. MERCANTILE LAW; EXECUTIVE ORDER NO. 1008 (CONSTRUCTION INDUSTRY ARBITRATION LAW); CIAC REVISED RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION; RULE 16, SECTION 16.5 THEREOF; COSTS OF ARBITRATION; DECISION OF THE ARBITRAL TRIBUNAL THEREON, UPHELD IN CASE AT BAR. — On the costs of the arbitration, the CIAC Revised Rules of Procedure Governing Construction Arbitration, Rule 16, Section 16.5 states: *Decision as to costs of arbitration*. — In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitral Tribunal, the Final Award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each of them. x x x The Terms of Reference signed by the parties expressly provides that: "[t]he costs of arbitration which include the filing, administrative, arbitrators' fees, and charges for Arbitration Development Fund, including all incidental expenses, shall be on a **pro rata basis**, subject to the determination of the Arbitral Tribunal which of the parties shall eventually shoulder such costs or the mode of sharing thereof." Based on the rules and the contract, the Arbitral Tribunal properly exercised its jurisdiction in holding that petitioner and respondent SKI should equally shoulder the arbitration costs. It likewise properly held that no party may recover attorney's fees from each other.

11. ID.; ID.; ID.; AS A GENERAL RULE, AND IF NO BOND TO STAY EXECUTION IS POSTED, THE MOTION FOR EXECUTION PENDING APPEAL FILED BY THE PREVAILING PARTY MAY BE GRANTED, UNLESS IT APPEALED SAID AWARD OR ANY PORTION THEREOF; CASE AT BAR. — [P]etitioner is not entitled to an execution pending appeal

> because it appealed the Award of the Arbitral Tribunal. x x x As stated in the present 2019 Revised Rules: "[a]s a general rule, if no bond to stay execution is posted, the motion for execution pending appeal filed by the prevailing party may be granted, unless it appealed said award or any portion thereof." It is clear then that the general rule is that the motion for execution pending appeal may be granted, and the exception would be if the award or any portion of it is appealed, by any party or both parties. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, but only application. The present rule as it stands is consistent with the interpretation of the Arbitral Tribunal, as affirmed by the Court of Appeals. When petitioner appealed the Award, its case fell within the exception for when a motion for execution pending appeal cannot be granted. Furthermore, similar to the expressed policy in CIAC Resolution No. 02-2006, the 2019 Revised Rules, "being procedural in nature, may be applied retroactively to all pending cases," such as in this case. The old rules and all policies issued in connection with it, as well as policies inconsistent with it, are expressly repealed.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Juan J. De Dios, Jr. for respondent SKI Construction Group, Inc.

D E C I S I O N

LEONEN, *J.*:

When the award of the Construction Industry Arbitration Commission Arbitral Tribunal becomes the subject of judicial review, courts must defer to its factual findings by reason of its "technical expertise and irreplaceable experience of presiding over the arbitral process."[1] A stringent exception would be

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[1] *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 229 (2017) [Per *J.* Leonen, Second Division].

when the integrity of the arbitral tribunal itself has been jeopardized[2] which is not present in this case.

This is a Petition for Review on *Certiorari* [3] filed by petitioner Wyeth Philippines, Inc. assailing the Consolidated Decision/ Resolution[4] and Resolution[5] of the Court of Appeals in CA-G.R. SP Nos. 117924, 117925, 117929 & 125648, which modified the Award[6] of the Construction Industry Arbitration Commission Arbitral Tribunal in CIAC Case No. 18-2009.

Petitioner Wyeth Philippines, Inc. (Wyeth) is the project owner of the "Dryer 3 and Wet Process Superstructure Works"[7] located at Canlubang Industrial Estate, Bo. Pittland, Cabuyao, Laguna. In 2007, Wyeth invited bidders to submit proposals for its project through its consultant, Jacobs Engineering Singapore Pte. Ltd.[8]

Respondent SKI Construction Group, Inc. (SKI) submitted its qualified proposal to undertake the project for ₱242,800,000.00.[9]

On June 29, 2007, SKI was awarded the bid provided it executes the superstructure works in accordance with a Notice to Proceed issued by Wyeth. The Notice to Proceed conformed

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[2] *Id.*

[3] *Rollo*, pp. 123-184.

[4] *Id.* at 15-49. The Decision dated January 23, 2015 was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesinando E. Villon (Chairperson) and Pedro B. Corales of the Former Fifteenth Division of the Court of Appeals, Manila.

[5] *Id.* at 51-58. The Resolution dated August 3, 2015 was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesinando E. Villon (Chairperson) and Pedro B. Corales of the Former Fifteenth Division of the Court of Appeals, Manila.

[6] *Id.* at 294-334. The December 23, 2010 award was rendered by the Arbitral Tribunal composed of Victor P. Lazatin (Chairperson) and Salvador P. Castro, Jr. and Mario E. Valderrama, as Members.

[7] *Id.* at 808.

[8] *Id.*

[9] *Id.*

to by SKI President and CEO Albert Altura provided for the completion of the project on February 23, 2008, and the possession of the site on June 29, 2007. It also designated Jacob Constructors Singapore Pte. Ltd. as Project Manager.[10]

After signing the Notice to Proceed, SKI was given an advance payment of ₱72,840,000.00.[11]

As required under the Contract, SKI caused respondent Mapfre Insular Insurance Corp. (Mapfre) to issue the following bonds in favor of Wyeth:

> 12.1. Surety Bond No. MAIC/G(25) 9995 (the "Payments Bond"), in the amount of ₱48,560,000.00 under which [SKI], as principal, and Mapfre, as surety, bound themselves unto [Wyeth] to jointly and severally pay claims for all labor and materials used or reasonably required for use in the performance of the Contract.
>
> 12.2. Surety Bond No. MAIC/G(25) 9994 (the "Advance Payment Bond"), in the amount of ₱72,840,000.00 under which [SKI], as principal, and Mapfre, as surety, bound themselves unto [Wyeth] to indemnify [Wyeth] for its failure to recoup the Advance Payment granted to [SKI] by [Wyeth] in connection with the Contract.
>
> 12.3. Performance Bond No. MAIC/G(13) 4104 (the "Performance Bond"), in the amount of ₱48,560,000.00 under which [SKI], as principal, and Mapfre, as surety, bound themselves unto [Wyeth] to indemnify [Wyeth] for any loss or damage that [it] may suffer as a consequence of [SKI's] failure to perform its obligations and comply with the terms and conditions of the Contract.[12]

On January 25, 2008, the Project Manager directed the cessation of all construction activities starting from January 26, 2008 until further notice to give SKI ample time to address internal issues regarding its workforce.[13]

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[10] *Id.*

[11] *Id.*

[12] *Id.* at 809.

[13] *Id.* at 305.

In a letter dated February 6, 2008, Wyeth notified Mapfre that it might need to call upon the bonds.[14]

On February 8, 2008, Wyeth, through its managing director informed SKI of the termination of the contract.[15] On February 11, 2008, SKI replied saying the termination was done without giving them 14 days to address the problems, pursuant to Clause 8 of the Conditions of the Contract:

> "if in the opinion of the Project Manager. . . the Contractor fails to proceed regularly and diligently with the Works. . . then the Project Manager shall give them Notice by registered post or hand delivery specifying the defaults and if the Contractor either shall continue such default for fourteen (14) days after receipt of such notice. . . then the Owner. . . may within ten (10) days after such continuance or repetition. . . terminate the Employment of the Contractor."[16]

SKI claimed they essentially only had three days to complete the project from the time they were informed of their default on January 23, 2008, until the Project Manager suspended all the construction activities starting January 26, 2008, even if they supposedly had until February 6, 2008 to complete it.[17]

On February 19, 2008, Wyeth wrote a letter to Mapfre, calling on the performance of the bonds they issued.[18]

On February 29, 2008, Wyeth wrote another letter to Mapfre, requesting confirmation that it will not be barred from claiming on the bonds pending settlement with SKI.[19] On March 4, 2008, Mapfre confirmed that Wyeth will not be barred from pursuing its claims against the bonds. However, Mapfre stated that it

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[14] *Id.*

[15] *Id.* at 765-767.

[16] *Id.* at 768-769.

[17] *Id.*

[18] *Id.* at 305.

[19] *Id.*

will only act on the bonds after SKI's liability has been clearly established.[20]

In a Letter dated January 14, 2009, Mapfre refused to pay the amount under the payments bond.[21]

On February 10, 2009, Wyeth wrote to Mapfre demanding payment of ₱47,371,855.91 representing the unrecouped amount from the advance payment of ₱72,840,000.00 given to SKI.[22]

When the parties failed to arrive at an amicable settlement on the claims after various meetings, they agreed to refer the dispute to arbitration pursuant to Article 10 of their contract.[23]

After the parties still failed to reach a settlement, Wyeth filed a Complaint before the Regional Trial Court of Makati to recover the amount under the payments bond. However, the parties eventually agreed to resolve the dispute through arbitration before the Construction Industry Arbitration Commission (Commission).

On June 2, 2009, SKI filed a Complaint against Wyeth before the Commission for the adjudication of its claims.[24] On June 29, 2009, Wyeth filed an Answer with Compulsory Counterclaims. On July 21, 2009, SKI filed a Reply to Counterclaim.[25]

In its Order dated July 23, 2009, the Commission apprised the parties of the composition[26] of the Arbitral Tribunal and the setting of the preliminary conference on August 6, 2010.[27]

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[20] *Id.*

[21] *Id.*

[22] *Id.* at 305.

[23] *Id.* at 810.

[24] *Id.* at 296.

[25] *Id.*

[26] The tribunal was composed of Jose F. Mabanta, Mario E. Valderrama, and Victor P. Lazatin (Chairperson).

[27] *Rollo*, p. 296.

During the preliminary conference, Wyeth filed an Omnibus Motion to implead Mapfre pursuant to the bonds it issued in favor of Wyeth.[28]

On October 19, 2009, Mapfre filed an Answer[29] claiming that Wyeth was not entitled to recover anything. It claimed to have acted in good faith in rejecting Wyeth's claim, because the same had been extinguished by judicial compensation. However, should it be held liable to Wyeth, Mapfre prayed to be indemnified by SKI. On November 6, 2009, Wyeth filed its Reply.[30]

On November 11, 2009, the Commission denied the motion filed by Wyeth seeking to recall the appointment of two members of the tribunal.[31]

On November 17, 2009, SKI, Wyeth, and Mapfre signed the Terms of Reference,[32] stating admitted facts, positions, claims and counterclaims, issues to be determined, and amount of arbitration fees.

In its Order dated December 22, 2009, the Arbitral Tribunal granted Wyeth's Motion for Reconsideration by recalling the appointment of Jose F. Mabanta from the tribunal, and directing the two members to choose a replacement from the list of accredited arbitrators who is not a nominee of any of the parties.[33]

On February 1, 2010, the Arbitral Tribunal promulgated its Order denying Wyeth's prayer to declare all proceedings, including the conduct of preliminary conference, preparation, and signing of Terms of Reference, as vacated.[34] On April 14,

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[28] *Id.*

[29] *Id.* at 748-757.

[30] *Id.* at 801-805.

[31] *Id.* at 297.

[32] *Id.* at 806-818.

[33] *Id.* at 298.

[34] *Id.* at 300.

2010, Wyeth filed a Manifestation and Motion on the Appointment of Felisberto G.L. Reyes (Reyes), claiming that he was an original nominee of SKI.[35] On April 19, 2010, Reyes resigned as member of the tribunal.[36] On April 27, 2010, the Commission appointed Salvador P. Castro, Jr. to replace Reyes.[37]

After the conduct of hearings, submission of parties' memoranda and offers of exhibits, the Arbitral Tribunal issued its December 23, 2010 Award,[38] finding that Wyeth validly terminated the contract because SKI incurred delay in the construction of the project. SKI was held liable for the payment of additional costs incurred by reason of the delay in the performance of its obligation. However, it awarded SKI the cost of rebars, formworks, safety equipment and repairs it had made.[39]

In finding SKI liable, the Arbitral Tribunal reasoned out that: (1) the agreed commitments under various construction programs were not met;[40] (2) the notes from the project meetings and Wyeth's letters raising causes of delays were not disputed and some were even acknowledged by SKI;[41] and (3) while SKI's delays were justified, they failed to raise a timely objection to Wyeth's Variation Order indicating that the problems they encountered had no time impact to the project's completion.[42] The Arbitral Tribunal further held that SKI is not entitled to an extension of time as its justifications were afterthoughts to escape its liability for the delays. Lastly, its failure to assert its entitlement

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[35] *Id.* at 301.

[36] *Id.* at 302.

[37] *Id.* at 303.

[38] *Id.* at 294-334.

[39] *Id.* at 20.

[40] *Id.* at 311-312.

[41] *Id.* at 312.

[42] *Id.*

to damages within the period allowed under the contract barred it from claiming them.[43]

The Arbitral Tribunal held that Wyeth, as project owner, had a wide latitude in exercising its prerogative to terminate the contract and that the termination was valid because SKI could further prejudice the completion of the project should it be given another chance to discharge its contractual obligations.[44]

The Arbitral Tribunal awarded SKI its valid claims, specifically: (1) the value of rebars considering that Wyeth had already agreed to SKI's entitlement to this; (2) the value of safety harness used by Wyeth; (3) the cost of repair of the damaged tower crane; and (4) the value of the damaged tower crane collar.[45]

However, the Arbitral Tribunal denied SKI's following claims: (1) the additional labor costs to catch up with the works as it was SKI who caused the delay;[46] (2) the additional costs due to change in the formworks system because it was SKI's contractual obligation to supply them;[47] (3) the cost for complying with additional safety requirements because SKI failed to observe the strict safety requirements stipulated in the contract;[48] and (4) the additional cost for a Load Moment Indicator (LMI) which aids in inspecting and certifying the worthiness of the crane.[49]

The Arbitral Tribunal also denied for lack of merit the other claims of SKI considering that the termination of the contract was valid:

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[43] *Id.*

[44] *Id.* at 314.

[45] *Id.* at 319-320.

[46] *Id.* at 317.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 318.

(1) Additional overhead expenses from March 2008 to December 2008;
(2) Loss of profit for undue termination;
(3) Loss of profit for deleted items;
(4) Standby cost of equipment, formworks, crane, Generator set and other materials; and
(5) Moral and exemplary damages.

On the other hand, the Arbitral Tribunal found the need to evaluate Wyeth's counterclaims, considering that it far exceed the value of the contract sum of the project in dispute.[50] Particularly, it held that Wyeth's claim of payment to various contractors in the amount of ₱167,588,306.67 is questionable since the total contract sum is ₱214,944,802.30 and ₱108,326,018.64 was already paid to SKI, leaving only ₱106,618,783.70 or 49.60% of the total contract sum.[51]

The Arbitral Tribunal held that while Wyeth suffered pecuniary loss, the evidence it submitted were not clear and convincing as to establish actual damages. Hence, the Tribunal applied Article 2224 of the Civil Code[52] and the parties' agreement on liquidated damages[53] as measure for temperate damages. It awarded Wyeth temperate damages amounting to ₱24,280,000.00, the maximum amount permitted under the contract.[54]

The Arbitral Tribunal held that Wyeth failed to present clear and convincing evidence on the scope, details, costing and reasonableness of some of their claims, specifically: (1) costs incurred for labor and materials; (2) additional cost of labor; (3) payment to various contractors; (4) rectification works; (5) additional cost to retain the site establishment; and (6) payment

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[50] *Id.* at 321.

[51] *Id.* at 322.

[52] *Id.* at 326.

[53] *Id.*

[54] *Id.* at 327.

to other contractors. However, it found Wyeth's claim of payment to various suppliers in the amount of ₱6,852,678.71 as valid and undisputed.[55]

The Arbitral Tribunal further held that the unrecouped down payment is deemed included in Wyeth's "global" or excess claim after lumping all the cost it allegedly incurred (including all payments to SKI as well as all other contractors/suppliers) less the contract price, and granted the unrecouped amount of ₱42,293,679.02 in addition to the Temperate Damages.[56]

The Arbitral Tribunal ruled that the cost of arbitration should be equally shouldered by SKI and Wyeth, Mapfre should shoulder its own costs, and no party may recover attorney's fees from each other.[57] It further held Mapfre jointly and severally liable with SKI, on its: (1) Advance Payment Bond, for the unrecouped down payment; (2) Payment Bond; and (3) Performance Bond equal to the Temperate Damages awarded.[58] The Arbitral Tribunal held that the right to file claim on the Payment Bond is not "time-barred" and the referral to arbitration is based on the agreement between Wyeth and Mapfre, without objection from SKI.[59] Lastly, it held that Mapfre should be indemnified by SKI in case it is made to pay Wyeth.[60]

The Award's dispositive portion read:

WHEREFORE, AWARD is hereby made as follows:

A. <u>FOR CLAIMANT</u>

1. Rebar	PhP12,298,307.68
2. Formworks	2,787,795.20

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[55] *Id.* at 323.

[56] *Id.* at 327.

[57] *Id.*

[58] *Id.* at 331.

[59] *Id.*

[60] *Id.*

3. Safety Harness	157,500.01
4. Repair of Damaged Tower Crane	1,172,384.00
5. Damage Tower Crane Collar	1,890,518.28
Total	PhP18,306,505.17

B. <u>FOR RESPONDENT</u>

1. Temperate Damages for the following Claims: PhP24,280,000.00

   a) Cost incurred for Labor and Materials
   b) Additional Cost for Labor
   c) Additional Site Management
   d) Payment to Various Contractors
   e) Rectification Work
   f) Payment to Other Contractors

2. Payment to Various Suppliers PhP 6,852,678.71

3. Unrecouped Down Payment PhP42,293,670.02

SUMMARY

<u>COMPUTATION</u>

Claimant		PhP18,306,505.17
Respondent		
Temperate Damages	PhP24,280,000.00	
Payment to Various Suppliers	6,852,678.71	
Recoupment of Down Payment	PhP42,293,679.02	(PhP73,426,357.73)
Due to **Respondent**		PhP55,119,852.56

This amount of Php55,119,852.56 due to Respondent from Claimant shall earn legal interest from the date of this Award until fully paid.

On the Third Party Complaint, the Arbitral Tribunal awards to Respondent against MAPFRE the maximum amounts as follows:

1. On the Advance Payment bond	-	PhP42,293,679.02
2. On the Payment Bond	-	6,852,678.71
3. On the Performance Bond	-	24,280,000.00

but [sic] MAPFRE's liability cannot exceed the net liability of Claimant, its principal, in the amount of Php55,119,852.56. Moreover, on the Cross-Claims against Claimant, MAPFRE is awarded the right of indemnification for any amounts that it may pay to Respondent, with legal interest from the time of Notice of Payment is served on the Claimant. [sic]

SO ORDERED.[61]

On February 18, 2011, Wyeth filed a Petition for Review,[62] docketed as CA-G.R. SP No. 117929, before the Court of Appeals, praying for the deletion of the award to SKI of the value of rebars, formworks, safety equipment, and costs of the damaged tower crane and tower crane collar. It also prayed that its net award be increased from ₱55,119,852.56 to ₱348,573,877.08. Lastly, it prayed that Mapfre be held solidarily liable with SKI for the entire amount of ₱348,573,877.08. On the same day, Mapfre filed a separate Petition for Review,[63] docketed as CA-G.R. SP No. 117924. On February 21, 2011, SKI filed its Petition for Review,[64] docketed as CA-G.R. SP No. 117925, before the Court of Appeals.

On May 25, 2011, Wyeth filed a Motion for Execution of the Award[65] before the Commission.

In its March 6, 2012 Resolution,[66] the Arbitral Tribunal denied the motion for execution on the basis of CIAC Resolution No. 06-2002 or "Policy Guidelines to Clarify the Policy Guidelines Regarding Execution of a Final Award during Appeal"[67] and further explained that "allowing [Wyeth] to move for the execution of the CIAC award as well as question the same award on

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[61] *Id.* at 332-333.

[62] *Id.* at 2065-2110.

[63] *Id.* at 1966-2002.

[64] *Id.* at 1810-1965.

[65] *Id.* at 2119-2129.

[66] *Id.* at 2036-2041.

[67] *Id.* at 2038.

appeal results to an absurd and conflicting scenario of a party seeking enforcement of a final and executory judgment while also seeking the reversal or modification of the same judgment."[68]

The Arbitral Tribunal ratiocinated that since the Revised Rules[69] is substantially a reenacted rule regarding the Rule on Execution of Final Award, it can be regarded that the present rule adopts the interpretation of the previous rule which under CIAC Resolution No. 06-2002 is that "no execution shall issue where both parties appeal[ed]."[70]

In its May 25, 2012 Order,[71] the Arbitral Tribunal denied the motion for reconsideration filed by Wyeth.

On July 16, 2012, Wyeth filed a Petition for *Mandamus*,[72] docketed as CA-G.R. SP No. 125648 before the Court of Appeals, questioning the March 6, 2012 Resolution and May 25, 2012 Order of the CIAC.

In a May 15, 2014 Resolution,[73] the Court of Appeals granted Wyeth's Motion for Consolidation of Cases filed on June 7, 2013. Thus, the Petitions for Review filed by Wyeth and SKI were consolidated with the Petition for Review filed by Mapfre. Subsequently, Wyeth's Petition for *Mandamus* was also consolidated with the three (3) other petitions.[74]

In its January 23, 2015 Consolidated Decision/Resolution,[75] the Court of Appeals held that SKI is liable for the delay, as

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[68] *Id.* at 2040.

[69] Revised Rules of Procedure Governing Construction Arbitration as amended until CIAC Resolution No. 07-2010.

[70] *Rollo*, p. 2038.

[71] *Id.* at 2042-2043.

[72] *Id.* at 2003-2035.

[73] *Id.* at 2395-2397.

[74] *Id.* at 22.

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

it is undisputed that SKI did not achieve the milestones stated in the Conditions of the Contract, and failed to ask for an extension of time if the delays were indeed not attributable to it.[76]

The Court of Appeals also affirmed the Arbitral Tribunal's ruling that Wyeth validly terminated its contract with SKI, because SKI did not proceed regularly and diligently with the project when it failed to supply equipment and materials, adequate manpower, and sufficient supervision over the project.[77]

The Court of Appeals also found that Wyeth served a Notice of Default to SKI on January 23, 2008 and the latter had until February 6, 2008, or 14 days from notice within which to remedy the defaults. However, when asked for an update on February 5, 2008, SKI said it was still addressing the issues with its workforce prompting Wyeth to terminate the contract.[78]

The Court of Appeals affirmed the Arbitral Tribunal's findings that SKI's claims for the following are baseless, since SKI was responsible for the delays in the construction of the project:

(1) Additional labor cost;
(2) Additional cost due to change in formworks system;
(3) Additional cost due to additional safety requirements;
(4) Additional cost due to use of cranes with LMI;
(5) Additional overhead expenses from March 2008 to December 2008;
(6) Loss of profit for undue termination;
(7) Loss of profit for deleted items;
(8) Standby cost; and
(9) Moral and exemplary damages.[79]

It also held that while SKI is entitled to the value of rebars, formworks, and costs of repair, the amount cannot be established

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[76] *Id.* at 28.

[77] *Id.* at 30.

[78] *Id.*

[79] *Id.* at 31-34.

with certainty.[80] Thus, the Court of Appeals only awarded SKI temperate damages amounting ₱4,500,000.00 and ₱157,500.01, for the value of safety harnesses, as the claim was undisputed.[81]

The Court of Appeals held that the Arbitral Tribunal erred in awarding temperate damages to Wyeth, and instead awarded actual damages amounting to ₱90,717,632.06,[82] broken down as follows:

(1) Payment of ₱5,507,726.50 to Precision Ready Mix, ₱28,985,790.00 to Capitol Steel and ₱3,844,481.14 to Unitan, considering that SKI agreed to such amounts;
(2) Payment to Chittick of ₱2,110,763.67, or to the extent covered by official receipt;
(3) Payment to SMCC of ₱9,794,372.29, or to the extent covered by official receipt;
(4) Payment to EEI of the total amount of ₱21,959,311.60, for being supported by official receipt;
(5) Payment to Cape East of ₱12,301,474.21, or only to the extent covered by official receipt;
(6) Payment to Freyssinet of ₱477,105.35 or to the extent covered by official receipt;
(7) Payment of ₱5,357,143.00 to RMD, for being covered by an official receipt;
(8) Payment of ₱111,607.14 to BCA for being covered by an official receipt; and
(9) Payment of ₱122,767.86 to T-Shuttle.[83]

However, it held that the following claims were not proven by Wyeth: (1) payment to Tetra Pak of ₱32,572,301.44; (2) additional project costs in the amount of ₱101,923,163.14; and (3) payment to Unitan for termination-related cost of ₱20,767,401.12.[84]

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[80] *Id.* at 35.

[81] *Id.*

[82] *Id.* at 41.

[83] *Id.* at 38-41.

[84] *Id.*

For Wyeth's claim on the bonds, the Court of Appeals held that:

> (1) Wyeth's claim against the Payment Bond is not time-barred because it filed its claim within a year from the time of its denial. This made Mapfre liable to perform the Payment Bond amounting to ₱38,337,997.14;
> (2) Wyeth's claim against the Advance Payment Bond is not extinguished and it is entitled to the unrecouped downpayment of ₱42,293,679.02; and
> (3) Mapfre is liable under the Performance Bond up to the extent of ₱48,560,000.00, due to SKI's delay.[85]

The Court of Appeals also found it inappropriate to award attorney's fees in favor of either party and held that each party shall bear its own arbitration cost.[86]

The Court of Appeals held that the Arbitral Tribunal did not err in refusing to execute its Award, considering that the 2010 CIAC Rules is silent as to whether a party may ask for the execution of the award it also assails, and Wyeth failed to state good reasons why judgment should be executed pending appeal pursuant to Rule 39, Section 2 (a) of the Rules of Court.[87]

The dispositive portion of the Consolidated Decision/ Resolution read:

> **WHEREFORE**, this Court hereby disposes and orders that in CA-G.R. SP No. 117924, the Decision promulgated on 22 April 2013 is hereby **MODIFIED** as will be stated hereunder; in CA-G.R. SP No. 117925, SKI's Petition for Review is **PARTLY GRANTED**; in CA-G.R. SP No. 117929, Wyeth's Petition for Review is **PARTLY GRANTED**; and in CA-G.R. SP No. 125648, Wyeth's Petition for Mandamus is **DENIED**.

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[85] *Id.* at 41-44.

[86] *Id.* at 45.

[87] *Id.* at 46-47.

Accordingly,

1. Wyeth is ordered to pay SKI the total amount of PhP4,500,000.00 as temperate damages and PhP157,500.01 for the value of the safety harness or a total of PhP4,657,500.01;

2. In addition to the award of unrecouped downpayment in the amount of PhP42,293,670.02, Wyeth is awarded the amount of PhP90,717,632.06 as actual damages. Hence, SKI is ordered to pay Wyeth the total amount of PhP133,011,302.08;

3. The above award to SKI and Wyeth shall earn interest at the rate of 6% per annum computed from the date of the assailed Award until fully paid;

4. Mapfre's liability under the Bonds shall be as follows: under the Advance Payment Bond, PhP42,293,670.02; under the Payment Bond, PhP38,337,997.64 and under the Performance Bond, PhP48,560,000.00. Mapfre is awarded the right of indemnification for any amount it may pay to Wyeth, with interest at the rate of 6% per annum, from time of Notice of Payment is served to SKI until fully paid; and

5. Each party shall bear its own costs.

SO ORDERED.[88]

In an August 3, 2015 Resolution,[89] the Court of Appeals denied the respective motions for reconsideration filed by Wyeth and SKI.

On October 2, 2015, petitioner filed the present Petition for Review on *Certiorari*.

On January 13, 2016, the Court required respondents to file a comment.[90] On March 30, 2016, private respondent SKI filed its Comment.[91] Subsequently, private respondent Mapfre also filed its Comment on April 11, 2016.[92]

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[88] *Id.* at 47-48.

[89] *Id.* at 51-62.

[90] *Id.* at 2486-2487.

[91] *Id.* at 2501-2522.

[92] *Id.* at 2523-2555.

On June 20, 2016, this Court granted the motions for extension of time filed by private respondents, noted their separate comments, and required petitioner to file a consolidated reply.[93] Petitioner filed a Manifestation and Motion to Admit Consolidated Reply[94] and a Consolidated Reply[95] on September 22, 2016.

Petitioner avers that whether it is entitled to an execution pending appeal is a question of law, properly determinable under its Petition for Review filed under Rule 45 of the Rules of Court and the factual issues raised would fall under the exceptions. Specifically, petitioner claims that the Arbitral Tribunal and the Court of Appeals have conflicting findings of fact, and manifestly overlooked certain relevant and undisputed details which, if properly considered, would justify a different conclusion. Also, it claimed that the Court of Appeals' findings as to the parties' entitlement to claims are contradicted by the evidence on record.

Petitioner argues that it proved and substantiated all of its monetary claims, entitling it to an additional award of ₱377,269,282.64, inclusive of VAT. It claimed that aside from the official receipts, it proved payment by unrefuted testimonies of witnesses, parole evidence, and tabular summaries. Petitioner argues that respondent SKI is not entitled to an award for the value of rebars, formworks, and costs of repair.

Petitioner also maintains that the liability of respondent Mapfre under the Advance Payment Bond should be ₱47,368,910.42, and ₱48,560,000.00 for the Payment Bond. Furthermore, petitioner posits that respondents SKI and Mapfre should be solidarily liable to pay attorney's fees and arbitration costs.

Lastly, Petitioner claims that it is entitled to an execution pending appeal under the 2010 CIAC Revised Rules of Procedure Governing Construction Arbitration. It counters that CIAC

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[93] *Id.* at 2581-2582.

[94] *Id.* at 2597-2603.

[95] *Id.* at 2611-2669.

Resolution No. 06-2002 is not applicable because: (1) it deals with entry of judgment and not execution of judgment; (2) it was not published in the Official Gazette; (3) it was expressly repealed under the 2005 Revised Rules of Procedure Governing Construction Arbitration; and (4) it was not part of the 2010 CIAC Revised Rules of Procedure Governing Construction Arbitration.

In its Comment, private respondent SKI claims that it is entitled to exemplary damages, considering that there is substantial evidence that petitioner agreed to its other claims.

As for petitioner's monetary claims, private respondent SKI maintains that this Court, not being a trier of facts, is not expected to review the evidence, especially that a specialized body like the Arbitral Tribunal, and the Court of Appeals had already evaluated them and ruled that they were not proven with a reasonable degree of certainty.[96]

In any event, respondent SKI claims that petitioners' claim of ₱417,845,459.62, which is almost twice of the total contract sum, was neither substantiated by evidence nor proven with reasonable certainty.[97]

Respondent SKI posits that both the Arbitral Tribunal and the Court of Appeals correctly denied the motion for execution filed by the petitioner, being consistent with the standing policy of the Commission of not granting motions for execution if parties appealed the decision.[98]

Finally, respondent SKI argues that petitioner failed to justify why it should be awarded attorney's fees and arbitration costs.[99]

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[96] *Id.* at 2503.

[97] *Id.* at 2503.

[98] *Id.* at 2516.

[99] *Id.* at 2518.

In its Comment, respondent Mapfre avers that petitioner is not entitled to an award of actual damages considering that its claims were without proof of official receipts.[100]

Respondent Mapfre maintains that it is not liable under the Payment Bond because when petitioner terminated the contract, it already paid respondent SKI ₱129,590,429.08, and any claim of petitioner for labor and materials should be deducted from the unspent balance. Similarly, it argues that its liability under the Advance Payment Bond was extinguished by compensation, because the unrecovered amount was applied as payment for unpaid billings of respondent SKI.[101] Furthermore, respondent Mapfre claims that it is not liable for variations of work only relayed to it after February 23, 2008.[102] It also claims that it cannot be liable for the alleged cost of rectification works and additional management costs as these were fraudulent.[103]

Lastly, Respondent Mapfre maintains that petitioner is not entitled to an execution pending appeal considering that it cannot approve and reject parts of the award for temperate damages in its favor. As petitioner is not entitled to recover anything, respondent Mapfre argues that petitioner is likewise not entitled to recover attorney's fees and costs of arbitration.[104]

In rebuttal, petitioner argues that since both respondents SKI and Mapfre did not appeal the decision of the Court of Appeals, then they are bound to pay the award ordered by it at the least. Petitioner avers that the issue of respondent Mapfre's liability under the bonds is already settled, and the only issue remaining is the amount of its liability.[105]

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[100] *Id.* at 2526.

[101] *Id.* at 2530.

[102] *Id.* at 2537.

[103] *Id.*

[104] *Id.* at 2547-2549.

[105] *Id.* at 2616.

Petitioner reiterates that it has proven and substantiated its monetary claims, and respondent SKI is not entitled to temperate damages because it failed to prove the cost of its repair and the damage is attributable to petitioner.[106] Petitioner counters that its monetary claims are not unreasonable, considering that respondent SKI caused the delay, which, in turn, resulted in delay-related claims by contractors, and additional costs for engaging other contractors and suppliers to complete and rectify respondent SKI's defective works.[107]

Petitioner further reiterates that it is entitled to execution pending appeal considering that the Arbitral Tribunal's award of ₱55,119,852.56 has already become final and executory.[108]

The issues for this Court's resolution are as follows:

(1) Whether or not the issues petitioner raised are properly determinable under the present Petition for Review before the Court;

(2) Whether or not respondent SKI is entitled to temperate damages;

(3) Whether or not petitioner is entitled to a total of ₱327,127,827.49 as additional costs incurred to complete the construction project due to the delay of respondent SKI;

(4) Whether or not the Court of Appeals correctly determined the amount of liability of respondent Mapfre under the Advance Payment Bond and Payment Bond; and

(5) Whether or not petitioner is entitled to an execution pending appeal of the Arbitral Tribunal's Award.

This Court denies the petition.

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[106] *Id.* at 2639 and 2641.

[107] *Id.* at 2624-2625.

[108] *Id.* at 2660.

I

"[T]o encourage the early and expeditious settlement of disputes in the Philippine construction industry[,]"[109] Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law created the Construction Industry Arbitration Commission (Commission). Section 4 of the Construction Industry Arbitration Law lays down the jurisdiction of the Commission, as follows:

> Section 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Cognizant of the competence of the Commission, Republic Act No. 9184 or the Government Procurement Reform Act, affirms its jurisdiction and states that, "disputes that are within the competence of the [Commission] to resolve shall be referred thereto."[110] Similarly, Republic Act No. 9285 or the Alternative

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[109] Executive Order No. 1008 (1985), Sec. 2.

[110] Republic Act No. 9184 (2003), Sec. 59 provides:

> SECTION 59. *Arbitration*. — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": *Provided, however*, That, disputes that are within the competence of the Construction Industry

Dispute Resolution Act of 2004, Section 35 provides that the Commission "shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is 'commercial' pursuant to Section 21 of this Act."[111]

The authority of the Commission proceeds from its technical expertise. The Construction Industry Arbitration Law states that arbitrators shall be persons of distinction in whom the business sector, "particularly the stake holders *[sic]* of the construction industry[,]"[112] and the government can have confidence.[113] "They shall possess the competence, integrity, and leadership qualities to resolve any construction dispute expeditiously and equitably. The Arbitrators shall come from different professions. They may include engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry and lawyers who are experienced in construction disputes."[114] Technical experts may

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Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: *Provided*, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

[111] Rep. Act No. 8285 (2004), Sec. 35 provides:

Coverage of the Law. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

[112] CIAC Revised Rules of Procedure Governing Construction Arbitration (June 22, 2019), Rule 8, Sec. 8.1.

[113] Executive Order No. 1008 (1985), Sec. 14.

[114] CIAC Revised Rules of Procedure Governing Construction Arbitration (June 22, 2019), Rule 8, Sec. 8.1.

also aid the arbitrators in resolving the disputes if requested by the parties, as stated in Section 15 of the Construction Industry Arbitration Law:

> SECTION 15. *Appointment of Experts*. — The services of technical or legal experts may be utilized in the settlement of disputes if requested by any of the parties or by the Arbitral Tribunal. If the request for an expert is done by either or by both of the parties, it is necessary that the appointment of the expert be confirmed by the Arbitral Tribunal.
>
> Whenever the parties request for the services of an expert, they shall equally shoulder the expert's fees and expenses, half of which shall be deposited with the Secretariat before the expert renders service. When only one party makes the request, it shall deposit the whole amount required.

The Commission's authority is expounded in *CE Construction Corp. v. Araneta Center, Inc.*:[115]

> The CIAC does not only serve the interest of speedy dispute resolution, it also facilitates *authoritative* dispute resolution. Its authority proceeds not only from juridical legitimacy but equally from technical expertise. The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment."[116] (Emphasis in the original, citation omitted)

II

Due to the highly "technical nature of the proceedings" before the Commission, and the voluntariness of the parties to submit to its proceedings, "the Construction Industry Arbitration Law

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[115] 816 Phil. 221 (2017) [Per *J.* Leonen, Second Division].

[116] *Id.*

provides for a narrow ground by which the arbitral award can be questioned[.]"[117] The Construction Industry Arbitration Law provides that arbitral awards are final and inappealable, except only on pure questions of law:

> SECTION 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

In keeping with the Construction Industry Arbitration Law, any appeal from the Commission's arbitral tribunals must remain limited to questions of law. Its rationale is explained in *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*:[118]

> Section 19 [of Executive Order No. 1008] makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.
>
> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which

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[117] *Metro Bottled Water Corp. v. Andrada Construction & Development Corp., Inc.*, G.R. No. 202430, March 6, 2019, <http://sc.judiciary.gov.ph/4380/> [Per *J.* Leonen, Third Division].

[118] 298-A Phil. 361, 361-362 (1993) [Per *J.* Feliciano, Third Division].

is necessary and important for the realization of national development goals.

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[119] (Citations omitted)

The general rule then is that the awards of the Arbitral Tribunal may be appealed only on pure questions of law, and its factual findings should be respected and upheld. Since the Construction Industry Arbitration Law does not provide when an arbitral award may be vacated, we can glean the exceptions from *Spouses David v. Construction Industry and Arbitration Commission*:[120]

We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award

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[119] *Id.*

[120] 479 Phil. 578 (2004) [Per *J.* Puno, Second Division].

was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[121] (Citation omitted)

Accordingly, there is a need to determine whether the issues raised by petitioner involve questions of law or fact. A question of law arises when there is "doubt. . . as to what the law is on a certain set of facts[,]" while there is a "question of fact when the doubt arises as to the truth or falsity of the alleged facts."[122] For a question to be one of law, there must be no doubt as to the veracity or falsehood of the facts alleged, but if it involves an "examination of the probative value of the evidence presented[,]" then the question posed is one of fact.[123]

In the present case, petitioner urges us to resolve the following issues in its favor:

(1) Whether it is entitled to execution pending appeal and the writ of *mandamus* can compel the Commission to execute the award pending appeal;
(2) Whether or not the award of temperate damages amounting to ₱4,500,000.00 in favor of respondent SKI is supported by the evidence on record;
(3) Whether it proved and substantiated its monetary claims entitling it to an additional award of ₱327,127,827.49, broken down as:

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[121] *Id.* at 590-591.

[122] *Id.* at 584.

[123] *Id.*

(a) Payment to Tetra Pak Processing System of ₱32,572,301.44;
(b) Additional amount of ₱147,818,032.88 for payments to SMCC Philippines, Inc.;
(c) Additional amount of ₱2,700,486.33 for payments to Chittick Fire & Security Corporation;
(d) Additional project management costs in the amount of ₱101,923,163.14;
(e) ₱20,767,401.12 for termination-related costs paid to Unitan Construction and Development Corporation;
(f) Additional amount of ₱14,403,210.44 for payment to Cape East Philippines, Inc.; and
(g) Additional payment of ₱6,943,232.14 to Freyssinet Filipinas, Corp.[124]

(4) Whether it is entitled to the full amounts of liability of respondent Mapfre under the Advance Payment Bond and the Payment Bond; and
(5) Whether it is entitled to recovery of attorney's fees and costs of arbitration.

Petitioner further submits that:

(1) The issue concerning its entitlement to a motion for execution pending appeal involves question of law;

(2) The other issues raised involve the resolution of conflicting findings of fact by the Arbitral Tribunal and the Court of Appeals;

(3) The Arbitral Tribunal and Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; and

(4) The findings of the Court of Appeals are contradicted by the presence of evidence on record.[125]

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[124] *Rollo*, pp. 38-41.

[125] *Id.* at 141.

Except for the first issue, which involves a question of law, the other issues raised by petitioner, as admitted by it, are questions of fact, which necessitates a reexamination of the probative value of the evidence presented by the parties. In asking this Court to go over each claim submitted by the parties to the Arbitral Tribunal, petitioner is asking this Court to pass upon claims which are either clearly factual or require previous determination of factual issues.[126] Petitioner therefore attempts to re-litigate before us the detailed factual claims it already made before the Arbitral Tribunal and asserts that its review falls within the exceptions. However, the reasons raised by petitioner are not among the exceptional grounds to review the factual findings of the Arbitral Tribunal.

Exceptions allowed in the review of Rule 45 petitions, such as the lower court's misapprehension of facts or a conflict in factual findings, do not apply to reviews of the Arbitral Tribunal's decisions.[127] In reviewing factual findings of the Arbitral Tribunal, exceptions must pertain to its conduct and the qualifications of the arbitrator, and not to its errors of fact and law, misappreciation of evidence, or conflicting findings of fact.[128] It is only when "the most basic integrity of the arbitral process was imperiled" that a factual review of the findings of the arbitral tribunal may be reviewed.[129] This, the petitioner did not allege or prove in the present case.

Courts should thus defer to the factual findings of the Arbitral Tribunal as held in *CE Construction Corp. v. Araneta Center, Inc.*:[130]

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[126] *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, 298-A Phil. 361 (1993) [Per *J.* Feliciano, Third Division].

[127] *Metro Bottled Water Corp. v. Andrada Construction & Development Corp., Inc.*, G.R. No. 202430, March 6, 2019, <http://sc.judiciary.gov.ph/4380/> [Per *J.* Leonen, Third Division] citing *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221 (2017), [Per *J.* Leonen, Second Division].

[128] *Id.*

[129] *Id.*

[130] 816 Phil. 221 (2017), [Per *J.* Leonen, Second Division].

In appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it. The CIAC Arbitral Tribunal perused each of the parties' voluminous pieces of evidence. Its members personally heard, observed, tested, and propounded questions to each of the witnesses. Having been constituted solely and precisely for the purpose of resolving the dispute between ACI and CECON for 19 months, the CIAC Arbitral Tribunal devoted itself to no other task than resolving that controversy. This Court has the benefit neither of the CIAC Arbitral Tribunal's technical competence nor of its irreplaceable experience of hearing the case, scrutinizing every piece of evidence, and probing the witnesses.

True, the inhibition that impels this Court admits of exceptions enabling it to embark on its own factual inquiry. Yet, none of these exceptions, which are all anchored on considerations of the CIAC Arbitral Tribunal's integrity and not merely on mistake, doubt, or conflict, is availing.

This Court finds no basis for casting aspersions on the integrity of the CIAC Arbitral Tribunal. There does not appear to have been an undisclosed disqualification for any of its three (3) members or proof of any prejudicial misdemeanor. There is nothing to sustain an allegation that the parties' voluntarily selected arbitrators were corrupt, fraudulent, manifestly partial, or otherwise abusive. From all indications, it appears that the CIAC Arbitral Tribunal extended every possible opportunity for each of the parties to not only plead their case but also to arrive at a mutually beneficial settlement. This Court has ruled, precisely, that the arbitrators acted in keeping with their lawful competencies. This enabled them to come up with an otherwise definite and reliable award on the controversy before it.

Inventive, hair-splitting recitals of the supposed imperfections in the CIAC Arbitral Tribunal's execution of its tasks will not compel this Court to supplant itself as a fact-finding, technical expert.

ACI's refutations on each of the specific items claimed by CECON and its counterclaims of sums call for the point by point appraisal of work, progress, defects and rectifications, and delays and their causes. They are, in truth, invitations for this Court to engage in its own audit of works and corresponding financial consequences. In the alternative, its refutations insist on the application of rates,

schedules, and other stipulations in the same tender documents, copies of which ACI never adduced and the efficacy of which this Court has previously discussed to be, at best, doubtful.

This Court now rectifies the error made by the Court of Appeals. By this rectification, this Court does not open the doors to an inordinate and overzealous display of this Court's authority as a final arbiter.

Without a showing of any of the exceptional circumstances justifying factual review, it is neither this Court's business nor in this Court's competence to pontificate on technical matters. These include things such as fluctuations in prices of materials from 2002 to 2004, the architectural and engineering consequences — with their ensuing financial effects — of shifting from reinforced concrete to structural steel, the feasibility of rectification works for defective installations and fixtures, the viability of a given schedule of rates as against another, the audit of changes for every schematic drawing as revised by construction drawings, the proper mechanism for examining discolored and mismatched tiles, the minutiae of installing G.I. sheets and sealing cracks with epoxy sealants, or even unpaid sums for garbage collection.

The CIAC Arbitral Tribunal acted in keeping with the law, its competence, and the adduced evidence; thus, this Court upholds and reinstates the CIAC Arbitral Tribunal's monetary awards.[131] (Citation omitted)

Moreover, the parties voluntarily submitted to arbitration any dispute arising from their contract and acknowledged that an Arbitral Tribunal constituted under the Commission has full competence to rule on the dispute presented to it. "An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction[.]"[132]

Article 6 of the Articles of Agreement of the parties provides that:

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[131] *Id.* at 283-284.

[132] CIAC Revised Rules of Procedure Governing Construction Arbitration (June 22, 2019), Rule 4, Sec. 4.1.

If any dispute or difference shall arise as to:

(1) The interpretation of the Contract Documents, or;

(2) Any dispute on any matter or thing of any nature arising out of or in connection with this Contract between the Owner (or Project Manager on the Owner's behalf) and the Contractor either during the progress or after the completion or abandonment of The Works or after the termination of the employment of the Contractor, it shall be referred to arbitration in accordance with Clause 10 of the Conditions of the Contract.[133]

Clause 10.1 of the Conditions of the Contract provides that:

Provided always that in case any dispute or difference shall arise between the Owner (or the Project Manager on the Owner's behalf) and the Contractor, either during the progress or after the completion or abandonment of The Works as to the construction of this Contract or as to any matter of whatsoever nature arising thereunder or in connection therewith (including any matter left by this Contract to the discretion of the Project Manager or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled or the measurement and valuation mentioned in the these Conditions or the rights and liabilities of the parties under these Conditions), the Owner and the Contractor hereby agree to exert all efforts to settle their differences or dispute amicably. Failing this effort then such dispute or difference shall be referred to arbitration by an Arbitration Tribunal in accordance with the Construction Industry Arbitration Law of the Philippines [Executive Order No. 1008], as amended by the Alternative Dispute Resolution Act of 2004 (R.A. No. 9285), including the Rules of Procedures Governing Construction Arbitration approved and promulgated by the Construction Industry Arbitration Commission (CIAC) and any amendments thereto.[134]

Accordingly, the present dispute is better left to the Commission, a quasi-judicial body with the technical expertise to resolve disputes outside the expertise of regular courts.[135]

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[133] *Rollo*, p. 394.

[134] *Id.* at 454.

[135] *Camp John Hay Development Corp. v. Charter Chemical and Coating Corp.*, G.R. No. 198849, August 7, 2019, <http://sc.judiciary.gov.ph/6600/> [Per *J.* Leonen, Third Division].

III

Both the Arbitral Tribunal and Court of Appeals held that since respondent SKI delayed in the fulfilment of its obligation, petitioner validly terminated the contract. Considering that respondent SKI did not appeal the findings of the Arbitral Tribunal and Court of Appeals as to the issues of termination and delay, the findings on these issues are deemed final as to respondent SKI. "Issues not raised on appeal are already final and cannot be disturbed."[136]

Thus, the next issues to be resolved involve the monetary claims of petitioner and respondent SKI.

We uphold the findings of the Arbitral Tribunal as to the rights and monetary claims of petitioner and respondent SKI.

Petitioner claimed that respondent SKI is not entitled to an award — actual or temperate damages — for the value of rebars, formworks, and costs of repair to the damaged tower crane and tower crane collar.[137]

Furthermore, petitioner alleged that it proved and substantiated its claim of an additional ₱327,127,827.49 or ₱377,269,282.64, inclusive of VAT, broken down as:

(1) Payment to Tetra Pak Processing System of ₱32,572,301.44;
(2) Additional amount of ₱147,818,032.88 for payments to SMCC Philippines, Inc.;
(3) Additional amount of ₱2,700,486.33 for payments to Chittick Fire & Security Corporation;
(4) Additional project management costs in the amount of ₱101,923,163.14;
(5) ₱20,767,401.12 for termination-related costs paid to Unitan Construction and Development Corporation;

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[136] *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*, 818 Phil. 27 (2017) [Per J. Leonen, Third Division].

[137] *Rollo*, pp. 1966-2002.

(6) Additional amount of ₱14,403,210.44 for payment to Cape East Philippines, Inc.; and
(7) Additional payment of ₱6,943,232.14 to Freyssinet Filipinas, Corp.[138]

Petitioner points out that, aside from the official receipts, it proved payment by unrefuted testimonies of witnesses, parole evidence and tabular summaries.

"[A] contract is the law between the parties and, absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts[,]"[139] without the need to resort to other aids in interpretation. Thus, there is basis in finding petitioner and respondent SKI entitled to some of its claims.

Based on the contract of the parties, particularly Clause 8.3 of the Conditions of Contract:

3.) In the event of the Employment of the Contractor being Terminated as aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the Owner and Contractor:

> 1.) The **Owner** may employ and pay other persons to carry out and complete The Works and they may enter upon The Works **and use all temporary buildings, plant, tools, equipment, materials and goods intended for, delivered to and placed on or adjacent to The Works, and may purchase (where they are not already paid for) all materials and goods necessary for the carrying out and completion of The Works.**
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> 2.) The Contractor shall [except where the Termination occurs by reason of the Bankruptcy of the Contractor or of the Contractor having a winding up order made or a petition for suspension of payment or the appointment of a Rehabilitation Receiver or Management Committee or (except for the purposes

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[138] *Id.* at 38-41.

[139] *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*, 818 Phil. 27, 70 (2017), [Per J. Leonen, Third Division].

of reconstruction) a resolution for voluntary winding up passed] if so required by the Owner or the Project Manager within fourteen (14) days of the date of Termination, assign to the Owner without payment the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract, but on the terms that a Supplier or Sub-Contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Owner. In any case the Owner may pay any Supplier or Sub-Contractor for any materials or goods delivered or works executed for the purposes of this Contract (whether before or after the date of Termination) in so far as the price thereof has not already been paid by the Contractor. Payments made under this sub-clause may be deducted by the Owner from any sum due or to become due to the Contractor. [140] (Emphasis supplied)

Clause 8.5 of the Conditions of Contract further provides:

5.) The Contractor shall allow or pay to the Owner in the manner hereinafter appearing the amount of any direct loss and/or damage caused to the Owner by the Termination. Until after the Taking Over of The Works, the Owner shall not be bound by any provision of this Contract to make any further payment to the Contractor but upon such Taking Over and the verification within a reasonable time of the accounts, the Project Manager shall certify the amount of expenses properly incurred by the Owner and the amount of any direct loss and/or damage caused to the Owner by the Termination and, if such amounts when added to the monies paid to the Contractor before the date of Termination exceed the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Owner by the Contractor; and if the said amounts when added to the said monies be less than the said total amount, the difference shall be a debt payable by the Owner to the Contractor. Provided that in no circumstances shall the Contractor be entitled to be paid more than the value of the work properly executed up to the date of Termination.[141] (Emphasis supplied)

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[140] *Rollo*, p. 447.

[141] *Id.* at 448.

Considering Clause 8.3.1 of the Conditions of Contract of the parties and the findings of the Arbitral Tribunal and Court of Appeals, respondent SKI is entitled to the value of rebars, formworks, and the costs of repair to the damaged tower crane and tower crane collar. Both the Arbitral Tribunal and the Court of Appeals found it undisputed that: (1) there were rebars and formworks left at the site; and (2) the tower crane and tower crane collar were damaged. The Arbitral Tribunal aptly held that respondent SKI is entitled to the value of rebars since petitioner "agreed to [respondent's] entitlement as evidenced by the signed-off document during their reconciliation meeting."[142] It also found valid the claims of respondent SKI for the value of the formworks and the repair of the damaged tower crane and tower crane collar.

On petitioner's claim, Clause 8.5 of the Conditions of Contract of the parties, and the findings of both the Arbitral Tribunal and Court of Appeals confirm that petitioner is entitled to adequate compensation for the amount of expenses incurred and the direct loss or damage caused by the termination of the project. The Arbitral Tribunal held that petitioner should be awarded temperate damages based on the parties' agreement on liquidated damages[143] because petitioner failed to prove its actual damages with clear and convincing evidence. It further found that only petitioner's claim of payment to various suppliers in the amount of ₱6,852,678.71 was "undisputed" and "valid."[144] It also granted the unrecouped advance payment of ₱42,293,679.02 given to respondent SKI in addition to the temperate damages.[145]

We see no reason to deviate from the factual findings of the Arbitral Tribunal which has the technical expertise and competence in resolving construction disputes.

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[142] *Id.* at 319.

[143] *Id.* at 326.

[144] *Id.* at 323.

[145] *Id.* at 327.

Clauses 10.5 and 10.6 of the Conditions of the Contract provides:

5. Subject to the provisions of these Conditions, the Arbitrators shall, without prejudice to the generality of their powers, **have power to direct such measurements and/or valuations as may in their opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum** which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or Notice and **to determine all matters in dispute which shall be submitted to them** in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

6. **The award of such Arbitrators shall be final and binding on the parties.** The decision of the Arbitrators shall be a condition precedent to any right of legal action that either party may have against the other.[146] (Emphasis supplied)

The contract provides that the award of the Arbitral Tribunal shall be final and binding on the parties, considering that it is granted wide discretion and necessary powers to determine and settle all disputes submitted to it. Aside from the contract itself, two (2) principles guide the Arbitral Tribunal in its task: (1) "the basic matter of fairness[;]" and (2) "the effective dispute resolution or the overarching principle of arbitration as a mechanism relieved of the encumbrances of litigation."[147]

Thus, the Arbitral Tribunal is in a better position to adjudicate and determine the claims and rights of the parties.[148] It fulfilled its task with technical competence and complied with the requirements of the CIAC Rules of Procedure. It was also given the full opportunity to exclusively preside over the arbitral

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[146] *Id.* at 455.

[147] *Tondo Medical Center v. Rante*, G.R. No. 230645, July 1, 2019 <http://sc.judiciary.gov.ph/6024/> [Per J. Reyes, J., Second Division].

[148] *Metro Bottled Water Corp. v. Andrada Construction & Development Corp., Inc.*, G.R. No. 202430, March 6, 2019, <http://sc.judiciary.gov.ph/4380/>, [Per J. Leonen, Third Division].

proceedings for 19 months (from June 2009 to December 2010), where it examined and cross-examined the evidence presented by the parties and conducted ocular inspection with "proven experts in the field."[149]

Any review by this Court of their findings would require conducting its own ocular inspection, hiring its own experts, and "[providing] its own interpretations of the findings of a highly technical agency."[150] Therefore, a review of these factual findings requires substantial proof "that the integrity of the arbitral tribunal has been compromised" or that the arbitral tribunal arrived at its findings "in a haphazard, immodest manner."[151] Absent such proof, this Court will not disturb the factual findings by the arbitral tribunal.

The Court of Appeals should not have disturbed the factual findings of the Arbitral Tribunal. In doing so, the Court of appeals based their modification on neither a legal question nor any exceptional ground requiring it to look into factual issues. Findings of fact of the Arbitral Tribunal, which has the competence and technical expertise on matters regarding the construction industry, should be upheld.[152] Although it agreed with the Arbitral Tribunal as to respondent SKI's claims, the Court of Appeals held that respondent SKI failed to present proof of the actual damages it suffered and granted temperate damages instead.[153] On petitioner's claim, it held that petitioner's monetary claims are in the nature of actual damages and granted petitioner the amount of ₱90,717,632.06, or up to the extent proved by official receipts.[154]

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[149] *Id.*

[150] *Id.*

[151] *Id.*

[152] *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*, 818 Phil. 27, 53-54 (2017), [Per J. Leonen, Third Division].

[153] *Rollo*, pp. 326-326.

[154] *Id.* at 228.

Article 2224 of the Civil Code provides for temperate damages, as follows:

Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not [sic], from the nature of the case, be proved with certainty.

On the other hand, actual damages are provided for under Article 2199 of the Civil Code:

Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Further, "[e]xcept as provided by law or by stipulation, [a claimant] is entitled to an adequate compensation only for pecuniary loss" duly proven.[155] Thus, actual damages must be proven "with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable"[156] like official receipts and invoices, as explained in *Metro Rail Transit Development Corp. v. Gammon Philippines*:[157]

Actual damages constitute compensation for sustained measurable losses. It must be proven "with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable." It is never presumed or based on personal knowledge of the court.

In *International Container Terminal Services, Inc. v. Chua*:

> "Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually

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[155] *Id.*

[156] *Oceaneering Contractors (Phils.), Inc. v. Barretto*, 657 Phil. 607, 617 [Per *J.* Perez, First Division].

[157] G.R. No. 200401, January 17, 2018 <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63930> [Per *J.* Leonen, Third Division].

> sustained and susceptible of measurement. . . . Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable."
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> . . . . . .
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> This Court has, time and again, emphasized that actual damages cannot be presumed and courts, in making an award, must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne. An award of actual damages is "dependent upon competent proof of the damages suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof." (Emphasis in the original, citations omitted)

Although official receipts are the best evidence of payment, this Court has acknowledged that actual damages may be proved by other forms of documentary evidence, including invoices.

In *MCC Industrial Sales Corporation v. Ssangayong Corporation*, this Court did not award actual damages because the claimant failed to substantiate its claims with official receipts.

In *G.Q. Garments, Inc. v. Miranda*, this Court held that an allegation of a witness must be supported by receipts or other documentary proofs to prove the claim of actual damages.

In *Gonzales v. Camarines Sur II Electric Cooperative, Inc.*, this Court noted that petitioners did not back up its claims of actual damages by documentary proof such as a receipt or an invoice. (Citations omitted)

In concluding that respondent SKI's claims for the value of rebars, formworks, safety harness equipment, and costs of the repair were validly proven, the Arbitral Tribunal thoroughly examined and considered the evidence presented by the parties. Thus, its evaluation of the evidence and findings of fact must be upheld.

With the same technical expertise and competence, the Arbitral Tribunal held that petitioner shall be awarded temperate damages

based on the parties' agreement on liquidated damages instead, for failure of petitioner to prove actual damages with clear and convincing evidence.[158] There is no merit to petitioner's contention that the testimonies of the witnesses and the tabular summaries it presented are acceptable to establish its monetary claims because these must still be supported by official receipt or invoice. Moreover, the tabular summaries are considered self-serving, since petitioner prepared them. Petitioner's argument that what it sought to establish by the tabular summaries is merely the general result of the entire cost it incurred was an argument raised and rejected in *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation*.[159] Similarly, "it is not merely the general result of the evidence that is sought[,]" but the fact of the cost is also in question, and evidence, such as receipts, "must be adduced to support any claim[.]"[160]

Because the Arbitral Tribunal found that petitioner failed to prove its alleged substantial pecuniary loss with competent proof and there was no opportunity for respondent SKI to assess the cost of the works awarded by petitioner to the contractors, the Arbitral Tribunal aptly awarded petitioner temperate damages based on the maximum amount of liquidated damages under the agreements voluntarily executed by the parties. Clause 6.2 of the Conditions of the Contract provides:

> 2. If the Contractor fails to complete The Works by the Date for Completion stated in Appendix A or within any extended time fixed in accordance with these Conditions, then the *Contractor shall pay or allow to the Owner a sum calculated at the rate stated in Appendix A as Liquidated Damages* for the period during which The Works remain or have remained uncompleted as Certified in writing by the Project Manager. Without prejudice to his other remedies available at law or elsewhere in this Contract, the Owner may deduct such

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[158] *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation*, 563 Phil. 184, 215 (2007) [Per J. Velasco, Second Division].

[159] *Id.*

[160] *Id.*

from any monies due or to become due to the Contractor under this Contract.[161] (Emphasis supplied)

In the Notice to Proceed:

2.5 Liquidated and Ascertained Damages (L.A.D.) shall be imposed and become payable by the Contractor to the Owner if the Contractor fails to complete The Works by the Completion Date and milestones dates set out in 2.3 and 2.4 above. The L.A.D. for The Works shall be at the rate of one tenth of one percent (1/10 of 1%) of the Contract Sum per day or part thereof[.][162]

Considering that there is no reason to deviate from the findings of the Arbitral Tribunal based on the contract of the parties, this Court affirms the same.

On the costs of the arbitration, the CIAC Revised Rules of Procedure Governing Construction Arbitration, Rule 16, Section 16.5 states:

Decision as to costs of arbitration. — In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitral Tribunal, the Final Award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each of them.

Rule 142 of the Rules of Court governing the imposition of costs likewise provides the following:

Section 1. Costs Ordinarily follow the result of suit. — Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power for special reasons, to adjudge that either party shall pay the cost of an action, or that the same shall be divided, as may be equitable.

The Terms of Reference signed by the parties expressly provides that: "[t]he costs of arbitration which include the filing, administrative, arbitrators' fees, and charges for Arbitration

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[161] *Rollo*, p. 438.

[162] *Id.* at 611.

Development Fund, including all incidental expenses, shall be on a **pro rata basis**, subject to the determination of the Arbitral Tribunal which of the parties shall eventually shoulder such costs or the mode of sharing thereof."[163] Based on the rules and the contract, the Arbitral Tribunal properly exercised its jurisdiction in holding that petitioner and respondent SKI should equally shoulder the arbitration costs. It likewise properly held that no party may recover attorney's fees from each other.

IV

Pursuant to the bonds it issued in favor of petitioner, Mapfre is jointly and severally liable with respondent SKI up to the amount awarded by the Arbitral Tribunal.

Under the bonds executed by respondent SKI as principal and Mapfre as surety, they bound themselves to indemnify petitioner the following: (1) in the Advance Payment Bond, the amount of ₱72,840,000.00 for failure to recoup the advance payment granted to respondent SKI;[164] (2) under the Payment Bond, the amount of ₱48.56 million to pay for claims for labor and materials used or reasonably required for use in the performance of the Contract; and (3) under the Performance Bond, ₱48.56 million for any loss or damages that petitioner may suffer as a consequence of failure by respondent SKI to perform its obligations under the Contract.[165]

Both the Arbitral Tribunal and the Court of Appeals held that respondent Mapfre is jointly and severally liable with respondent SKI pursuant to the Advance Payment Bond, Payment Bond and Performance Bond it issued in favor of petitioner.[166] Respondent Mapfre is clearly bound by its undertaking under the bonds. Considering that respondent Mapfre did not appeal the Court of Appeals decision, its joint and several

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[163] Terms of Reference, Article VIII.

[164] *Rollo*, p. 328.

[165] *Id*.

[166] *Id*.

liability under the bonds it issued in favor of petitioner is "deemed final" with respect to it, since issues not raised on appeal are already final and cannot be disturbed.[167]

However, petitioner questions the amount of Mapfre's liability under the bonds and claims that it should be liable for ₱47,368,910.42 under the Advance Payment Bond and ₱42,938,557.46 under the Payment Bond, because the Court of Appeals failed to include the 12% VAT in the amount it granted.[168]

On this issue, this Court reinstates and affirms the findings of the Arbitral Tribunal as they are "binding, respected, and final[;]" otherwise, it would have the effect of "setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution."[169] Petitioner failed to allege that the present case falls within the exceptional grounds which would warrant a review of the factual findings by this Court.

Considering that this Court upholds the monetary claims of petitioner as found by the Arbitral Tribunal, respondent Mapfre is also jointly and severally liable with respondent SKI to the extent awarded by the Arbitral Tribunal for the following amounts: (1) ₱42,293,679.02 under the Advance Payment Bond; (2) ₱6,852,678.71 under the Payment Bond; and (3) ₱24,280,000.00 under the Performance Bond.

V

Lastly, petitioner is not entitled to an execution pending appeal because it appealed the Award of the Arbitral Tribunal.

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[167] *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*, 818 Phil. 27, 72 (2017), [Per J. Leonen, Third Division].

[168] *Rollo*, p. 2621.

[169] *Metro Rail Transit Development Corp. v. Gammon Philippines, Inc.*, G.R. No. 200401, January 17, 2018 <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63930>, [Per J. Leonen, Third Division].

The CIAC Revised Rules of Procedure Governing Construction (as amended by CIAC Resolution Nos. 15-2006, 16-2006, 18-2006, 19-2006, 02-2007, 07-2007, 13-2007, 02-2008, 03-2008, 11-2008, 01-2010, 04-2010, and 07-2010) or the 2010 Revised Rules provides that:

RULE 18 — EXECUTION OF FINAL AWARD

SECTION 18.1. *Execution of Award*. — A final arbitral award shall become executory upon the lapse of fifteen (15) days from receipt thereof by the parties.

SECTION 18.2. *Petition for review*. — A petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.

SECTION 18.3. *Entry of judgment*. — If a petition for review is filed from a final award and a temporary restraining order (TRO) is issued by the appellate court, such award shall become executory only upon the issuance of the entry of judgment of the appellate court, or upon the lapse/lifting of the TRO or lifting of the preliminary injunction.

SECTION 18.4. *Effect of petition for review*. — The petition for review shall not stay the execution of the final award sought to be reviewed unless the Court of Appeals directs otherwise upon such terms as it deems just.

SECTION 18.5. *Execution/enforcement of awards*. — As soon as a decision, order or final award has become executory, the Arbitral Tribunal (or the surviving remaining member/s), shall, motu proprio or on motion of the prevailing party issue a writ of execution requiring any sheriff or proper officer to execute said decision, order or final award. If there are no remaining/surviving appointed arbitrator/s, the Commission shall issue the writ prayed for.

Notwithstanding the Commission's disagreement with the substance or merit of the award/decision, if execution is ripe or proper under the CIAC Rules, it shall release the writ of execution issued by the arbitrator/s. Hence, once an award/decision becomes executory, the release of the writ of execution by the Commission is purely ministerial, regardless of whether or not the arbitrator/s considered the comments of the Commission, or any of its members, on points of substance in the award during scrutiny. (Citation omitted, emphasis in the original)

The 2010 Revised Rules was subsequently amended several times to conform to the Alternative Dispute Resolution law and the international practices and standards, while preserving the spirit and intent of Construction Industry Arbitration Law. Thus, since 2010, the Revised Rules has been amended by CIAC Resolution Nos. 08-2014, 07-2016, 06-2017, 01-2019, 04-2019, and 05-2019. Particularly, Section 18.5, paragraph 2 has been amended by CIAC Resolution No. 04-2019 to reflect the following:

SECTION 18.5. *Execution/enforcement of awards*. — As soon as a decision, order or final award has become executory, the Arbitral Tribunal (or the surviving remaining member/s), shall, motu proprio or on motion of the prevailing party issue a writ of execution requiring any sheriff or proper officer to execute said decision, order or final award. If there are no remaining/surviving appointed arbitrator/s, the Commission shall issue the writ prayed for.

As a general rule, and if no bond to stay execution is posted, the motion for execution pending appeal filed by the prevailing party may be granted, unless it appealed said award or any portion thereof. *If execution is ripe or proper under the CIAC Rules,* ***the Commission*** *shall* ***concur with, and*** *release, the writ of execution issued by the arbitrator/s. Hence, once an award/decision becomes executory, the release of the writ of execution by the Commission is purely ministerial.* (Citations omitted, emphasis in the original)

Prior to the 2019 Revised Rules, there has been no clear and categorical statement in the 2010 Revised Rules as to the effect of a pending appeal to a motion of execution filed by the prevailing party. Thus, in its March 6, 2012 Resolution, the Arbitral Tribunal denied the Motion for Writ of Execution filed by petitioner reasoning that: (1) the CIAC Resolution No. 06-2002 or "Policy Guidelines to clarify the Policy Guidelines Regarding Execution of a Final Award during Appeal" expresses the policy against interim execution when both parties appealed from the decision of the arbitrator;[170] and (2) the interim execution is allowed only with respect to a party who has accepted the award by not appealing it.

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[170] *Rollo*, p. 2226.

The Commission expresses that this policy "sought to liberalize the rule on execution during appeal, by allowing a stay of execution rather than hastening the execution, and thereby give due recognition to the right of the party to avail of and exhaust the remedies for appeal under the law[.]"[171] The Court of Appeals agreed with the Arbitral Tribunal and added that petitioner failed to state good reasons for allowing an execution pending appeal.

As stated in the present 2019 Revised Rules: "[a]s a general rule, and if no bond to stay execution is posted, the motion for execution pending appeal filed by the prevailing party may be granted, unless it appealed said award or any portion thereof." It is clear then that the general rule is that the motion for execution pending appeal may be granted, and the exception would be if the award or any portion of it is appealed, by any party or both parties.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, but only application. The present rule as it stands is consistent with the interpretation of the Arbitral Tribunal, as affirmed by the Court of Appeals. When petitioner appealed the Award, its case fell within the exception for when a motion for execution pending appeal cannot be granted. Furthermore, similar to the expressed policy in CIAC Resolution No. 02-2006, the 2019 Revised Rules, "being procedural in nature, may be applied retroactively to all pending cases," such as in this case. The old rules and all policies issued in connection with it, as well as policies inconsistent with it, are expressly repealed.[172]

WHEREFORE, premises considered, the petition is **DENIED**. The December 23, 2010 Award of the Construction Industry Arbitration Commission in CIAC Case No. 18-2009 is **AFFIRMED** and **REINSTATED**.

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[171] *Id.* at 2227.

[172] CIAC Revised Rules of Procedure Governing Construction Arbitration (June 22, 2019), Rule 23, Sec. 23.1.

SO ORDERED.

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

Gaerlan, J., on leave.

SECOND DIVISION

[G.R. No. 227457. June 22, 2020]

HELEN L. SAY, GILDA L. SAY, HENRY L. SAY, and DANNY L. SAY, *petitioners, vs.* **GABRIEL DIZON,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI;* GRAVE ABUSE OF DISCRETION; THE ABUSE OF DISCRETION MUST BE SO PATENT AND GROSS AS TO AMOUNT TO AN EVASION OF A POSITIVE DUTY OR A VIRTUAL REFUSAL TO PERFORM A DUTY ENJOINED BY LAW, OR TO ACT AT ALL IN CONTEMPLATION OF LAW, AS WHERE THE POWER IS EXERCISED IN AN ARBITRARY AND DESPOTIC MANNER BY REASON OF PASSION AND HOSTILITY.—** It is well-settled that in an action for *certiorari*, the primordial task of the court is to ascertain whether the court *a quo* acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment. **The abuse of discretion must be so patent and gross** as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, **as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility**.

2. **ID.; CIVIL PROCEDURE; JUDICIAL AFFIDAVIT RULE (JAR); THE PARTIES MUST FILE AND SERVE THE JUDICIAL AFFIDAVITS OF THEIR WITNESSES, TOGETHER WITH THEIR DOCUMENTARY OR OBJECT EVIDENCE, NOT**

LATER THAN FIVE (5) DAYS BEFORE PRE-TRIAL OR PRELIMINARY CONFERENCE OR THE SCHEDULED HEARING WITH RESPECT TO MOTIONS AND INCIDENTS; THE SUBMISSION OF THE REQUIRED JUDICIAL AFFIDAVITS BEYOND THE MANDATED PERIOD MAY BE ALLOWED ONCE, PROVIDED THE DELAY WAS FOR A VALID REASON; IT WOULD NOT UNDULY PREJUDICE THE OPPOSING PARTY; AND THE DEFAULTING PARTY PAYS A FINE OF NOT LESS THAN ₱1,000.00 NOR MORE THAN ₱5,000.00 AT THE DISCRETION OF THE COURT. — [T]he CA found grave abuse of discretion on the part of the RTC when it admitted the belatedly filed Judicial Affidavits of petitioners in violation of the JAR. In particular, Section 2 (a) of the JAR mandates the parties to file and serve the Judicial Affidavits of their witnesses, together with their documentary or object evidence, **not later than five (5) days before** pre-trial or preliminary conference or **the scheduled hearing with respect to motions and incidents** x x x. Corollary thereto, Section 10 (a) of the same Rule further contains a caveat that the failure to timely submit the Judicial Affidavits and documentary evidence **shall be deemed a waiver of their submission** x x x. However, it bears to note that **Section 10 (a) does not contain a blanket prohibition on the submission of a belatedly filed judicial affidavit.** As also stated in the same provision, the submission of the required judicial affidavits beyond the mandated period **may be allowed once provided that the following conditions were complied**, namely: ***(a)*** that the delay was for a valid reason; ***(b)*** it would not unduly prejudice the opposing party; and ***(c)*** the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00 at the discretion of the court.

3. ID.; ID.; ID.; FOUR (4)-DAY DELAY IN THE SUBMISSION OF THE REQUIRED JUDICIAL AFFIDAVITS, ALLOWED WHERE THE NON-COMPLIANCE WITH THE MANDATED PERIOD WAS AN HONEST PROCEDURAL MISTAKE, AND IT WAS NOT SHOWN THAT THE PARTIES HAD DELIBERATE INTENTION TO FLOUT THE RULES. — In this case, there is no dispute that petitioners complied with the RTC's directive to pay the fine of ₱2,500.00 for the late submission of their Judicial Affidavits. What remains at issue is petitioners' compliance with the first two (2) conditions under Section 10 (a) of the JAR. With respect to the justification for the delay,

petitioners consistently pointed out that they were under the belief that the Notice of Hearing they had received was a mere notification of the hearing, and not the formal order or resolution of the presiding judge. However, as both the RTC and CA correctly ruled, the Notice of Hearing was already a grant of their *ex-parte* motion and that the March 13, 2014 hearing was the setting for their counterclaim itself. This notwithstanding, the Court observes that petitioners' failure to submit their Judicial Affidavits five (5) days prior to March 13, 2014 was an honest procedural mistake. As the records clearly show, petitioners actually submitted their Judicial Affidavits a day prior to the March 13, 2014 hearing, or on March 12, 2014. While four (4) days late, their submission of the Judicial Affidavits before the hearing itself shows that they had no deliberate intention to flout the rules. Moreover, petitioners' reason for non-compliance was not completely unjustified. As petitioners candidly expressed, while their counsel misconstrued the import of the Notice of Hearing, the error was made in good faith x x x. Thus, with the foregoing in mind, the RTC cannot be said to have gravely abused its discretion in permitting the mere four (4)-day delay in the submission of petitioners' Judicial Affidavits.

4. ID.; ID.; ID.; JUDICIAL AFFIDAVITS ONLY CONSTITUTE THE EVIDENCE OF PETITIONERS TO PROVE THEIR COUNTERCLAIM AGAINST RESPONDENT, AND ADMITTING THE SAME WOULD NOT NECESSARILY MEAN THAT THE SAID COUNTERCLAIM WOULD ALREADY BE GRANTED SINCE RESPONDENT WOULD STILL BE GIVEN THE CHANCE TO PRESENT HIS OWN EVIDENCE TO CONTROVERT THE SAME, AND BASED ON THE EVIDENCE PRESENTED, THE REGIONAL TRIAL COURT WOULD STILL RULE ON THE COUNTERCLAIM'S MERITS; WHEN NO SUBSTANTIAL RIGHTS ARE AFFECTED AND THE INTENTION TO DELAY IS NOT MANIFEST WITH THE CORRESPONDING SUBMISSION, IT IS SOUND JUDICIAL DISCRETION TO ALLOW THE JUDICIAL AFFIDAVIT TO THE END THAT THE MERITS OF THE CASE MAY BE FULLY VENTILATED. — [T]he admission of petitioners' Judicial Affidavits would not — as it actually did not — unduly prejudice respondent. To be sure, on the scheduled hearing on March 13, 2014, the RTC did not yet allow any presentation of evidence. It was only later, or on April 14, 2015, that the actual hearing

for the reception of petitioners' testimonies took place. It must be emphasized that the Judicial Affidavits only constitute the evidence of petitioners to prove their counterclaim against respondent. Admitting the same would not necessarily mean that the said counterclaim would already be granted since respondent would still be given the chance to present his own evidence to controvert the same, and based on the evidence presented, the RTC would still rule on the counterclaim's merits. In fact, as the records bear out, respondent did submit his rebuttal evidence; thus, this supervening act had, if at all, already negated any supposed prejudice which would have been caused by the allowance of petitioners' Judicial Affidavits. In contrast, if this Court were to affirm the CA's ruling, then, as petitioners aptly pointed out, they would be the ones who would be unduly prejudiced as a consequence of a simple, and now, innocuous, procedural mistake x x x. Jurisprudence explains that "[w]hen no substantial rights are affected and the intention to delay is not manifest with the corresponding [submission] x x x, it is sound judicial discretion to allow the same to the end that the merits of the case may be fully ventilated." In this relation, the Court has held that "[c]ourts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity," as in this case.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT COMMITTED BY THE REGIONAL TRIAL COURT WHEN IT RELAXED THE RIGID APPLICATION OF THE JUDICIAL AFFIDAVIT RULE IN THE INTEREST OF SUBSTANTIAL JUSTICE. — [T]he Court finds that the RTC did not act in an arbitrary, whimsical, and capricious manner in admitting the subject Judicial Affidavits. Verily, there was no patent abuse of discretion which was so gross in nature amounting 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. What is only apparent is that the RTC exercised its due discretion in relaxing the rigid application of the JAR in the interest of substantial justice. Accordingly, the CA erred in attributing grave abuse of discretion against it.

APPEARANCES OF COUNSEL

Rean S. Sy for petitioners.
Joffrey L. Montefrio for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated May 13, 2016 and the Resolution[3] dated August 24, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 06840, which set aside the Orders dated September 2, 2014[4] and April 1, 2015[5] of the Regional Trial Court of Koronadal City, South Cotabato, Branch 24 (RTC) in Civil Case No. 1973-24, declaring that the RTC gravely abused its discretion in allowing the belated submission of the Judicial Affidavits of petitioners Helen, Gilda, Henry, and Danny, all surnamed Say (petitioners), despite non-compliance with the conditions provided under Section 10 (a) of the Judicial Affidavit Rule (JAR).[6]

The Facts

This case stemmed from a complaint for Declaration of Nullity of the Deed of Absolute Sale filed by respondent Gabriel Dizon (respondent) against one Robert Dizon and petitioners before the RTC, docketed as **Civil Case No. 1973-24**. In an Order dated November 23, 2011, the said complaint was dismissed

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[1] *Rollo*, pp. 5-18.

[2] *Id.* at 24-29. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas, concurring.

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

[4] *Id.* at 79-80. Penned by Presiding Judge Lorenzo F. Balo.

[5] *Id.* at 90-91.

[6] A.M. No. 12-08-08-SC (January 1, 2013).

by the RTC on the ground of forum shopping after it was shown that respondent had filed a similar complaint, docketed as **Civil Case No. 1263-25**, involving the same subject matter, issue, and relief.[7]

After the order of dismissal in Civil Case No. 1973-24 had attained finality, petitioners filed an ***Ex-Parte* Motion for Leave of Court to Set Defendants' Counterclaim for Hearing**. In a Notice of Hearing dated November 25, 2013 (Notice of Hearing) signed by the Branch Clerk of Court, the parties were informed that the case was set for hearing on **March 13, 2014**. Claiming that the notice was a mere notification of the hearing, and not a formal order or resolution on their motion, petitioners filed their Judicial Affidavits on **March 12, 2014**, or one (1) day before the scheduled hearing. On the other hand, respondent opposed the same claiming that the Judicial Affidavits were filed out of time as provided under Section 2 (a)[8] of the JAR, which requires that the same be filed **not later than five (5) days before the scheduled hearing**.[9]

Eventually, the RTC directed the parties to file their respective position papers.[10] Notably, petitioners argued that the March 13, 2014 hearing was for their *ex-parte* motion and not yet the hearing of the counterclaim itself. Hence, the five (5)-day period to file their Judicial Affidavits under the JAR had not yet commenced to run.[11]

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[7] See *rollo*, pp. 7 and 24.

[8] Section 2. *Submission of Judicial Affidavits and Exhibits in Lieu of Direct Testimonies*. — (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, **not later than five days before** pre-trial or preliminary conference or **the scheduled hearing with respect to motions and incidents** x x x. (Emphasis supplied)

[9] See *rollo*, pp. 8-9 and 25.

[10] See *id.* at 9.

[11] See *id.* at 26.

The RTC Ruling

In an Order[12] dated September 2, 2014, the RTC admitted the Judicial Affidavits of petitioners. While the RTC held that the Notice of Hearing sent to the parties was already a confirmation that on the specified date, *i.e.*, March 13, 2014, petitioners' counterclaim will already be heard, it nonetheless allowed the late submission of the Judicial Affidavits pursuant to the rule that technicalities must give way to substantial justice.[13]

Respondent moved for reconsideration[14] but was denied in an Order[15] dated April 1, 2015. The RTC reiterated the rule that technicalities must give way to substantial justice. Further, it cited Section 10 (a)[16] of the JAR which allows the late submission of Judicial Affidavits. Thus, pursuant to the same, the RTC modified its earlier order by directing petitioners to pay a fine of ₱2,500.00 for their late submission.[17]

Aggrieved, respondent elevated the matter before the CA via a petition for *certiorari* under Rule 65 of the Rules of Court.[18]

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

[13] See *id.*

[14] See motion for reconsideration dated January 22, 2015; *id.* at 81-83.

[15] *Id.* at 90-91.

[16] Section 10. *Effect of Non-Compliance with the Judicial Affidavit Rule*. — (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same **provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court**.

x x x x x x x x x (Emphasis supplied)

[17] See *rollo*, pp. 90-91.

[18] *Id.* at 24.

The CA Ruling

In a Decision[19] dated May 13, 2016, the CA gave due course to the petition and set aside the RTC's Orders, holding that the RTC gravely abused its discretion when it admitted the belatedly filed Judicial Affidavits of petitioners without proof of compliance with the conditions laid down under Section 10 (a) of the JAR, namely: *(a)* the delay is for a valid reason; *(b)* it would not unduly prejudice the opposing party; and *(c)* the defaulting party pays the specified fine. The CA pointed out that other than the payment of the fine, petitioners failed to show that they had complied with the remaining conditions for the allowance of the late submission of their Judicial Affidavits.[20]

Petitioners' motion for reconsideration was denied in a Resolution[21] dated August 24, 2016; hence, this petition.

The Issue Before the Court

The essential issue for resolution is whether or not the CA erred in finding grave abuse of discretion on the part of the RTC when the latter admitted petitioners' Judicial Affidavits that were belatedly filed.

The Court's Ruling

The petition is meritorious.

It is well-settled that in an action for *certiorari*, the primordial task of the court is to ascertain whether the court *a quo* acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment. **The abuse of discretion must be so patent and gross** as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, **as**

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[19] *Id.* at 24-29.

[20] See *id.* at 27-28.

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

where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[22]

In this case, the CA found grave abuse of discretion on the part of the RTC when it admitted the belatedly filed Judicial Affidavits of petitioners in violation of the JAR.[23] In particular, Section 2 (a) of the JAR mandates the parties to file and serve the Judicial Affidavits of their witnesses, together with their documentary or object evidence, **not later than five (5) days before** pre-trial or preliminary conference or **the scheduled hearing with respect to motions and incidents**, to wit:

> Section 2. *Submission of Judicial Affidavits and Exhibits in Lieu of Direct Testimonies*. — (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, **not later than five days** before pre-trial or preliminary conference or **the scheduled hearing** with respect to motions and incidents, the following:
>
> (1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and
>
> (2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked x x x (Emphases supplied)

Corollary thereto, Section 10 (a) of the same Rule further contains a caveat that the failure to timely submit the Judicial Affidavits and documentary evidence **shall be deemed a waiver of their submission**, thus:

> Section 10. *Effect of Non-Compliance with the Judicial Affidavit Rule*. — (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. **The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00 at the discretion of the court.** (Emphasis and underscoring supplied)

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[22] *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 482 (2011).

[23] See *rollo*, pp. 27-28.

However, it bears to note that **Section 10 (a) does not contain a blanket prohibition on the submission of a belatedly filed judicial affidavit.** As also stated in the same provision, the submission of the required judicial affidavits beyond the mandated period **may be allowed once provided that the following conditions were complied**, namely: (***a***) that the delay was for a valid reason; (***b***) it would not unduly prejudice the opposing party; and (***c***) the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00 at the discretion of the court.

In this case, there is no dispute that petitioners complied with the RTC's directive to pay the fine of ₱2,500.00 for the late submission of their Judicial Affidavits.[24] What remains at issue is petitioners' compliance with the first two (2) conditions under Section 10 (a) of the JAR.

With respect to the justification for the delay, petitioners consistently pointed out that they were under the belief that the Notice of Hearing they had received was a mere notification of the hearing, and not the formal order or resolution of the presiding judge.[25] However, as both the RTC and CA correctly ruled, the Notice of Hearing was already a grant of their *ex-parte* motion and that the March 13, 2014 hearing was the setting for their counterclaim itself. This notwithstanding, the Court observes that petitioners' failure to submit their Judicial Affidavits five (5) days prior to March 13, 2014 was an honest procedural mistake. As the records clearly show, petitioners actually submitted their Judicial Affidavits a day prior to the March 13, 2014 hearing, or on March 12, 2014. While four (4) days late, their submission of the Judicial Affidavits before the hearing itself shows that they had no deliberate intention to flout the rules. Moreover, petitioners' reason for non-compliance was not completely unjustified. As petitioners candidly expressed, while their counsel misconstrued the import of the Notice of Hearing, the error was made in good faith, *viz.*:

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[24] See *id.* at 10.

[25] See *id.* at 8-9.

In good faith, petitioners' counsel believed that the notice of hearing he received which set a hearing on March 13, 2014 is not yet the approval of their *ex-parte* motion. Petitioners' counsel most respectfully assumes that only the trial judge can formally approve or deny a motion filed in court.

x x x x x x x x x

As can be noted in its words and language, the notice of hearing itself did not require the submission of judicial affidavits.

Normally, when the court sets a case for preliminary or pre-trial conference, the notice always expressly directs the filing of the judicial affidavits and the consequence of non-compliance. In the case at bar, the notice of hearing did not expressly require the submission of judicial affidavits. There was also no caveat of the consequence in the event the petitioners fail to comply with it.

Taken altogether, it is this factual backdrop that led petitioners to sincerely and honestly believe the notice of hearing they received is not yet the formal approval of their *ex parte* motion.[26]

Thus, with the foregoing in mind, the RTC cannot be said to have gravely abused its discretion in permitting the mere four (4)-day delay in the submission of petitioners' Judicial Affidavits.

At any rate, the admission of petitioners' Judicial Affidavits would not — as it actually did not — unduly prejudice respondent. To be sure, on the scheduled hearing on March 13, 2014, the RTC did not yet allow any presentation of evidence. It was only later, or on April 14, 2015, that the actual hearing for the reception of petitioners' testimonies took place.[27] It must be emphasized that the Judicial Affidavits only constitute the evidence of petitioners to prove their counterclaim against respondent. Admitting the same would not necessarily mean that the said counterclaim would already be granted since respondent would still be given the chance to present his own evidence to controvert the same, and based on the evidence presented, the RTC would still rule on the counterclaim's merits. In fact, as the records

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

[27] See *id.* at 13.

bear out, respondent did submit his rebuttal evidence;[28] thus, this supervening act had, if at all, already negated any supposed prejudice which would have been caused by the allowance of petitioners' Judicial Affidavits.

In contrast, if this Court were to affirm the CA's ruling, then, as petitioners aptly pointed out, they would be the ones who would be unduly prejudiced as a consequence of a simple, and now, innocuous, procedural mistake, *viz.*:

> The irreparable harm is on the petitioners if they are forever barred from pursuing their counterclaim. Moreover, there was no wanton or deliberate act on the part of petitioners to violate the rules or delay the proceedings. Striking out their judicial affidavits and depriv[ing] them of their opportunity to pursue their claim would be too harsh a penalty.
>
> Totally preventing the petitioners from presenting their evidence on their counterclaim is to totally deprive them of due process over one minor technicality.
>
> The decision of the Honorable Court of Appeals if maintained would deny the petitioners of their day in court. They respectfully beg for its reversal. After all, the issue is only about the admission of the judicial affidavits. The trial judge will still have to decide the case on the merits — whether petitioners are indeed entitled to their compulsory counterclaims.[29]

Jurisprudence explains that "[w]hen no substantial rights are affected and the intention to delay is not manifest with the corresponding [submission] x x x, it is sound judicial discretion to allow the same to the end that the merits of the case may be fully ventilated."[30] In this relation, the Court has held that "[c]ourts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed

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[28] See *id.*

[29] *Id.* at 17.

[30] *Spouses Sibay v. Spouses Bermudez*, 813 Phil. 807, 814 (2017).

liberal construction of the rules when to do so would serve the demands of substantial justice and equity,"[31] as in this case.

Thus, based on the considerations above-discussed, the Court finds that the RTC did not act in an arbitrary, whimsical, and capricious manner in admitting the subject Judicial Affidavits. Verily, there was no patent abuse of discretion which was so gross in nature amounting 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. What is only apparent is that the RTC exercised its due discretion in relaxing the rigid application of the JAR in the interest of substantial justice. Accordingly, the CA erred in attributing grave abuse of discretion against it.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 13, 2016 and the Resolution dated August 24, 2016 of the Court of Appeals in CA-G.R. SP No. 06840 are **REVERSED** and **SET ASIDE**. The Orders dated September 2, 2014 and April 1, 2015 of the Regional Trial Court of Koronadal City, South Cotabato, Branch 24 in Civil Case No. 1973-24 are hereby **REINSTATED**.

SO ORDERED.

Hernando, Inting, and *Delos Santos, JJ.*, concur.

Gaerlan,[*] *J.*, on leave.

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[31] *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corporation*, 551 Phil. 768, 780 (2007).

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[G.R. No. 228947. June 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. **JULIETO AGAN *a.k.a.* "JONATHAN AGAN",** *accused-appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONVICTION IN RAPE CASES USUALLY RESTS SOLELY ON THE BASIS OF THE TESTIMONY OF THE VICTIM, PROVIDED THE TESTIMONY IS CREDIBLE, NATURAL, CONVINCING, AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS. —** Due to its distinctive nature, conviction in rape cases usually rests solely on the basis of the testimony of the victim, with the condition that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Consequently, in the resolution of rape cases, the credibility of the private complainant is decisive. In this case, private complainant positively identified the accused-appellant as her assailant.

2. **ID.; ID.; ID.; IN THE ABSENCE OF ANY CLEAR SHOWING THAT THE TRIAL COURT OVERLOOKED OR MISCONSTRUED COGENT FACTS AND CIRCUMSTANCES THAT WOULD JUSTIFY ALTERING OR REVISING SUCH FINDINGS AND EVALUATION, THE COURT HAS DEFERRED TO THE TRIAL COURT'S FACTUAL FINDINGS AND EVALUATION OF THE CREDIBILITY OF WITNESSES, ESPECIALLY WHEN ITS FINDINGS ARE AFFIRMED BY THE COURT OF APPEALS. —** It must be stressed that both the RTC and the CA found the testimony of private complainant to be credible and persuasive. [T]he Court has time and again emphasized that the trial court is in the best position to determine facts and to assess the credibility of witnesses. Thus, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation, the Court

has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when its findings are affirmed by the CA.

3. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; UNDESERVING OF WEIGHT, FOR BEING NEGATIVE AND SELF-SERVING, UNLESS SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE. — In the case at bar, private complainant's positive identification of the accused-appellant as the one who took her cellphone and forced her to lay with him at gun point at the dawn of January 22, 2011, completely disproves and destroys the defense of denial and alibi presented by accused-appellant. Nothing is more settled than the rule that alibi and denial, unless substantiated by clear and convincing evidence, is undeserving of weight, for being negative and self-serving.

4. CRIMINAL LAW; ROBBERY WITH RAPE; ELEMENTS; THE ORIGINAL INTENT OF THE ACCUSED WAS TO TAKE, WITH INTENT TO GAIN, PERSONAL PROPERTY BELONGING TO ANOTHER AND RAPE WAS COMMITTED BY REASON OR ON THE OCCASION OF THE ROBBERY AND NOT THE OTHER WAY AROUND. — The crime of Robbery with Rape is a special complex crime which is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659. For one to be liable for the complex crime of Robbery with Rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape was committed by reason or on the occasion of the robbery and not the other way around.

5. ID.; ID.; ID.; THE SLIGHTEST CONTACT OF THE PENIS WITH EVEN JUST THE OUTER LIP OF THE VAGINA, REGARDLESS OF THE EXTENT OF ERECTION, CONSUMMATES THE CRIME OF RAPE. — In this case, both the RTC and CA found that on the occasion of the robbery, rape was committed. However, their legal conclusions differed as to the stage of execution. The RTC held that the crime committed was not consummated, but only attempted rape, since

the accused-appellant's penis merely touched private complainant's genitalia due to his failure to have an erection. However, the CA ruled that the crime was consummated. The Court agrees with the CA. x x x. It is well-settled that the crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the "mere touching of the external genitalia by a penis capable of consummating the sexual act." That the slightest penetration of the male organ or even its slightest contact with the outer lip or the labia majora of the vagina already consummates the crime. Thus, mere knocking of accused-appellant's penis at the door of the pudenda, regardless of the extent of erection, is sufficient to constitute the crime of rape. Parenthentically, applying the above-mentioned principle, the slightest contact of the penis with even just the outer lip of the vagina consummates the crime of rape. Here, accused-appellant committed rape through sexual intercourse when he tried to insert his penis into private complainant's vagina though it merely touched her genitals as his penis was not fully erect. A perusal of private complainant's testimony shows that she felt accused-appellant's penis touch her labia majora x x x.

6. **ID.; ID.; ID.; THE ABSENCE OF LACERATION, ERYTHEMA, AND ABRASION IN THE VICTIM'S VAGINAL ORIFICE IS IMMATERIAL; AS LONG AS THE ATTEMPT TO INSERT THE PENIS RESULTS IN CONTACT WITH THE LIPS OF THE VAGINA, EVEN WITHOUT RUPTURE OR LACERATION OF THE HYMEN, THE RAPE IS CONSUMMATED; CONVICTION OF ACCUSED-APPELLANT OF THE CRIME OF ROBBERY WITH RAPE, AFFIRMED. —** The fact that the medical examination showed no laceration, erythema, and abrasion in her vaginal orifice is immaterial. "Carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. A complete or total penetration of the private organ is not necessary to consummate the crime of rape. The slightest penetration is sufficient. As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated. This is based from the physical fact that the labias are physically situated beneath the mons pubis or the vaginal surface, such that for the penis to touch either of them is to attain some degree

of penetration beneath the surface of the female genitalia. Hence, the CA correctly convicted accused-appellant of the crime of Robbery with Rape.

7. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. — In line with the recent jurisprudence, the award of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, the CA correctly affirmed the RTC's order to indemnify the private offended party in the sum of ₱10,000.00 as actual damages, representing the cost of the cellphone.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Samson N. Dajao for accused-appellant.

D E C I S I O N

INTING, *J.*:

That the medical examination showed no laceration, erythema, and abrasion in the victim's vaginal orifice is immaterial. Accused-appellant's inability to maintain an erection firm enough for continuous penetration will not save him from punishment. The Court, in deciding this appeal, stresses the oft-stated doctrine that in rape cases the slightest penetration is sufficient.

This is an appeal from the Decision[1] dated May 6, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 01210-MIN, which affirmed with modification the Decision[2] dated May 15, 2014 of Branch 4, Regional Trial Court (RTC), Iligan City, Lanao del Norte in Criminal Case No. 15388. The CA found Julieto Agan also known as "Jonathan Agan" (accused-appellant) guilty beyond reasonable doubt of the crime of Robbery with Rape.

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[1] *Rollo*, pp. 3-11; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Edgardo T. Lloren, concurring.

[2] CA *rollo*, pp. 18-39; penned by Presiding Judge Concordio Y. Baguio.

The Antecedents

Accused-appellant was charged in an Information[3] with the crime of Robbery with Rape, *viz.*:

"That on or about January 22, 2011 in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the accused by the use of violence and intimidation upon the person of [AAA][4] that is, that is [sic] by poking a handgun at the latter and while he was doing the same, with intent to gain, did then and there willfully, unlawfully and feloniously take, steal, rob and carry away the one unit Samsung cellular phone amounting to Php10,000.00 belonging to the said [AAA] without her consent and against her will, to the damage and prejudice of the said owner in the aforesaid sum of Php10,000.00 Philippine currency and on occasion of the said robbery, the accused feloniously used force and intimidation against the herein victim and had carnal knowledge with [AAA] against the latter's will and without her consent.

Contrary to and in violation of Article 294 of the Revised Penal Code."[5]

Accused-appellant was arrested and committed to jail on May 11, 2011. During his arraignment, he entered a plea of not guilty to the crime charged.[6]

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[3] *Id.* at 18.

[4] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, 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.

[5] *Id.*

[6] *Rollo*, p. 4.

Trial ensued.

According to the prosecution, on January 22, 2011 at around 4:30 a.m., AAA (private complainant) was on her way home after watching over her sister-in-law who just gave birth in a clinic. While walking along Zone Mars, Suarez, Iligan City she noticed that someone was following her. It was the accused-appellant. She walked faster, but accused-appellant caught up with her and declared "hold-up." At gun point, accused-appellant asked for her jewelry and other belongings. Accused-appellant warned her not to shout as he would not hesitate to kill her.[7]

Private complainant told accused-appellant that she had no jewelry, but accused-appellant demanded for her cellphone, opened her bag, and inspected its contents. Accused-appellant took her cellphone worth ₱10,000.00.[8]

Not satisfied with the cellphone, accused-appellant fondled private complainant's breast and genitalia, pulled her to the grassy part of the road, and ordered her to lie down. Private complainant obliged out of fear. As she was lying down, accused-appellant drew up her skirt and removed her panty. He then took off his pants and brief, placed his body on top of her, and started to caress her. He then tried to insert his penis into private complainant's vagina, but he failed as it was not fully erect. After trying and failing to penetrate private complainant's vagina, he gave up and put on his brief and trousers and instructed her to dress up. He again demanded for any jewelry from the private complainant. Private complainant told him again that she had none. When he sensed that she was telling the truth, he instructed her to pass from the right side of the road and not to look back. Private complainant hurriedly left.[9]

When private complainant arrived home, she reported the incident to her brother and mother. They then proceeded to

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[7] *Id.*

[8] *Id.*

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

the Nonucan Police Station to report the incident. Afterwards, they went to the City Health Office to secure a medical certificate.[10]

Dr. Efleida Valdehueza (Dr. Valdehueza) conducted the medical examination of the private complainant at 8:15 a.m. of the same day and found no laceration, erythema, and abrasion in her vaginal orifice, but noted the presence of a grass stalk and two small seeds near her anus.[11]

In his defense, accused-appellant denied the charge of Robbery with Rape and made contradicting testimony with respect to his whereabouts on that fateful day. Initially, he claimed to be working as security guard of Happibee Disco Bar (Happibee) on January 22, 2011, then later admitted that he was jobless at that time and was staying in their house the whole day.[12]

Defense witnesses Vanessa Grace Nadoza and Ramil Pol testified that they fetched accused-appellant, together with Michelle Nadoza who is accused-appellant's common law wife, from Happibee at 3:00 a.m. on January 22, 2011. They were with accused-appellant until they reached his house where they ate and later on slept. Michael Ferolino (Michael), on his part, testified that on February 1, 2011, at the Suarez *Barangay* Hall, he heard private complainant saying that accused-appellant was not the culprit as her assailant has a tattoo in his body. This was specifically denied by private complainant when she was presented as a hostile witness. On the other hand, Police Officer II Carmelo Daleon (PO2 Daleon) testified that private complainant told him that accused-appellant was her assailant.[13]

In the Decision[14] dated May 15, 2014, the RTC disposed of as follows:

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[10] *Id.* at 5.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] CA *rollo*, pp. 18-39.

WHEREFORE, all told, and in view of the evidence herein adduced, this Court renders judgment in the following manner to wit:

a) Convicting the accused with the offense of Robbery with Attempted rape and hereby sentences him to suffer an imprisonment of *reclusion temporal* ranging from 14 years, 8 months and 1 day as minimum to 17 years and 4 months as maximum.

b) To indemnify the offended party the sum of ₱10,000.00 representing the cost of the cellphone that was taken from her.

c) No damages of any kind are being awarded for lack of proof.

d) The period of accused's detention in jail is fully credited in the computation of his sentence.

SO ORDERED.[15]

On appeal, the CA, in its assailed Decision[16] dated May 6, 2016, upheld accused-appellant's conviction with modification, to wit:

WHEREFORE, the appeal is DENIED. The 15 May 2014 Decision of the Regional Trial Court of Lanao del Norte, Branch 4 of Iligan City in Criminal Case No. 15388 is AFFIRMED with modification as follows:

The appellant's conviction of the crime of robbery with attempted rape is VACATED, and We find appellant Julieto Agan also known as "Jonathan Agan" guilty beyond reasonable doubt of the crime of robbery with rape. We SENTENCE him to suffer the penalty of *reclusion perpetua*, without eligibility for parole and ORDER him to pay the victim the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php10,000.00 as actual damages.

SO ORDERED.[17]

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

[16] *Rollo*, pp. 3-11.

[17] *Id.* at 10.

In the Manifestation[18] dated May 27, 2016, accused-appellant prayed that his case be forwarded to the Court for automatic review considering that the assailed CA Decision convicted him of a more severe crime of Robbery with Rape which carried with it a penalty of *reclusion perpetua*.

The CA, in the Resolution[19] dated October 25, 2016, granted accused-appellant's prayer and directed its Judicial Records Division to elevate the case to the Court.

The Court in the Resolution[20] dated February 22, 2017, required the parties to simultaneously file their respective supplemental briefs. However, the People of the Philippines, through the Office of the Solicitor General, manifested that it is no longer filing a Supplemental Brief there being no significant transaction, occurrence, or event that happened since the filing of its Appellee's Brief dated December 5, 2014.[21] While the filing of accused-appellant's Supplemental Brief was dispensed with by the Court in the Resolution[22] dated July 9, 2018.

The issue in this case is whether the CA correctly found that accused-appellant is guilty beyond reasonable of the crime of Robbery with Rape.

The Court's Ruling

The appeal is devoid of merit.

An appeal in criminal cases confers the appellate court full jurisdiction over the case and renders such court competent to examine the entire records of the case, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[23]

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[18] *Id.* at 12.

[19] *Id.* at 13-15.

[20] *Id.* at 17-18.

[21] *Id.* at 19-20.

[22] *Id.* at 35.

[23] *People v. Alejandro, et al.*, 807 Phil. 221, 229 (2017), citing *People v. Comboy*, 782 Phil. 187, 196 (2016).

Proceeding from the foregoing, the CA correctly modified the RTC Decision as will be discussed hereunder.

Credibility of the witness is controlling.

Due to its distinctive nature, conviction in rape cases usually rests solely on the basis of the testimony of the victim, with the condition that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[24] Consequently, in the resolution of rape cases, the credibility of the private complainant is decisive.[25]

In this case, private complainant positively identified the accused-appellant as her assailant, *viz.*:[26]

> *(Private complainant, directly examined by Fiscal Macabenta Derogongan:)*
>
> *Q:* *So, by the way, Miss witness how were you able to identify the accused when the incident occurred at 4:30 in the morning?*
>
> *A:* *The place was lighted sir, because there were electric posts and besides that there were residence houses with lights outside, sir.*
>
> *Q:* *So, you mean you were able to positively identified (sic) the accused because there (sic) lights at your surroundings, the electric post and the houses with lights outside?*
>
> *A:* *Yes, sir.*
>
> [x x x x x x x x x]
>
> *Q:* *When the accused pointed his gun at you, in front of you, how far were you from the accused?*
>
> *A:* *Very very near sir, in front of me and I was looking or staring at him, sir.*

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[24] *People v. Ganaba*, G.R. No. 219240, April 4, 2018, 860 SCRA 513, 525.

[25] *People v. Gerones*, 271 Phil. 275, 281 (1991).

[26] *Rollo*, p. 7.

Further, defense witness PO2 Daleon, instead of corroborating the testimony of fellow defense witness Michael did the exact opposite and testified that private complainant told him that accused-appellant was the one who robbed and raped her, to wit:[27]

(Fiscal Derogongan, cross-examining SPO2 Daleon:)

Q: What did the victim tell you if there was any when she saw the accused at a closer distance?
A: The vernacular word is "Siya gyud, Sir."
Q: When you say "Siya gyud, Sir," what (sic) was she referring to?
A: She was referring to accused Julieto Agan, sir.
Q: As what?
A: The suspect, the one who robbed her and the one who raped her, sir.

It must be stressed that both the RTC and the CA found the testimony of private complainant to be credible and persuasive.

On this note, the Court has time and again emphasized that the trial court is in the best position to determine facts and to assess the credibility of witnesses.[28] Thus, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation, the Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when its findings are affirmed by the CA.[29]

In the case at bar, private complainant's positive identification of the accused-appellant as the one who took her cellphone and forced her to lay with him at gun point at the dawn of January 22, 2011, completely disproves and destroys the defense of denial and alibi presented by accused-appellant.

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[27] *Id.* at 8.

[28] *People v. Abdul*, 369 Phil. 506, 531 (1999).

[29] *People v. Sanota*, G.R. No. 233659, December 10, 2019.

Nothing is more settled than the rule that alibi and denial, unless substantiated by clear and convincing evidence, is undeserving of weight, for being negative and self-serving.[30]

The crime of rape is consummated the moment the penis touches the labia, regardless of the extent of erection.

The crime of Robbery with Rape is a special complex crime which is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659.

For one to be liable for the complex crime of Robbery with Rape, the following elements must concur:[31]

(1) the taking of personal property is committed with violence or intimidation against persons;

(2) the property taken belongs to another;

(3) the taking is characterized by intent to gain or *animus lucrandi*; and

(4) the robbery is accompanied by rape.

It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape was committed by reason or on the occasion of the robbery and not the other way around.[32]

Applying the foregoing to the case at bar, the prosecution's evidence established with certainty that at the dawn of January 22, 2011, accused-appellant followed private complainant along Zone Mars, Suarez, Iligan City and when accused-appellant

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[30] *People v. Catuiran, Jr.*, 397 Phil. 325, 335 (2000).

[31] See *People v. Evangelio, et al.*, 672 Phil. 229, 242 (2011), citing *People v. Suyu*, 530 Phil. 569, 596 (2006).

[32] *People v. Bragat*, 821 Phil. 625, 633 (2017), citing *People v. Belmonte*, 813 Phil. 240, 246 (2017).

caught up with her, he declared a hold-up. At that moment, accused-appellant asked private complainant for jewelry and other belongings. He searched private complainant's bag and took her cellphone at gun point. Clearly, the first element, that the taking is committed with violence and intimidation, and the second element, that the property taken belongs to another, are present in this case. As to the third element, *animus lucrandi* or intent to gain is presumed from the unlawful taking of private complainant's cellphone.[33] *Acta exteriora iudicant interiora secreta* — a man's action is a reflection of his intention.

Thus, the first three elements of the crime were clearly established.

Anent the fourth element, it was established that on the occasion of the robbery, the private complainant was ordered by accused-appellant, at gun point, to lie down and out of fear she obliged. Accused-appellant drew up her skirt and removed her panties. Soon after, accused-appellant started caressing private complainant's private parts. He then positioned himself on top of the private complainant and began pumping his body to satisfy his lust.[34] It was also established, based from the testimony of Dr. Valdehueza who physically examined private complainant's genital organ that while there was no laceration or bleeding on the hymen, she however noted the presence of a grass stalk and two small seeds in the perianal area.[35]

In this case, both the RTC and CA found that on the occasion of the robbery, rape was committed. However, their legal conclusions differed as to the stage of execution.

The RTC held that the crime committed was not consummated, but only attempted rape, since the accused-appellant's penis merely touched private complainant's genitalia due to his failure

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[33] *People v. Reyes*, 447 Phil. 668, 674 (2003), citing *People v. Del Rosario*, 411 Phil. 676, 686 (2001).

[34] CA *rollo*, p. 32.

[35] *Id.* at 30.

to have an erection.[36] However, the CA ruled that the crime was consummated.[37]

The Court agrees with the CA.

Article 6 of the RPC defines the stages of a felony in this wise:

> ART. 6. *Consummated, frustrated, and attempted felonies.* — Consummated felonies as well as those which are frustrated and attempted, are punishable.
>
> **A felony is consummated when all the elements necessary for its execution and accomplishment are present**; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.
>
> **There is an attempt when the offender commences the commission of a felony directly by over acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance.** (Emphasis supplied.)

It is well-settled that the crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the "mere touching of the external genitalia by a penis capable of consummating the sexual act."[38] That the slightest penetration of the male organ or even its slightest contact with the outer lip or the labia majora of the vagina already consummates the crime.[39] Thus, mere knocking of accused-appellant's penis at

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[36] *Id.* at 32.

[37] *Rollo*, p. 9.

[38] *People v. Tampos*, 455 Phil. 844, 858 (2003), citing *People v. Lerio*, 381 Phil. 80, 87 (2000).

[39] *Ricalde v. People*, 751 Phil. 793, 809 (2015), citing *People v. Bonaagua*, 665 Phil. 750, 769 (2011).

the door of the pudenda, regardless of the extent of erection, is sufficient to constitute the crime of rape.[40]

Parenthetically, applying the above-mentioned principle, the slightest contact of the penis with even just the outer lip of the vagina consummates the crime of rape. Here, accused-appellant committed rape through sexual intercourse when he tried to insert his penis into private complainant's vagina though it merely touched her genitals as his penis was not fully erect.

A perusal of private complainant's testimony shows that she felt accused-appellant's penis touch her labia majora, to wit:[41]

(Atty. Macabenta Derogongan, cross examining the private complainant:)

Q: In your Affidavit Madam witness No. 8 paragraph of your Affidavit, you clearly mentioned that his penis did not fully erected (sic)?
A: Yes, sir.
Q: So, in other words, it is very soft?
A: Yes, sir.
Q: When it contact with your genital, am I correct?
A: Yes, sir.
Q: In other words, may I say that his an (sic) erected penis even touch you (sic) labia of your genital?
*A: **He touched my labia mejora (sic), he tried to insert it, sir.***
Q: So, the reason why his penis did not erect fully because he is afraid that somebody might passed and saw you in that position, am I correct [sic]?
A: Yes, sir.

Undisputedly, accused-appellant's penis touched private complainant's labia majora.

The fact that the medical examination showed no laceration, erythema, and abrasion in her vaginal orifice is immaterial. "Carnal

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[40] *People v. De la Cuesta*, 363 Phil. 425, 432 (1999), citing *People v. Echegaray*, 327 Phil. 349, 360 (1996).

[41] *Rollo*, p. 9. Emphasis supplied, underscoring in the original.

knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured.[42] A complete or total penetration of the private organ is not necessary to consummate the crime of rape.[43]

The slightest penetration is sufficient.

As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated.[44] This is based from the physical fact that the labias are physically situated beneath the mons pubis or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia.[45] Hence, the CA correctly convicted accused-appellant of the crime of Robbery with Rape.

In line with the recent jurisprudence,[46] the award of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, the CA correctly affirmed the RTC's order to indemnify the private offended party in the sum of ₱10,000.00 as actual damages, representing the cost of the cellphone.

WHEREFORE, the Decision dated May 6, 2016 of the Court of Appeals in CA-G.R. CR No. 01210-MIN is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Julieto Agan *a.k.a.* Jonathan Agan is ordered to pay AAA the amounts of

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[42] *People v. Lerio*, 381 Phil. 80, 87 (2000), citing *People v. Quiñanola*, 366 Phil. 390, 410 (1999).

[43] *People v. Cruz*, 259 Phil. 1256, 1259 (1989).

[44] *People v. Banzuela*, 723 Phil. 797, 818 (2013), citing *People v. Boromeo*, 474 Phil. 605, 617 (2004).

[45] *People v. Besmonte*, 735 Phil. 234, 248 (2014), citing *People v. Bali-Balita*, 394 Phil. 790, 808-810 (2000).

[46] *People v. Romobio*, 820 Phil. 168 (2017); see also *People v. Jugueta*, 783 Phil. 806 (2016).

₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱10,000.00 as actual damages. All monetary awards for damages shall earn an interest rate of 6% *per annum* to be computed from the finality of the judgment until fully paid.

SO ORDERED.

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

Gaerlan,[*] *J.*, on leave.

SECOND DIVISION

[G.R. No. 230222. June 22, 2020]

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

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[*] Designated as additional member per Special Order No. 2780 dated May 11, 2020.

[*] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes"; RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, 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.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; MUST CHARGE ONLY ONE OFFENSE, EXCEPT WHEN THE LAW PRESCRIBES A SINGLE PUNISHMENT FOR VARIOUS OFFENSES. —** [T]he Court notes that the CA convicted accused-appellant for two counts of Rape, while only one Information was filed against him. Duplicity of offenses charged contravenes Section 13, Rule 110 of the Rules of Court (Rules) which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses."

2. **ID.; ID.; MOTION TO QUASH; FAILURE OF THE ACCUSED TO MOVE TO QUASH INFORMATION BASED ON THE GROUND OF DUPLICITY OF THE OFFENSES CHARGED IS DEEMED A WAIVER OF ANY OBJECTION ON THAT GROUND DUE TO HIS/HER FAILURE TO ASSERT IT BEFORE HE/SHE PLEADED TO THE INFORMATION; CASE AT BAR.—** From a reading of the Information dated June 15, 2010, the Court agrees with the CA that accused-appellant was charged with two offenses—the act of having carnal knowledge of AAA constitutes one offense, while the act of inserting his finger into AAA's private part constitutes another. Section 3(f), Rule 117 of the Rules allows the accused to move for the quashal of the information based on the ground of duplicity of the offenses charged. However, under Section 9, Rule 117 of the Rules, accused-appellant is deemed to have waived any objection based on this ground due to his failure to assert it before he pleaded to the Information. Thus, the CA was correct in holding that accused-appellant can be convicted for the two offenses.

3. **CRIMINAL LAW; RAPE THROUGH CARNAL KNOWLEDGE UNDER PARAGRAPH 1(a), ARTICLE 266-A (IN RELATION TO ARTICLE 266-B) OF THE REVISED PENAL CODE, AFFIRMED; LASCIVIOUS CONDUCT UNDER SECTION 5(b) OF REPUBLIC ACT NO. 7610, PROPER NOMENCLATURE OF THE CRIME IF THE VICTIM IS 12 YEARS OLD OR ABOVE BUT UNDER 18 YEARS OLD, OR AT LEAST 18 YEARS OLD UNDER SPECIAL CIRCUMSTANCES; CASE AT BAR. —** The Court upholds the CA's finding that accused-appellant is guilty of the two offenses charged in the Information. Thus, accused-

appellant's conviction for Rape through carnal knowledge under paragraph 1(a), Article 266-A [in relation to Article 266-B] of the RPC is affirmed. With respect to the finding of Rape through sexual assault under paragraph 2 of Article 266-A, however, there is a need to modify the nomenclature of the crime, its corresponding penalty, and the award of damages. This is in light of the fact that AAA was only 15 years old at the time of the incident. In the landmark case of *People v. Tulagan* (*Tulagan*), the Court pronounced that if the victim is 12 years old or above but under 18 years old, or at least 18 years old under special circumstances, "the nomenclature of the crime should be 'Lascivious Conduct under Section 5(b) of RA 7610' with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the RPC." The crime shall be called "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor* only when the victim of the sexual assault is 18 years old or above and not demented.

4. ID.; REPUBLIC ACT NO. 7610; COERCION AND INFLUENCE; BROAD ENOUGH TO COVER FORCE AND INTIMIDATION AS USED IN THE INFORMATION. — In *Quimvel v. People*, the Court ruled that "force and intimidation" is subsumed under "coercion and influence" and these terms are used almost synonymously, *viz.*: The term "*coercion and influence*" as appearing in the law is broad enough to cover "*force and intimidation*" as used in the Information. To be sure, Black's Law Dictionary defines "*coercion*" as "*compulsion; force; duress*" while "[undue] *influence*" is defined as "*persuasion carried to the point of overpowering the will*." On the other hand, "*force*" refers to "*constraining power, compulsion; strength directed to an end*" while jurisprudence defines "*intimidation*" as "*unlawful coercion; extortion; duress; putting in fear*." As can be gleaned, the terms are used almost synonymously. It is then of no moment that the terminologies employed by RA 7610 and by the Information are different.

5. ID.; ID.; FOUR SCENARIOS CONTEMPLATED BY THE PHRASE "CHILDREN EXPLOITED IN PROSTITUTION". — In *Tulagan*, the Court explained that the phrase "children exploited in prostitution," on the one hand, contemplates four scenarios: (a) a child, whether male or female who, for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child who, for money, profit or any other consideration,

indulges in sexual intercourse; (c) a child, whether male or female, who, due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulges in sexual intercourse.

6. **ID.; ID.; CHILD ABUSE; AS DEFINED UNDER SECTION 3, ARTICLE 1 THEREOF AND AS DEFINED UNDER SECTION 2(g) OF THE RULES AND REGULATIONS ON THE REPORTING AND INVESTIGATION OF CHILD ABUSE CASES. —** The phrase "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of RA 7610 and of "sexual abuse" under Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases. "Child abuse" as defined in the former provision refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters; on the other hand, "sexual abuse" as defined in the latter provision includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

7. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MOTIVES SUCH AS FAMILY FEUDS, RESENTMENT, HATRED, OR REVENGE HAVE NEVER CONVINCED THE COURT FROM GIVING FULL CREDENCE TO THE TESTIMONY OF A MINOR RAPE VICTIM; CASE AT BAR.—** The Court rejects accused-appellant's contention that the charge of Rape against him was filed out of hatred. "AAA's credibility cannot be diminished or tainted by [an] imputation of ill motives. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge." Furthermore, motives such as family feuds, resentment, hatred, or revenge have never convinced the Court from giving full credence to the testimony of a minor rape victim.

8. **ID.; ID.; ID.; GENERALLY, TRIAL COURT'S EVALUATION AND CONCLUSION ON THE CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIMES EVEN FINALITY, ESPECIALLY AFTER THE COURT OF APPEALS, AS THE INTERMEDIATE REVIEWING TRIBUNAL, HAS AFFIRMED**

THE FINDINGS. — Jurisprudence has emphasized that "the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, especially after the CA, as the intermediate reviewing tribunal, has affirmed the findings." This applies in the absence of "a clear showing that the findings were reached arbitrarily, or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated that, if properly considered, would alter the result of the case."

9. ID.; ID.; ID.; DELAY ON THE PART OF THE MINOR VICTIM TO REPORT THE ALLEGED PRIOR INCIDENTS OF SEXUAL MOLESTATION DOES NOT PUT A DENT ON THE CREDIBILITY OF HER TESTIMONY; CASE AT BAR. — [T]he Court finds no reason to rule that the delay on the part of AAA to report the alleged prior incidents of sexual molestation puts a dent on the credibility of her testimony. The Court agrees with the CA that it is not uncommon for young girls to conceal for some time the assault against their virtue; and it is not expected of a young girl like AAA, as opposed to a mature woman, to have the courage and intelligence to immediately report a sexual assault committed against her.

10. ID.; ID.; ID.; BEST ADDRESSED BY THE TRIAL COURT, IT BEING IN A BETTER POSITION TO DECIDE SUCH QUESTION, HAVING HEARD THEM AND OBSERVED THEIR DEMEANOR, CONDUCT, AND ATTITUDE UNDER GRUELING EXAMINATION. — "The credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and observed their demeanor, conduct, and attitude under grueling examination." Considering that there is no evidence that the RTC's assessment on the credibility of the AAA's testimony was tainted with arbitrariness or oversight of a fact, it is entitled to great weight, if not conclusive or binding on the Court.

11. CRIMINAL LAW; RAPE; FORCE EMPLOYED THEREIN NEED NOT BE SO GREAT NOR OF SUCH A CHARACTER AS COULD NOT BE RESISTED; IT IS ONLY THAT THE FORCE USED BY THE ACCUSED IS SUFFICIENT TO ENABLE HIM TO CONSUMMATE HIS PURPOSE. — As held in *People v. Amarela*: The absence of any superficial abrasion or contusion on the person of the offended party does not militate against

the claim of the latter whose clear and candid testimony bears the badges of truth, honesty, and candor. It must be stressed that *the absence or presence of visible signs of injury on the victim depends on the degree of force employed by the accused to consummate the purpose which he had in mind to have carnal knowledge with the offended woman*. Thus, the force employed in rape need not be so great nor of such a character as could not be resisted. It is only that the force used by the accused is sufficient to enable him to consummate his purpose.

12. ID.; RAPE UNDER PARAGRAPH 1(a), ARTICLE 266-A, IN RELATION TO ARTICLE 266-B, OF THE REVISED PENAL CODE; PENALTY AND DAMAGES AWARDED IN CASE AT BAR. — [T]he Court finds that the CA's imposition with respect to the crime of Rape under paragraph 1(a), Article 266-A, in relation to Article 266-B, of the RPC conforms to recent jurisprudence. Considering the qualifying circumstances of minority and relationship, the proper penalty would have been death if not for the prohibition under RA 9346. As such, the CA correctly imposed *reclusion perpetua* without eligibility for parole in lieu of death. It also correctly ordered accused-appellant to pay AAA civil indemnity, moral damages, and exemplary damages, each in the amount of ₱100,000.00, with interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

13. ID.; LASCIVIOUS CONDUCT UNDER SECTION 5(b), ARTICLE III OF REPUBLIC ACT NO. 7610; PENALTY AND DAMAGES AWARDED IN CASE AT BAR. — With respect to the offense of Lascivious Conduct under Section 5(b), Article III of RA 7610, considering that AAA was more than 12 years old but less than 18 years old at the time of the incident, the imposable penalty is *reclusion temporal*, in its medium period, to *reclusion perpetua*. Since the perpetrator of the offense is her own father, and this was alleged in the Information and proven during trial, such relationship should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the alternative aggravating circumstance, the penalty provided shall be imposed in its maximum period, *i.e., reclusion perpetua*. This is also in conformity with Section 31(c), Article XII of RA 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, among others, the parent of the victim.

Moreover, pursuant to *People v. Jugueta* and *Tulagan*, accused-appellant should be ordered to pay AAA civil indemnity, moral damages, and exemplary damages, each in the amount of ₱75,000.00, with interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid. Furthermore, pursuant to Section 31(f), Article XII of RA 7610, accused-appellant shall pay a fine in the amount of ₱15,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

INTING, *J.*:

Assailed in this ordinary appeal is the Decision[1] dated August 4, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 37242 affirming with modification the Judgment[2] dated September 26, 2014 of Branch 18, Regional Trial Court (RTC), [redacted] Isabela in Criminal Case No. 5412. In the RTC Judgment, VVV (accused-appellant) was found guilty beyond reasonable doubt of Rape through sexual assault under paragraph 2, Article 266-A of the Revised Penal Code (RPC), as amended. In the assailed CA Decision, accused-appellant's conviction under paragraph 2, Article 266-A of the RPC was upheld; however, he was additionally found guilty of Rape through carnal knowledge under paragraph 1 (a) of the same Article.

The Antecedents

In an Information[3] dated June 15, 2010, accused-appellant was charged with Rape as defined and penalized under Article

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Rosmari D. Carandang (now a member of the Court) with Associate Justices Mario V. Lopez (now a member of the Court) and Myra V. Garcia-Fernandez, concurring.

[2] CA *rollo*, pp. 37-52; penned by Presiding Judge Rodolfo B. Dizon.

[3] Records, pp. 1-2.

266-A of the RPC, as amended. The accusatory portion of the Information reads:

> That on or about the 10th day of June, 2010, in the municipality of [redacted], province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd designs, and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously, lay with and have carnal knowledge with his own daughter [AAA], who is a minor of 15 years·old, by then and there inserting his finger in her private parts, against her will and consent.
>
> With the aggravating circumstances that the [victim] is a minor below 18 years old and that the accused is the father of the victim.
>
> CONTRARY TO LAW.[4]

On arraignment, accused-appellant pleaded not guilty.[5] Pre-trial and trial on the merits ensued.

As established by the prosecution, on June 10, 2010, at around 9:00 p.m., AAA was attending the wake of her grandmother at the latter's house in [redacted] Isabela. AAA was with her father, herein accused-appellant, and her other siblings. Thereat, accused-appellant suddenly told AAA to get inside the room and give him a massage. After AAA obliged, accused-appellant told her to lie down. He then started to mash her breast. After a while, he put his hands inside her shorts and touched her vagina. He then inserted his forefinger into her vagina and made a push and pull motion for about three minutes. Thereupon, he pulled her right hand and placed it in his penis for about five minutes. He told her not to tell anyone about what happened; otherwise, he would maul and kick her. Afterwards, he took off her shorts and underwear, laid on top of her, inserted his penis into her vagina, and made a push and pull motion. He stopped after about five minutes and told her to sleep. Throughout the molestation, he was holding a *balisong*

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[4] *Id.* at 1.

[5] See Order dated July 5, 2010, *id.* at 15.

(knife) in his left hand. He then left the room and proceeded to play *tong-its*.[6]

AAA also decided to go outside the room as she could not sleep. At around 4:00 a.m. of June 11, 2010, she decided to approach her aunt, BBB, who was then sitting near the coffin of her grandmother. She told BBB about the incident as well as all the other sexual abuses that accused-appellant committed against her since 2008. BBB proceeded to [redacted] Police Station and reported the incident. Thereafter, BBB, with AAA, went to [redacted] Hospital for a medico-legal examination.[7]

Dr. Mary Grace Bartolome-Agcaoili (Dr. Agcaoili) examined AAA and found that her hymen was "crescentric, tanner stage 4." While finding that AAA's private part had no bleeding, discharges, or lacerations in the hymen, Dr. Agcaoili did not exclude the possibility of sexual abuse.[8]

For his part, accused-appellant interposed denial. He testified that in the evening of June 10, 2010, he brought his children to the house of his in-laws to attend the wake of his mother-in-law. Thereat, he did not see where AAA and her siblings were as he became busy drinking and playing cards.[9]

Accused-appellant vehemently denied the charge of Rape against him and asserted that it was filed out of hatred. He stated that he once scolded AAA for having a drinking spree in another *barangay* and that there were times that she would not come home and sleep in their house.[10]

Accused-appellant also testified that he had quarrels with his wife regarding money matters, particularly on the fact that

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[6] *Rollo*, p. 4.

[7] *Id.*

[8] *Id.* at 5.

[9] TSN, August 27, 2013, pp. 6-8.

[10] *Id.*

she would send money to his in-laws for the purchase of medicines, and that he had a disagreement with his in-laws when he disapproved of their wish to let his wife go to the United States of America (USA) in the hope that she would also be able to help her brothers to go abroad.[11] Moreover, accused-appellant stated that his in-laws did not speak to him after he refused to let his wife go to the USA.[12] He claimed that his in-laws, his wife, and his daughter conspired for him to be put in jail.[13]

On September 26, 2014, the RTC rendered its Judgment[14] finding accused-appellant guilty of sexual assault under paragraph 2, Article 266-A of the RPC. The RTC sentenced him to suffer the penalty of imprisonment of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum; and to indemnify AAA in the following amounts: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

Aggrieved, accused-appellant appealed to the CA.

Upon a reading of the Information, the CA observed that accused-appellant was charged with two offenses: (*1*) rape through sexual intercourse under paragraph 1 (a), and (*2*) rape as an act of sexual assault under paragraph 2, both of Article 266-A of the RPC, as amended. The CA found that accused-appellant was charged with having carnal knowledge of AAA, his 15-year-old daughter, by means of force and intimidation; and, at the same time, he was charged with committing an act of sexual assault against AAA by inserting his finger into her private part.[15] The CA noted that the Information merely lacked

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[11] TSN, December 16, 2013, pp. 15-18.

[12] *Id.* at 18.

[13] *Id.* at 19.

[14] CA *rollo*, pp. 37-52.

[15] *Rollo*, p. 7.

the conjunctive word "and."[16] Furthermore, the CA found that the prosecution was able to prove during trial the guilt of accused-appellant for the two charges of rape.

Thus, on August 4, 2016, the CA rendered the assailed Decision[17] affirming with modification the RTC Judgment, *viz.*:

> WHEREFORE, premises considered, this Court AFFIRMS with MODIFICATION the Judgment dated September 26, 2014 of the Regional Trial Court (RTC) of Ilagan City, Isabela.
>
> For rape through carnal knowledge/sexual assault under Art. 266-A paragraph 1 (a) of the Revised Penal Code (RPC), accused-appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and to pay AAA the amount of ₱100,000 as civil indemnity, ₱100,000 as moral damages, and ₱100,000 as exemplary damages.
>
> For rape through sexual assault under Art. 266-A, paragraph 2 of the Revised Penal Code (RPC), accused-appellant is sentenced to an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, and to pay AAA the amount of ₱30,000 as civil indemnity, ₱30,000 as moral damages, and ₱30,000 as exemplary damages.
>
> Accused-appellant is likewise ordered to pay interest on all damages at the legal rate of 6% per annum from the date of finality of this decision until full payment.
>
> SO ORDERED.[18]

Hence, the present appeal. Per the Court's Resolution[19] dated August 7, 2017, both parties manifested that they would no longer file a supplemental brief before the Court.

In his appellate brief before the CA, accused-appellant raised the following assignment of errors:

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[16] *Id.*

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

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

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

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF RAPE THROUGH SEXUAL ASSAULT, DESPITE THE UNRELIABILITY OF THE PROSECUTION WITNESSES' TESTIMONIES.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THAT THE PHYSICAL EVIDENCE PROVES OTHERWISE.[20]

The Court's Ruling

The appeal lacks merit.

At the outset, the Court notes that the CA convicted accused-appellant for two counts of Rape, while only one Information was filed against him. Duplicity of offenses charged contravenes Section 13, Rule 110 of the Rules of Court (Rules) which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses."

From a reading of the Information[21] dated June 15, 2010, the Court agrees with the CA that accused-appellant was charged with two offenses — the act of having carnal knowledge of AAA constitutes one offense, while the act of inserting his finger into AAA's private part constitutes another. Section 3(f),[22] Rule 117 of the Rules allows the accused to move for the quashal of the information based on the ground of duplicity

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[20] CA *rollo*, p. 22.

[21] Records, pp. 1-2.

[22] Section 3, Rule 117 of the Rules of Court provides:

SEC. 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

x x x x x x x x x

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law.

x x x x x x x x x

of the offenses charged. However, under Section 9,[23] Rule 117 of the Rules, accused-appellant is deemed to have waived any objection based on this ground due to his failure to assert it before he pleaded to the Information. Thus, the CA was correct in holding that accused-appellant can be convicted for the two offenses.

Article 266-A of the RPC, as amended by Republic Act No. (RA) 8353,[24] known as The Anti-Rape Law of 1997, provides:

ART. 266-A. *Rape, When and How Committed.* — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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[23] Section 9, Rule 117 of the Revised Rules of Criminal Procedure provides:

SEC. 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

[24] Entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes," approved on September 30, 1997.

The Court upholds the CA's finding that accused-appellant is guilty of the two offenses charged in the Information. Thus, accused-appellant's conviction for Rape through carnal knowledge under paragraph 1 (a), Article 266-A [in relation to Article 266-B][25] of the RPC is affirmed. With respect to the finding of Rape through sexual assault under paragraph 2 of Article 266-A, however, there is a need to modify the nomenclature of the crime, its corresponding penalty, and the award of damages. This is in light of the fact that AAA was only 15 years old at the time of the incident.

In the landmark case of *People v. Tulagan* (*Tulagan*),[26] the Court pronounced that if the victim is 12 years old or above but under 18 years old, or at least 18 years old under special circumstances, "the nomenclature of the crime should be 'Lascivious Conduct under Section 5 (b) of RA 7610' with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the RPC." The crime shall be called "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor* only when the victim of the sexual assault is 18 years old or above and not demented.[27]

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[25] Article 266-B of the Revised Penal Code pertinently provides:

Article 266-B. *Penalties*. — Rape under paragraph 1 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, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.*

x x x x x x x x x

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

[27] *Id.*

Section 5 (b), Article III of RA 7610,[28] otherwise known as the "Special Protection of Children against Abuse, Exploitation and Discrimination Act," provides:

> Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the [victim] is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

The following account reveals that accused-appellant is guilty both of Rape through carnal knowledge under paragraph 1 (a), Article 266-A of the RPC and of Lascivious Conduct under Section 5 (b), Article III of RA 7610:

> Q Miss Witness, during the last time, you said that your father told you to enter the room because he wanted you to massage him, is that correct?
>
> A Yes, sir.

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[28] Entitled "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes," approved on June 17, 1992.

Q And then, when you entered, you saw him sitting down and then he stood up and made you lie on the bed, is that correct?

A Yes, sir.

Q And you said that he started mashing your breast and afterwhich, he placed his hand under your short pants and *took hold of your vagina*?

A *Yes, sir*.

Q And after he placed his hand under your shorts and took hold of your vagina, what did he do next?

A *He placed his hand on top of my vagina, sir*.

Q Afterwhich, what did he do next?

A *He inserted his finger into my vagina, sir*.

Q *Do you know how many fingers did he insert in your vagina?*

A *Only one, sir*.

Q And when his finger was inserted into your vagina, what did he do next?

A *He inserted it in a push and pull motion*.

Q *How long did he do that?*

A *Three (3) minutes, sir*.

Q *After three (3) minutes, what did he do next?*

A He made me hold his penis, sir.

Q How did he make you do that?
A He pulled my hand and placed it in his penis, sir.

COURT:

Q Which hand?

A My right hand, sir.

Q *May I interrupt, regarding the insertion . . . so he made his right hand in that act of inserting then which part of the hand? Which finger did he use?*

A *Forefinger, sir*.

PROS. ERESE:

Q How long did he make you hold his penis?

A Five (5) minutes, sir.

Q By the way, Miss Witness, when he made you hold his penis, did he say anything?

A Yes, sir.

Q What was it?

A *He told me not to make any report to anyone, sir.*

Q Anything more?

A *He will maul me and kick me if I will make a report, sir.*

x x x x x x x x x

Q Did he tell you anything about what to do with his penis when you were holding it?

A Yes, sir.

Q What did he say? Can you still remember what he made you do with his penis?

A None, sir.

Q After holding his penis for about five minutes, what happened next?

A *He inserted his penis into my vagina.*

x x x x x x x x x

Q When he inserted his penis inside your vagina, were you still wearing your shorts?

A No more, sir.

Q And who took your shorts off?

A My father, sir.

Q And when he inserted his penis inside your vagina, what were your relative positions?

A We were lying down, sir.[29] (Italics supplied.)

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[29] TSN, August 13, 2012, pp. 3-7.

Accused-appellant's act of inserting his penis into AAA's vagina through force and intimidation constitutes Rape through carnal knowledge under paragraph 1 (a), Article 266-A of the RPC. Moreover, accused-appellant's acts of intentionally holding AAA's vagina and inserting into it his right forefinger plainly constitute sexual abuse and lascivious conduct as defined in the Implementing Rules and Regulations of RA 7610, known as the "Rules and Regulations on the Reporting and Investigation of Child Abuse Cases," which pertinently provide:

> Section 2. *Definition of Terms*. — As used in these Rules, unless the context requires otherwise —
>
> x x x x x x x x x
>
> (g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or *coercion* of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;
>
> (h) "Lascivious conduct" means the *intentional touching*, either directly or through clothing, of the *genitalia*, anus, groin, breast, inner thigh, or buttocks, or the *introduction of any object into the genitalia*, anus or mouth, of any person, whether of the same or opposite sex, with an *intent to abuse*, humiliate, harass, degrade, or arouse or *gratify the sexual desire of any person*, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.] (Italics supplied.)

In *Quimvel v. People*,[30] the Court ruled that "force and intimidation" is subsumed under "coercion and influence" and these terms are used almost synonymously, *viz.*:

> The term "*coercion and influence*" as appearing in the law is broad enough to cover "*force and intimidation*" as used in the Information. To be sure, Black's Law Dictionary defines "*coercion*" as "*compulsion; force; duress*'' while "[undue] *influence*" is defined as "*persuasion carried to the point of overpowering the will*." On

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[30] 808 Phil. 889 (2017).

the other hand, "*force*" refers to "*constraining power, compulsion; strength directed to an end*" while jurisprudence defines "*intimidation*" as "*unlawful coercion; extortion; duress; putting in fear*." As can be gleaned, the terms are used almost synonymously. It is then of no moment that the terminologies employed by RA 7610 and by the Information are different.[31]

As can be gleaned from the testimony of AAA, accused-appellant, her own father, employed force, intimidation, coercion, and influence upon her. He threatened to maul and kick her if she would make a report about what happened.[32] Also, he was holding a *balisong* (knife) in his left hand throughout the molestation.[33]

In *Tulagan*,[34] the Court explained that the phrase "children exploited in prostitution," on the one hand, contemplates four scenarios: (a) a child, whether male or female who, for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child who, for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who, due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulges in sexual intercourse.

The phrase "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of RA 7610 and of "sexual abuse" under Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases. "Child abuse" as defined in the former provision refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters; on the other hand, "sexual abuse" as defined in the latter provision includes the employment, use, persuasion, inducement, enticement

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[31] *Id.* at 919. Citations omitted.

[32] TSN, August 13, 2012, p. 6.

[33] TSN, January 7, 2013, p. 9.

[34] *Supra* note 27.

or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.[35]

Based on the facts of the case, it is undeniable that AAA was subjected to sexual abuse under the above definitions. She is a child who, due to the coercion or influence of accused-appellant, was subjected to the latter's lascivious conduct. It also bears stressing that accused-appellant is the father of AAA; as such, he has moral ascendancy over AAA, his minor daughter. Where rape is committed by a relative, such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of "force and intimidation" as an essential element of rape.[36]

As previously mentioned, it is undisputed that AAA was only 15 years old at the time of the incident. This fact was alleged in the Information and shown in the Certificate of Live Birth of AAA.[37] Under Section 3 (a) of RA 7610, the term "children" refers to persons below 18 years of age or those over, but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

Given that AAA was only 15 years old at the time of the incident, instead of Rape through sexual assault under paragraph 2, Article 266-A of the RPC, accused-appellant should thus be held liable for Lascivious Conduct under Section 5 (b), Article III of RA 7610. This is in addition to accused-appellant's conviction for Rape through carnal knowledge under paragraph 1(a), Article 266-A, in relation to Article 266-B, of the RPC, which was correctly ruled by the CA.

The Court rejects accused-appellant's contention that the charge of Rape against him was filed out of hatred.

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[35] *Id.*

[36] *Ramilo v. People*, G.R. No. 234841, June 3, 2019.

[37] Records p. 10.

"AAA's credibility cannot be diminished or tainted by [an] imputation of ill motives. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge."[38] Furthermore, motives such as family feuds, resentment, hatred, or revenge have never convinced the Court from giving full credence to the testimony of a minor rape victim.[39]

In *People v. Manuel*,[40] the Court held:

> Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being. It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[41]

The Court is also not swayed by accused-appellant's insistence that the testimonies of the prosecution witnesses are unreliable.

Accused-appellant contends that it is "highly incredible and contrary to ordinary conduct and human experience" that AAA kept silent for so many years if indeed he had been sexually assaulting her since 2008. He avers that his wife came home for a vacation in 2008 and yet AAA did not tell her about any of his alleged sexual acts.[42] He also points out AAA's testimony that her siblings knew what was happening and yet no one dared to inform their mother or other relatives about it.[43]

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[38] *People v. Zafra*, 712 Phil. 559, 575 (2013), citing *People v. Acala*, 366 Phil. 797, 814 (1999).

[39] *Dizon v. People*, 616 Phil. 498, 515 (2009), citing *People v. Audine*, 539 Phil. 583, 605 (2006).

[40] 358 Phil. 664 (1998). Citations omitted.

[41] *Id.* at 674.

[42] CA *rollo*, p. 29, citing TSN, September 17, 2012, p. 6.

[43] *Id.* at 29-30, citing TSN, August 13, 2012, p. 26.

Furthermore, accused-appellant asserts that the place of the incident would be so unlikely for a sexual molestation to happen.[44] He specifically refers to AAA's description of the place and circumstances of the incident, which was inside the only room of the house of her grandmother, with no light and no door and with only a curtain made of thin material to cover it, while the wake of her grandmother was being held at the living room.[45]

Between the assertions of accused-appellant and the testimony of AAA, the latter deserves credence. Jurisprudence has emphasized that "the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, especially after the CA, as the intermediate reviewing tribunal, has affirmed the findings."[46] This applies in the absence of "a clear showing that the findings were reached arbitrarily, or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated that, if properly considered, would alter the result of the case."[47]

Further, the Court finds no reason to rule that the delay on the part of AAA to report the alleged prior incidents of sexual molestation puts a dent on the credibility of her testimony. The Court agrees with the CA that it is not uncommon for young girls to conceal for some time the assault against their virtue; and it is not expected of a young girl like AAA, as opposed to a mature woman, to have the courage and intelligence to immediately report a sexual assault committed against her.

It is worthy to note that both the RTC and the CA found the testimony of AAA credible and persuasive. According to the CA, AAA's spontaneous, direct, and sincere manner of presenting her testimony on how she was raped by her father bears the

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[44] *Id.* at 30.

[45] *Id.*, citing TSN, January 7, 2013, p. 4.

[46] *People v. Ganaba*, G.R. No. 219240, April 4, 2018, 860 SCRA 513, 524, citing *People v. Domingo*, 810 Phil. 1040, 1046-1047 (2017).

[47] *Id.*

earmarks of credibility.[48] The CA also noted the RTC's observation of AAA's demeanor at the witness stand which was natural, convincing, and consistent with human nature and the normal course of things.[49] As observed by the RTC, AAA was candid and truthful. Further, when asked to identify her father in court, AAA approached accused-appellant "frontally and gave him a resounding slap on the face and cried out unabashedly."[50]

"The credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and observed their demeanor, conduct, and attitude under grueling examination."[51] Considering that there is no evidence that the RTC's assessment on the credibility of the AAA's testimony was tainted with arbitrariness or oversight of a fact, it is entitled to great weight, if not conclusive or binding on the Court.[52]

Accused-appellant also questions AAA's medical certificate, which showed that she did not suffer any hymenal injury despite the fact that she was examined a few hours after the alleged sexual molestation.[53] He asserts that the lack of physical manifestation of Rape by sexual assault weakens the case against him.[54]

The Court remains unswayed. As held in *People v. Amarela*:[55]

The absence of any superficial abrasion or contusion on the person of the offended party does not militate against the claim of the latter

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[48] *Rollo*, p. 8.

[49] *Id.*

[50] *Id.*

[51] *People v. Manson*, 801 Phil. 130, 140 (2016).

[52] *Id.*

[53] *Rollo*, p. 31.

[54] *Id.* at 33.

[55] G.R. Nos. 225642-43, January 17, 2018, 852 SCRA 54.

whose clear and candid testimony bears the badges of truth, honesty, and candor. It must be stressed that *the absence or presence of visible signs of injury on the victim depends on the degree of force employed by the accused to consummate the purpose which he had in mind to have carnal knowledge with the offended woman.* Thus, the force employed in rape need not be so great nor of such a character as could not be resisted. It is only that the force used by the accused is sufficient to enable him to consummate his purpose.[56] (Italics in the original.)

In sum, the Court holds accused-appellant guilty of both Rape under paragraph 1 (a), Article 266-A, in relation to Article 266-B, of the RPC and Lascivious Conduct under Section 5 (b), Article III of RA 7610.

As regards the penalty and damages, the Court finds that the CA's imposition with respect to the crime of Rape under paragraph 1 (a), Article 266-A, in relation to Article 266-B, of the RPC conforms to recent jurisprudence.[57] Considering the qualifying circumstances of minority and relationship, the proper penalty would have been death if not for the prohibition under RA 9346.[58] As such, the CA correctly imposed *reclusion perpetua* without eligibility for parole in lieu of death. It also correctly ordered accused-appellant to pay AAA civil indemnity, moral damages, and exemplary damages, each in the amount of ₱100,000.00, with interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

With respect to the offense of Lascivious Conduct under Section 5 (b), Article III of RA 7610, considering that AAA was more than 12 years old but less than 18 years old at the time of the incident, the imposable penalty is *reclusion temporal*, in its medium period, to *reclusion perpetua*. Since the perpetrator of the offense is her own father, and this was alleged in the

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[56] *Id.* at 66.

[57] See *People v. Jugueta*, 783 Phil. 806 (2016).

[58] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," approved on June 24, 2006.

Information and proven during trial, such relationship should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the alternative aggravating circumstance, the penalty provided shall be imposed in its maximum period, *i.e.*, *reclusion perpetua*.[59] This is also in conformity with Section 31 (c),[60] Article XII of RA 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, among others, the parent of the victim. Moreover, pursuant to *People v. Jugueta*[61] and *Tulagan*,[62] accused-appellant should be ordered to pay AAA civil indemnity, moral damages, and exemplary damages, each in the amount of ₱75,000.00, with interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid. Furthermore, pursuant to Section 31 (f),[63] Article XII of RA 7610, accused-appellant shall pay a fine in the amount of ₱15,000.00.

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[59] *Ramilo v. People, supra* note 38.

[60] Section 31 (c) of RA 7610 provides:

Section 31. *Common Penal Provisions.* —

x x x x x x x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

[61] *Supra* note 58.

[62] *Supra* note 27.

[63] Section 31 (f) of RA 7610 provides:

Sec. 31. Common Penal Provisions. —

x x x x x x x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated August 4, 2016 of the Court of Appeals in CA-G.R. CR No. 37242 is **AFFIRMED with MODIFICATION**. Accused-appellant VVV is found guilty beyond reasonable doubt of:

(1) *Rape* under paragraph 1 (a) of Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay the victim, AAA, the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages; and

(2) *Lascivious Conduct* under Section 5 (b), Article III of Republic Act No. 7610 and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱15,000.00. He is further ordered to pay the victim, AAA, the amounts of ₱75,000 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

All monetary awards so imposed are subject to interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Gaerlan,[**] *J.*, on leave.

[**] Designated as additional member as per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 232192. June 22, 2020]

ALEJANDRO C. MIRANDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; LAWFUL ARREST WITHOUT WARRANT. —** [L]awful warrantless arrest under Rule 113, Section 5 of the Revised Rules of Criminal Procedure states: SECTION 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112. (5a)

2. **ID.; ID.; ID.; SINCE THE WARRANTLESS ARREST IN CASE AT BAR WAS NOT LAWFUL, PETITIONER SHOULD HAVE BEEN ENTITLED TO A PRELIMINARY INVESTIGATION BEFORE AN INFORMATION WAS FILED. —** Here, as the barangay police narrated, petitioner went with them to the barangay hall upon their invitation. He was detained after the victim had identified him as the sexual assaulter. Certainly, the barangay police were not present within the meaning of Section 5(a) at the time of the crime's commission. Neither do the barangay police have any personal knowledge of the facts indicating that petitioner was the offender. Instead, they only acted on the information they got from the victim's stepfather.

This information did not constitute personal knowledge within the meaning of Section 5(b). As previously held, "personal gathering of information is different from personal knowledge." Since petitioner's warrantless arrest was not lawful, he should have been entitled to a preliminary investigation before an Information was filed against him. The inquest investigation conducted by the City Prosecutor is void. Under Rule 112, Section 7 of the Revised Rules on Criminal Procedure, an inquest investigation is proper only when the suspect is lawfully arrested without a warrant.

3. ID.; ID.; ID.; ID.; THE ABSENCE OF PRELIMINARY INVESTIGATION DOES NOT AFFECT THE TRIAL COURT'S JURISDICTION; THE RIGHT TO QUESTION THE SAME WAS WAIVED BY ENTERING A PLEA WITHOUT OBJECTION. — [T]he absence of a preliminary investigation does not affect the trial court's jurisdiction, but merely the regularity of the proceedings. It does not impair the validity of the information or render it defective. Besides, in this case, it is too late now for petitioner to protest his arrest and detention. He voluntarily pleaded not guilty on arraignment. By so pleading, he is deemed to have submitted his person to the jurisdiction of the trial court, curing any defect in his arrest. Also, by entering a plea without objection, he waived his right to question any irregularity in his arrest or the absence of a preliminary investigation. x x x At any rate, any irregularity in the arrest of petitioner will not negate the validity of his conviction, as this has been duly proven beyond reasonable doubt by the prosecution.

4. CRIMINAL LAW; RAPE AS A CRIME AGAINST PERSONS, DISCUSSED. — Petitioner was charged and correctly convicted of rape through sexual assault under Article 266-A(2) of the Revised Penal Code, as amended, in relation to Republic Act No. 7610, or the Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act. This second type of rape is committed: 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. Republic Act No. 8353, or the Anti-Rape Law of 1997, reclassified rape as a crime against persons and broadened its concept. As a crime against persons, rape cases may now be prosecuted even

without the complaint of the offended party; likewise, express pardon by the offended party will not extinguish criminal liability. Under the new law, rape may be committed against any person regardless of sex or gender. Thus, in *Ricalde v. People,* it was acknowledged that even men can be victims of rape. Furthermore, with the amendments introduced by Republic Act No. 8353, rape can be committed either by sexual intercourse or by sexual assault, which is also called "instrument or object rape" or "gender-free rape." Regardless of the manner of its commission, rape is heinous, causing incalculable damage on a victim's dignity.

5. ID.; RAPE THROUGH SEXUAL ASSAULT IN RELATION TO RA 7610; PENALTY AND DAMAGES. — Both the Regional Trial Court and the Court of Appeals found petitioner guilty beyond reasonable doubt of rape through sexual assault. This Court affirms his conviction. However, we modify the penalty, in line with Section 5(b) of Republic Act No. 7610. Thus, for committing rape through sexual assault, petitioner is sentenced to suffer the indeterminate penalty of 12 years, 10 months, and 21 days of *reclusion temporal*, as minimum, to 15 years, six months, and 20 days of *reclusion temporal*, as maximum. As to civil liabilities, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages are awarded in favor of the victim, consistent with jurisprudence.

APPEARANCES OF COUNSEL

David Eñano, Jr. for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The accused's failure to object to the legality of their arrest or to the absence of a preliminary investigation, before entering their plea, will not negate their conviction when it is duly proven by the prosecution.

This Court resolves the Petition for Review on *Certiorari*[1] seeking to reverse and set aside the Court of Appeals' Decision[2] and Resolution,[3] which affirmed Alejandro C. Miranda's (Miranda) conviction for rape through sexual assault under Article 266-A(2) of the Revised Penal Code, as amended, in relation to Republic Act No. 7610.

On April 12, 2006, the City Prosecutor of Muntinlupa City filed an Information before the Regional Trial Court of Muntinlupa City, charging Miranda with rape through sexual assault. It reads:

> On or about the 6th day of April 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously insert his penis into the anal orifice of [AAA], a six-year old boy born on 22 June 1999, which debases, degrades and demeans the intrinsic worth and dignity of [AAA] as a human being.
>
> Contrary to law.[4]

When arraigned on May 17, 2006, Miranda, assisted by Atty. Melita Pilar P. Briñas of the Public Attorney's Office, pleaded not guilty to the crime charged.[5]

In a May 22, 2006 Order,[6] the Regional Trial Court granted Miranda's Motion to Reduce Bail and reduced the ₱120,000.00 bail to ₱70,000.00 (if cash bond) or ₱80,000.00 (if bail bond).

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[1] *Rollo*, pp. 13-37. Filed under Rule 45 of the Rules of Court.

[2] *Id.* at 137-149. The July 30, 2014 Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Carmelita S. Manahan of the Twelfth Division, Court of Appeals, Manila.

[3] *Id.* at 40-45. The April 26, 2017 Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Carmelita S. Manahan of the Former Twelfth Division, Court of Appeals, Manila.

[4] *Id.* at 53.

[5] *Id.* at 54.

[6] *Id.* at 55.

After pre-trial, trial on the merits followed.[7] The facts as narrated in the Court of Appeals Decision are as follows:

At around 5:00 to 6:00 p.m. on April 6, 2006, six-year-old AAA was playing in front of Miranda's house when the man pulled the kid inside. There, Miranda undressed AAA and told him to lie down. He then inserted his penis in the anal orifice of the child, who cried in pain.[8]

AAA immediately told his stepfather, BBB, what Miranda did to him. By 8:30 p.m., they reached the barangay police and reported that Miranda had molested the child.[9] At this, Barangay Police Officers Reynaldo Espino and Roberto Fernandez proceeded to Miranda's house and invited him to go with them to clear up the complaint. Miranda voluntarily went with them.[10]

For his part, Miranda denied the charge against him, claiming that he could not do such a thing because he treated AAA as his own son, and was even entrusted sometimes to look after the child whenever his parents were not around. Miranda also claimed that he was close friends with BBB.[11]

On February 12, 2010, the Regional Trial Court rendered a Decision convicting Miranda.[12] The dispositive portion of the Decision reads:

WHEREFORE, the Court finds accused guilty beyond reasonable doubt of sexual assault defined and penalized under the second paragraph of Article 266-A of the Revised Penal Code, by inserting his penis into the anal orifice of the private complainant, and is sentenced to an indeterminate penalty of six (6) years and one (1) day of *prision mayor* in its minimum as the minimum period to twelve

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[7] *Id.* at 138.

[8] *Id.* at 47-49 and 139.

[9] *Id.* at 47, 50, and 139.

[10] *Id.* at 139.

[11] *Id.* at 139-140.

[12] *Id.* at 140.

(12) years and one (1) day of *reclusion temporal* in its minimum as the maximum period, as the prosecution was able to prove the age of the private complainant who was born on June 22, 1999 and was six years, seven months and 14 days old at the time the crime was committed. He is further adjudged to pay civil damages in the amount of ₱25,000.00 and moral damages in the amount of ₱25,000.00, without subsidiary imprisonment in case of insolvency. The accessory penalties under the law shall be imposed on him.

So ordered.[13] (Citation omitted)

Miranda appealed to the Court of Appeals.[14]

In a July 30, 2014 Decision,[15] the Court of Appeals affirmed Miranda's conviction for rape through sexual assault, with a modification on the damages awarded. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing premises, the appealed Decision of Branch 207 of the Regional Trial Court of Muntinlupa City in Criminal Case No. 06-353 is AFFIRMED with the MODIFICATIONS that, aside from being sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum, the civil indemnity awarded by the trial court is increased to ₱30,000.00 and the moral damages awarded is likewise increased to ₱30,000.00. Moreover, AAA is entitled to an interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.[16]

Miranda's handwritten Motion for Reconsideration was denied in the Court of Appeals' December 12, 2014 Resolution[17] for

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[13] *Id.*

[14] *Id.*

[15] *Id.* at 137-149.

[16] *Id.* at 148-149.

[17] *Id.* at 41.

failure to comply with Section 3 of A.M. No. 11-9-4-SC, otherwise known as The Efficient Use of Paper Rule.[18]

Thus, Miranda filed a Motion to Comply with his amended Motion for Reconsideration attached. He prayed that he be allowed to amend his Motion for Reconsideration to comply with the Efficient Use of Paper Rule.[19]

The Court of Appeals, in its April 26, 2017 Resolution,[20] granted and admitted the Motion to Comply.[21] However, it denied the amended Motion for Reconsideration for lack of merit.[22]

Hence, Miranda filed this Petition.[23] The Office of the Solicitor General, on behalf of respondent People of the Philippines, filed its Comment.[24]

Petitioner assails his conviction on the ground that his warrantless arrest and detention were invalid.[25] As he was arrested without warrant, he asserts that his being subjected to an inquest investigation deprived him of his right to a preliminary investigation.[26]

Petitioner further asserts that Article 266-A of the Revised Penal Code "suffers from confusion, ambiguity, [and] vagueness for attem[p]ting to unite rape as physical injuries *vis-á-vis* crimes against chastity, honor, reputation, . . . and other provisions of

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[18] *Id.* at 63.

[19] *Id.* at 41.

[20] *Id.* at 40-45.

[21] *Id.* at 42.

[22] *Id.* at 45.

[23] *Id.* at 12-37.

[24] *Id.* at 60-85.

[25] *Id.* at 21-24.

[26] *Id.* at 30.

the Revised Penal Code, as amended, incompatible with sexual assault as rape[.]"[27]

The issue for this Court's resolution is whether or not petitioner Alejandro C. Miranda was properly convicted of rape through sexual assault.

The Petition is denied for lack of merit.

I

Petitioner's arrest and detention do not fall within the purview of a lawful warrantless arrest under Rule 113, Section 5 of the Revised Rules of Criminal Procedure. The provision states:

SECTION 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112. (5a)

Here, as the barangay police narrated,[28] petitioner went with them to the barangay hall upon their invitation. He was detained

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[27] *Id.* at 34.

[28] *Rollo*, p. 47.

after the victim had identified him as the sexual assaulter. Certainly, the barangay police were not present within the meaning of Section 5(a) at the time of the crime's commission.

Neither do the barangay police have any personal knowledge of the facts indicating that petitioner was the offender. Instead, they only acted on the information they got from the victim's stepfather. This information did not constitute personal knowledge within the meaning of Section 5(b). As previously held, "personal gathering of information is different from personal knowledge."[29]

Since petitioner's warrantless arrest was not lawful, he should have been entitled to a preliminary investigation before an Information was filed against him. The inquest investigation conducted by the City Prosecutor is void. Under Rule 112, Section 7 of the Revised Rules on Criminal Procedure, an inquest investigation is proper only when the suspect is lawfully arrested without a warrant. It states in part:

> SECTION 7. *When accused lawfully arrested without warrant.* — When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest investigation has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Nonetheless, the absence of a preliminary investigation does not affect the trial court's jurisdiction, but merely the regularity of the proceedings. It does not impair the validity of the information or render it defective.[30]

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[29] *People v. Manlulu,* 301 Phil. 707, 717 (1994) [Per *J.* Bellosillo, First Division].

[30] *De Lima v. Reyes*, 776 Phil. 623, 649 (2016) [Per *J.* Leonen, Second Division] citing *People v. Narca*, 341 Phil. 696 (1997) [Per *J.* Francisco, Third Division].

Besides, in this case, it is too late now for petitioner to protest his arrest and detention. He voluntarily pleaded not guilty on arraignment. By so pleading, he is deemed to have submitted his person to the jurisdiction of the trial court, curing any defect in his arrest. Also, by entering a plea without objection, he waived his right to question any irregularity in his arrest or the absence of a preliminary investigation.[31] This Court has held:

> [A]n accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person must be made before he enters his plea, otherwise, the objection is deemed waived. Even in instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived when a person arrested submits to arraignment without objection. The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention.[32]

At any rate, any irregularity in the arrest of petitioner will not negate the validity of his conviction, as this has been duly proven beyond reasonable doubt by the prosecution.[33]

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[31] RULES OF COURT, Rule 114, Sec. 26 provides: SECTION 26. *Bail not a Bar to Objections on Illegal Arrest, Lack of or Irregular Preliminary Investigation.* — An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case. See also *Roallos v. People,* 723 Phil. 655, 669-670 (2013) [Per *J*. Reyes, First Division] citing *Miclat, Jr. v. People,* 672 Phil. 191 (2011) [Per *J*. Peralta, Third Division] and *Villarin v. People,* 672 Phil. 155 (2011) [Per *J*. Del Castillo, First Division].

[32] *People v. Divina,* 558 Phil. 390, 395 (2007) [Per *J*. Carpio Morales, Second Division] citing *People v. Bongalon,* 425 Phil. 96 (2002) [*Per Curiam*, *En Banc*].

[33] *People v. Yau,* 741 Phil. 747, 770 (2014) [Per *J*. Mendoza, Third Division].

II

Petitioner was charged and correctly convicted of rape through sexual assault under Article 266-A(2) of the Revised Penal Code, as amended, in relation to Republic Act No. 7610, or the Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act. This second type of rape is committed:

> 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.[34] (Emphasis supplied)

Republic Act No. 8353,[35] or the Anti-Rape Law of 1997, reclassified rape as a crime against persons[36] and broadened its concept.[37] As a crime against persons, rape cases may now be prosecuted even without the complaint of the offended party; likewise, express pardon by the offended party will not extinguish criminal liability.[38]

Under the new law, rape may be committed against any person regardless of sex or gender.[39] Thus, in *Ricalde v. People,*[40] it was acknowledged that even men can be victims of rape. Furthermore, with the amendments introduced by Republic Act No. 8353, rape can be committed either by sexual intercourse

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[34] REVISED PENAL CODE, Art. 266-A(2), as amended by Republic Act No. 8353 (1997).

[35] Republic Act No. 8353 took effect on October 22, 1997.

[36] See *People v. Jumawan,* 733 Phil. 102 (2014) [Per J. Reyes, First Division].

[37] See *People v. Abulon,* 557 Phil. 428 (2007) [Per J. Tinga, *En Banc*].

[38] *People v. Tulagan*, G.R. No. 227363, March 12, 2019,<https://library.judiciary.gov.ph/the bookshelf/showdocs/1/65020> [Per J. Peralta, *En Banc*].

[39] See J. Leonen, Dissenting Opinion in *People v. Caoili*, 815 Phil. 839, 933-954 (2017) [Per J. Tijam, *En Banc*].

[40] 751 Phil. 793 (2015) [Per J. Leonen, Second Division].

or by sexual assault, which is also called "instrument or object rape" or "gender-free rape."[41]

Regardless of the manner of its commission, rape is heinous, causing incalculable damage on a victim's dignity. In *People v. Quintos*:[42]

> The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim's dignity is incalculable. Child sexual abuse in general has been associated with negative psychological impacts such as trauma, sustained fearfulness, anxiety, self-destructive behavior, emotional pain, impaired sense of self, and interpersonal difficulties. Hence, one experience of sexual abuse should not be trivialized just because it was committed in a relatively unusual manner.
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> "The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order." Crimes are punished as retribution so that society would understand that the act punished was wrong.
>
> Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person's will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality.[43] (Citations omitted)

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[41] *Id.* at 804. See also *People v. Caoili*, 815 Phil. 839 (2017) [Per *J.* Tijam, *En Banc*]; *People v. Abulon,* 557 Phil. 428 (2007) [Per *J.* Tinga, *En Banc*].

[42] 746 Phil. 809 (2014) [Per *J.* Leonen, Second Division].

[43] *Id.* at 832-833.

Here, the victim categorically testified to how petitioner inserted his penis into his anus. Both the Regional Trial Court and the Court of Appeals found petitioner guilty beyond reasonable doubt of rape through sexual assault.[44] This Court affirms his conviction.

However, we modify the penalty, in line with Section 5(b) of Republic Act No. 7610.[45] Thus, for committing rape through sexual assault, petitioner is sentenced to suffer the indeterminate penalty of 12 years, 10 months, and 21 days of *reclusion temporal*, as minimum, to 15 years, six months, and 20 days of *reclusion temporal*, as maximum.[46]

As to civil liabilities, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages are awarded in favor of the victim, consistent with jurisprudence.[47]

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[44] *Rollo*, pp. 145-147.

[45] Republic Act No. 7610 (1992), Sec. 5(b) provides:

SECTION 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

. . . . . .

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, ***That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period***[.] (Emphasis supplied)

[46] See *People v. Tulagan,* G.R. No. 227363, March 12, 2019,<https://library.judiciary.gov.ph/the bookshelf/showdocs/1/65020> [Per *J*. Peralta, *En Banc*]; *Ricalde v. People,* 751 Phil. 793 (2015) [Per *J*. Leonen, Second Division].

[47] *People v. Tulagan,* G.R. No. 227363, March 12, 2019,<https://library.judiciary.gov.ph/the bookshelf/showdocs/1/65020> [Per *J*. Peralta, *En Banc*].

WHEREFORE, the Petition is **DENIED**. The July 30, 2014 Decision and April 26, 2017 Resolution of the Court of Appeals are **AFFIRMED WITH MODIFICATION.** Petitioner Alejandro C. Miranda is found guilty beyond reasonable doubt of rape through sexual assault under Article 266-A(2) of the Revised Penal Code, as amended, in relation to Republic Act No. 7610. He is sentenced to suffer the indeterminate penalty of 12 years, 10 months, and 21 days of *reclusion temporal*, as minimum, to 15 years, six months, and 20 days of *reclusion temporal,* as maximum. He is also ordered to pay the victim civil indemnity, moral damages, and exemplary damages worth ₱50,000.00 each.

All damages awarded shall be subject to legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.[48]

SO ORDERED.

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

Gaerlan, J., on leave.

SECOND DIVISION

[G.R. No. 234519. June 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO JUARE *y* ELISAN and DANILO AGUADILLA *y* BACALOCOS,** *accused-appellants.*

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

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS AND EVALUATION OF THE CREDIBILITY OF WITNESSES ARE ACCORDED THE HIGHEST DEGREE OF RESPECT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, UNLESS SOME FACTS OR CIRCUMSTANCES OF WEIGHT WERE OVERLOOKED, MISAPPREHENDED OR MISINTERPRETED AS TO MATERIALLY AFFECT THE DISPOSITION OF THE CASE. —** Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty, and candor. x x x The Court upholds the factual findings of the RTC as affirmed by the CA, and the conclusion that the testimonies of the prosecution witnesses are credible which must be taken into consideration than the incredible and unbelievable version of the accused-appellants. To stress, the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witness first-hand and to note their demeanor, conduct, and attitude during examination. The factual findings of the RTC, therefore, are accorded the highest degree of respect especially if the CA adopted and confirmed these, unless some facts or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case. In the absence of substantial reason to justify the reversal of the trial court's findings, assessment and conclusion, especially when affirmed by the appellate court, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the Court generally affirms the trial court's findings.

2. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; DOES NOT REQUIRE ABSOLUTE CERTAINTY OF THE FACT THAT THE ACCUSED COMMITTED THE CRIME, FOR WHAT IS ONLY REQUIRED IS THAT DEGREE OF PROOF WHICH, AFTER A SCRUTINY OF THE FACTS, PRODUCES IN AN UNPREJUDICED MIND MORAL CERTAINTY OF THE CULPABILITY OF THE ACCUSED. — The Court has ruled that in criminal cases, proof beyond reasonable doubt does not require absolute certainty of the fact that the accused committed the crime, and it does not likewise exclude the possibility of error; what is only required is that degree of proof which, after a scrutiny of the facts, produces in an unprejudiced mind moral certainty of the culpability of the accused.

3. ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE; AN ACCUSED MAY BE CONVICTED ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE, PROVIDED THE PROVEN CIRCUMSTANCES CONSTITUTE AN UNBROKEN CHAIN LEADING TO ONE FAIR REASONABLE CONCLUSION POINTING TO THE ACCUSED, TO THE EXCLUSION OF ALL OTHERS, AS THE GUILTY PERSON. — [D]irect evidence of the commission of a crime is not the only basis on which a court draws its finding of guilt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. The commission of a crime, the identity of the perpetrator, and the finding of guilt may all be established by circumstantial evidence. In *Planteras, Jr. v. People*, the Court expounded on the distinction between direct and circumstantial evidence x x x. It is well-settled that in the absence of direct evidence, the courts could resort to circumstantial evidence to avoid setting felons free and deny proper protection to the community. Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. An accused may be convicted on the basis of circumstantial evidence, provided the proven circumstances constitute an unbroken chain leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person. It is akin to a tapestry made up of strands which create a pattern when interwoven.

4. ID.; ID.; ID.; ID.; REQUISITES.— Section 4, Rule 133 of the Rules of Court provides for the requisites that need to be established to sustain a conviction based on circumstantial evidence. x x x [F]or the courts to consider circumstantial evidence, the following requisites must be present: (1) there must be more than one circumstance; (2) the facts from which inferences are derived were proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.

5. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS; A CONVICTION FOR ROBBERY WITH HOMICIDE REQUIRES CERTITUDE THAT THE ROBBERY IS THE MAIN PURPOSE AND OBJECTIVE OF THE MALEFACTOR, AND THE KILLING IS MERELY INCIDENTAL TO THE ROBBERY.— The complex crime of Robbery with Homicide is specially defined and penalized under Article 294(1) of the Revised Penal Code x x x. It requires the following elements: (1) taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is with *anima lucrandi*; and (4) by reason of the robbery, or on the occasion thereof, homicide is committed. A conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.

6. ID.; ID.; INTENT TO ROB; MAY BE INFERRED FROM PROOF OF VIOLENT AND UNLAWFUL TAKING OF THE VICTIM'S PROPERTY AND WHEN THE FACT OF ASPORTATION HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT, CONVICTION OF THE ACCUSED IS JUSTIFIED EVEN IF THE PROPERTY SUBJECT OF THE ROBBERY IS NOT PRESENTED IN COURT. — Intent to rob, may be inferred from proof of violent and unlawful taking of the victim's property. Here, evidence reveals that the victim struggled to defend her life and property at the time of the commission of the crime as indicated by the locations of the stab wounds she suffered, scattered pieces of broken vases and disarrayed personal properties inside the room. Evidently, there was violent and forcible taking of the victim's personal properties. When the fact of asportation has been established beyond reasonable

doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. It is likewise, immaterial that the robber knows the exact value of the thing taken. It is not required for the prosecution to prove the actual value of the thing stolen as the motivation to rob exists regardless of the amount or value involved.

7. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; REGARDED AS INHERENTLY WEAK DEFENSES BECAUSE THEY CAN EASILY BE FABRICATED AND THEY CANNOT BE ACCORDED EVIDENTIARY WEIGHT THAN THE POSITIVE DECLARATION OF CREDIBLE WITNESSES. — [T]he Court cannot subscribe to the accused-appellants defense of denial and alibi. Their defense is weak and self-serving. To Juare, the accusations were all lies, but when asked why they were indicted all that he can muster was to say "maybe they could not find the prime suspect that is why we were the ones charged in this case." The same goes for Aguadilla, he simply said that he really felt bad for the victim's loss or "*nanghihinayang*." No other explanation was offered by both accused-appellants, especially regarding their respective possessions of the bloodied shorts and kitchen knife. It is also worthy to note that during the presentation of the evidence for the defense, the trial court judge had closely observed the demeanor of both accused-appellants and he noticed that they were definitely not telling the truth as they were evasive and were offering plain alibis instead of answering the simple questions with simple and candid answers. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. In this jurisdiction, we are replete of cases pronouncing that denial and alibi are inherently weak defenses because they can easily be fabricated. The accused-appellants' plain alibi cannot be accorded evidentiary weight than the positive declaration of credible witnesses. Their denial and alibi are not enough to convince this Court that they were falsely charged.

8. ID.; ID.; CREDIBILITY OF WITNESSES; THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE WORTHY OF FULL FAITH AND CREDIT WHEN THERE IS NO EVIDENCE SHOWING ANY REASON OR MOTIVE FOR THEM TO

PERJURE. — [A]bsent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are worthy of full faith and credit. There is nothing in the records to show that the prosecution witnesses harbored any ill-will against the accused-appellants. Neither did they have any reason to fabricate statements that could deprive the innocents of their freedom. As for the testimony of Teresita, the victim's daughter, it would be unnatural for her to implicate someone other than the real culprit lest the guilty go unpunished. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence to blame one who is innocent of the crime. Clearly, in testifying against the accused-appellants, the prosecution witnesses were solely impelled to bring justice to the victim.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

INTING, *J.*:

Before the Court is an appeal[1] from the Decision[2] dated July 4, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08369 which affirmed the Decision[3] dated October 23, 2014 of Branch 170, Regional Trial Court (RTC), City of Malabon in Criminal Case No. 22886-MN. The RTC found Reynaldo Juare *y* Elisan (Juare) and Danilo Aguadilla *y* Bacalocos (Aguadilla) (collectively, accused-appellants) guilty beyond reasonable doubt of the crime of Robbery with Homicide punishable under Article 294(1) of the Revised Penal Code.

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[1] See Notice of Appeal dated August 8, 2017, *rollo*, pp. 18-19.

[2] *Id.* at 2-17; penned by Associate Justice Ramon A. Cruz with Associate Justices Marlene Gonzales-Sison and Jhosep Y. Lopez, concurring.

[3] CA *rollo*, pp. 50-65; penned by Presiding Judge Zaldy B. Docena.

The Antecedents

Accused-appellants were charged with the crime of Robbery with Homicide, in an Information[4] which reads, as follows:

> That on or about the 24th day of May, 2000 in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a blunt instrument and bladed weapon, conspiring, confederating and helping one another, with intent to gain and by means of force, violence and intimidation employed upon the person of ADELA ABELLA Y DE CASTRO, did, then and there, willfully, unlawfully and feloniously take, rob and carry away one (1) bag containing cash money amounting to ₱15,000.00 and assorted jewelries worth ₱300,000.00 owned and belonging to ADELA ABELLA Y DE CASTRO, to the damage and prejudice of the complainant in the total amount of ₱315,000.00; that on the occasion of the said robbery the accused with the use of bladed weapon & blunt instrument/stab and hit one ADELA ABELLA Y DE CASTRO thereby inflicting upon the said ADELA ABELLA Y DE CASTRO serious physical injuries which directly cause her death.
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> CONTRARY TO LAW.[5]

At the arraignment on September 14, 2000, Juare and Aguadilla pleaded not guilty to the charge.[6]

Trial on the merits ensued.

The Version of the Prosecution

During the trial, the prosecution presented the testimonies of the following: (1) Dr. Jose Arnel M. Marquez (Dr. Marquez), the medico-legal officer of the Philippine National Police (PNP) Crime Laboratory, NPD Caloocan City, who conducted an autopsy on the body of Adela Abella *y* De Castro (victim); (2) Alfredo L. Tecson (Tecson), a neighbor and friend of the

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[4] Records, pp. 1-2.

[5] *Id.* at 1.

[6] *Id.* at 26.

victim's family; (3) Teresita Abella (Teresita), the daughter of the victim; (4) Alfredo Baudin (Baudin), the family caretaker of the building where the victim was found dead; (5) Dr. Olga Bausa (Dr. Bausa), the pathologist at the PNP Crime Laboratory who conducted the examination on the kitchen knife alleged to have been used in the stabbing of the victim; (6) Police Officer II Jose Mario Jumaquio (PO2 Jumaquio), the investigator assigned to the case; (7) Jeffrey Arnaldo (Arnaldo), a supervisor at the Abella Marine Supply Co., and the husband of the victim's granddaughter; and (8) *Barangay* Chairman Reynaldo Tan (Brgy. Chairman Tan) of Brgy. San Rafael, who first responded to Arnaldo's call for assistance.

The witnesses' testimonies can be summarized as follows:

On May 23, 2000, at around 9:00 p.m., Tecson was in the store of one Romy Cruz, located in front of the victim's house. He was having a drinking spree with friends when Aguadilla, whom he personally knew for more than ten years, passed by their table. Aguadilla entered the victim's house through the accordion door and another glass door.[7] Tecson left the store at around 11:00 p.m., but he never saw Aguadilla come out from the victim's house.[8]

Baudin was inside the compound on the night of the incident. At that time, he requested Juare to lock the office for him because he was not feeling well.[9] He then played a game of chess and drank gin with accused-appellants. At around 8:30 p.m., Baudin decided to go home because of his condition.[10] Aguadilla told them that he also wanted to go home, borrowed an umbrella, and went inside the warehouse to get one.[11] Baudin did not see Aguadilla leave the premises.[12] Earlier, during their game of

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[7] TSN, February 11, 2002, pp. 3-10.

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

[9] TSN, March 7, 2002, p. 8.

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

[11] *Id.* at 13.

[12] *Id.* at 14.

chess, Baudin observed that Juare left the premises four times. Juare also borrowed the keys of the garage from him.[13] Baudin testified that Aguadilla's wife Nita, who needed some medicines, arrived and passed through the back of the building.[14] Nita also asked Baudin to call a pedicab for her.[15]

The following morning, when Baudin was about to open the door of the office, he noticed that the accordion door was partially open.[16] He confronted Juare about the matter, but the latter told him that he locked it in the presence of the victim.[17] He also noticed that the key to the front door was already on the steel accordion door.[18]

Arnaldo arrived at the victim's place at around 7:30 a.m. of May 24, 2000.[19] He was with Juare and Baudin.[20] At around 8:30 a.m., Baudin asked Arnaldo to go upstairs and wake up his grandmother.[21] Upon opening the bedroom door, Arnaldo saw the victim sprawled on the floor with blood on her right temple.[22] The room was also in disarray, with broken glasses and vases everywhere.[23] Arnaldo went downstairs and told Baudin and Juare about the situation.[24] He then summoned his neighbors and the *barangay* officials to report the incident, while Baudin and Juare proceeded upstairs.[25]

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[13] *Id.*

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

[15] *Id.*

[16] *Id.* at 18.

[17] *Id.*

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

[19] TSN, April 3, 2003, p. 3.

[20] *Id.*

[21] *Id.* at 4.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 5.

[25] *Id.*

Brgy. Chairman Tan responded to Arnaldo's report and proceeded to the crime scene. He saw the lifeless body of the victim on the bed.[26] He immediately ordered his *barangay* tanod to seek medical assistance, but the doctor who responded pronounced the victim dead.[27] Brgy. Chairman Tan likewise called for police assistance.[28] PO2 Jumaquio and PO3 Charlie Bontigao proceeded to the crime scene and also saw the lifeless body of the victim.[29] They conducted an inspection of the crime scene and surmised that the entry to the house was only possible if someone would open the door from the inside.[30] They also found a pair of shorts with bloodstains in Juare's room.[31]

Brgy. Chairman Tan and Baudin also recovered the umbrella and two knives from the house of Aguadilla.[32] One of the knives, a kitchen knife which was identified by Teresita as belonging to her mother,[33] tested positive for the presence of human blood.[34]

Dr. Marquez testified that the victim died of hemorrhagic shock due to multiple stab wounds.[35] The victim sustained eight stab wounds, six of which were fatal.[36] There were also hematomas, incised wounds, and lacerated wounds found on the victim's body which indicated that the victim struggled and resisted.[37]

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[26] TSN, August 6, 2002, p. 4.

[27] *Id.*

[28] *Id.*

[29] TSN, July 2, 2002, p. 6.

[30] *Id.* at 8.

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

[32] TSN, May 6, 2004, pp. 4-11; TSN, August 6, 2002, p. 7.

[33] See Sinumpaang Salaysay of Teresita C. Abella dated May 4, 2000, record, p. 4.

[34] See Medico-Legal Report No. S-092-02, *id.* at 261.

[35] TSN, January 9, 2001, pp. 5-6.

[36] *Id.*

[37] *Id.*

Teresita testified that she resided with her mother together with two house helpers, Baudin and Juare, in a three-storey building in Navotas. The first floor was the office of Abella Marine Supply Co.; the second floor was the residential area where the bedroom of the victim was located; and the third floor was where the penthouse, roof, and garden were located.[38] The house helpers stayed in a bodega on the ground floor.[39] Baudin was their caretaker for about 40 years, while Juare, who was recommended by Aguadilla, was their driver for about two months until he resigned.[40] Teresita testified that she was in Tagaytay during the incident, but attested that her mother's brown leather bag with ₱15,000.00 in cash and ₱500,000.00 worth of jewelry was missing.[41] The manager of the bank where the victim had an account informed Teresita that a withdrawal of money was made on May 22, 2000, or days before the incident.[42] Teresita explained that it had been their practice that every time her mother withdrew money from the bank, the bank manager would inform her of the transaction.[43] Teresita further explained that her mother kept and carried her jewelry in her bag because she lost ₱3,000,000.00 worth of jewelry two months before the incident.[44]

Version of the Defense

Accused-appellants denied the accusations against them and raised the defense of *alibi*.

Juare, who was employed by the victim as stay-in worker in charge of washing the spare parts of boats/ships, testified

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[38] TSN, February 19, 2002, pp. 5-8, 11.

[39] *Id.* at 13.

[40] *Id.* at 13-14, 23.

[41] *Id.* at 8-10.

[42] *Id.* at 10.

[43] *Id.*

[44] *Id.* at 10, 17.

that on May 23, 2000, he slept at around 10:00 p.m.[45] In the morning of May 24, 2000, while he was asleep at the victim's house, Baudin woke him up and asked if he locked the door of the office.[46] He responded in the affirmative and told Baudin that he returned the key to its place.[47] Only the two of them were in the house at that time.[48] Arnaldo arrived in the morning. He, Baudin, and Arnaldo waited for the victim to come downstairs because they were about to deliver some spare parts to Sulpicio Lines.[49] Baudin later went upstairs to check on the victim. Upon seeing that the door was closed, Baudin forcibly opened the door and saw the victim sprawled on the floor.[50] Baudin then shouted for help.[51] Juare remained at the door to serve as guard, while Baudin and Arnaldo went out to seek assistance.[52]

Juare admitted that only him and Baudin were in the house at the time of the incident, but he asserted that he was only being indicted because the prime suspect to the killing could not be found.[53]

Aguadilla was employed as a reliever driver of the victim. He narrated that on the night of May 23, 2000, he went to the house of the victim that was only five minutes away from his house to watch television and play the game of chess with Baudin and Juare.[54] He went to the victim's place because he

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[45] TSN, April 29, 2013, pp. 7-9.

[46] *Id.* at 3.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 4.

[50] *Id.* at 5.

[51] *Id.*

[52] *Id.*

[53] *Id.* at 7.

[54] TSN, September 26, 2013, pp. 3-4, 8, 11.

got bored in the hospital where his wife was confined.[55] Juare opened the door for him upon his arrival at the victim's house.[56] He left Baudin and Jaure at around 8:00 or 9:00 p.m.[57] He admitted that he borrowed an umbrella because it was raining. He denied that he had any participation in the death of the victim, and maintained that he only learned about it from a newspaper vendor.[58]

The Ruling of the RTC

After trial, the RTC found Juare and Aguadilla guilty beyond reasonable doubt of the complex crime of Robbery with Homicide. The *fallo* of the RTC's Decision reads:

> WHEREFORE, premises considered, the guilt of both accused Reynaldo Juare y Elisan and Danilo Aguadilla y Bacalocos having been proven beyond reasonable doubt for the crime of Robbery with Homicide each is hereby imposed the penalty of *reclusion perpetua*. Likewise, said accused Reynaldo Juare and Danilo Aguadilla are jointly and severally ordered to pay the heirs of the victim ₱50,000.00 as civil indemnity, ₱50.000.00 as moral damages and ₱315,000.00 as and by way of restitution of the stolen jewelries and monies of that amount or value.
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> SO ORDERED.[59]

The RTC declared that there was no eyewitness to the robbing and killing of the victim. Nevertheless, it held that direct evidence is not the only matrix where the trial court may draw its conclusion, and circumstantial evidence may be the basis for a conviction.[60]

The RTC ruled that there are circumstances that, taken together, proved the guilt of Juare and Aguadilla. The RTC

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[55] TSN, March 18, 2014, p. 3.

[56] *Id.* at 5.

[57] TSN, September 26, 2013, p. 5.

[58] *Id.* at 5-10.

[59] CA *rollo*, p. 65.

[60] *Id.* at 59.

ruled that these circumstances, in addition to the demeanor of Juare and Aguadilla during the trial, convinced the court that they were guilty beyond reasonable doubt of the crime charged. The RTC gave more weight to the circumstantial evidence over the mere defense of *alibi* and denial proffered by Juare and Aguadilla.

Juare and Aguadilla filed a Notice of Appeal.[61]

The Ruling of the CA

On July 4, 2017, the CA affirmed the RTC's Decision convicting Juare and Aguadilla for the crime of Robbery with Homicide but modified the award of damages consonant with recent jurisprudence.

In affirming Juare and Aguadilla's conviction, the CA also appreciated the circumstantial evidence against them. It noted in particular the blood-stained knife that belonged to the victim that was recovered from the house of Aguadilla and the blood-stained shorts that was recovered from Juare's room. Both items were discovered the morning after the incident and after the body of the victim was found. It likewise gave weight to Teresita's testimony that the three doors of the building can only be locked from the inside, and no one can enter it without being let in by somebody from the inside.[62] It ruled that the RTC is in the best position to assess the credibility of the witnesses since it had the opportunity to observe first-hand their demeanor, conduct, and attitude when they testified in court.

The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED for lack of merit. The Decision October 23, 2014 rendered by the Regional Trial Court of the City of Malabon, Branch 170, in Criminal Case No. 22886-MN is AFFIRMED with MODIFICATION,

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[61] *Id.* at 8.

[62] *Id.* at 13.

in that accused-appellants are ordered to pay the heirs of the victim Adela Abella civil indemnity in the amount ₱75,000.00, moral damages in the amount of ₱75,000.00 and exemplary damages in the amount of ₱75,000.00 in addition to the actual damages.

SO ORDERED.[63]

Unsatisfied with the CA's Decision, Juare and Aguadilla are now before the Court through an appeal.

The parties adopted their respective Appellant's and Appellee's Briefs filed before the CA as their Supplemental Briefs before the Court.[64]

The Issue

The primordial issue for the Court's resolution is whether the guilt of Juare and Aguadilla for the complex crime of Robbery with Homicide has been proven beyond reasonable doubt.

The Ruling of the Court

The appeal must fail.

Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation.[65] This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty, and candor.[66] The RTC

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[63] *Rollo*, p. 16.

[64] *Id.* at 25-27; 30-32.

[65] *People v. Sanota*, G.R. No. 233659, December 10, 2019. Citations omitted.

[66] *Id.*, citing *People v. Villacorta*, 672 Phil. 712, 719-720 (2011).

and the CA both relied on a number of circumstantial evidence against Juare and Aguadilla. This Court upholds the findings of both courts. As aptly ruled by the RTC:

> Based on a careful examination and meticulous consideration of all the circumstantial evidence proffered by the Prosecution, this Court is of the considered opinion that the accused are responsible for robbing the victim as well as killing her. The combination of the circumstances alleged and proven is such as to prove a conviction beyond reasonable doubt.
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> x x x x x x x x x
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> All in all, the testimonies of the Prosecution witnesses show a positive finding that indeed herein accused were in the very place where the crime happened. Particularly, in the case of accused Aguadilla his going to and entering the residence of the Abellas on the night of May 23, 2000 was unrebutted and in fact he admitted it when he testified for his own defense. But also Aguadilla's having gone home or out of the Abellas residence after 8:30 or 9:00 p.m. (when their playing of chess and drinking of gin came to an end) or by 11:00 p.m. (when witness Alfredo Tecson went home from the store of Roman Cruz — which is just across the residence and/or business establishment of the Abellas), no one has ever testified to/on about it. To add to this was the discovery of the bloodied shorts in the morning of May 24, 2000, as well as one of the knives owned by the victim already tucked in the wall of the house of accused Aguadilla, also in the same morning of May 24, 2000.
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> x x x When asked by the Court what was his reaction apart from being "surprised" upon hearing about the news that Mrs. Abella was robbed and killed, he simply said that he really felt bad because of her loss or "nanghihinayang."
>
> *During the presentation of the evidence for the Defense, the Undersigned Presiding Judge had closely observed the demeanor of both accused on the witness stand and it is his observation that both were definitely not telling the truth as they were evasive in their answers and were resorting to "palusot" instead of answering the simple questions with simple but forthright direct and candid answers.*[67] (Italics supplied.)

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[67] CA *rollo*, pp. 59-64.

The factual findings of the RTC were affirmed by the CA, thus:

> The accused-appellants and prosecution witness Alfredo Baudin were all in agreement that at least between 6 PM to 9 PM of May 23, 2000, only the three of them were in the victim's house aside from the victim herself. They were also in agreement, and supported by the ocular inspection of the police as well as the testimony of the victim's daughter Teresita Abella, that the three doors of the building can only be locked from inside and that no one can enter without being let in by somebody inside. There was also an eyewitness in the person of Alfredo Tecson that accused-appellant Danilo Aguadilla did not leave the premises before 11 PM. We also note that he claimed to be home between 6 AM and 1:00 PM in the afternoon of May 24, 2000. These established and admitted facts only point to nothing else but that the perpetrator/s of the crime is/are among the people inside. However, aside from being at the scene of the crime, there were other circumstances that point to the accused-appellants as authors of the crime. A blood-stained pair of shorts were found by the police among the things of Accused-Appellant Renaldo Juare, which was unexplained by the latter. As for Accused-Appellant Danilo Aguadilla, the fact that the knife which belonged to the victim as claimed by the victim's daughter was found in his house on the day of the crime was discovered, was also unrefuted.[68]

The Court upholds the factual findings of the RTC as affirmed by the CA, and the conclusion that the testimonies of the prosecution witnesses are credible which must be taken into consideration than the incredible and unbelievable version of the accused-appellants. To stress, the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witness first-hand and to note their demeanor, conduct, and attitude during examination.[69] The factual findings of the RTC, therefore, are accorded the highest degree of respect especially if the CA adopted and confirmed these, unless some

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[68] *Rollo*, pp. 14-15.

[69] *People v. Sanota, supra note* 65, citing *Planteras, Jr. v. People*, G.R. No. 238889, October 3, 2018.

facts or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case.[70] In the absence of substantial reason to justify the reversal of the trial court's findings, assessment and conclusion, especially when affirmed by the appellate court, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the Court generally affirms the trial court's findings.

The Court has ruled that in criminal cases, proof beyond reasonable doubt does not require absolute certainty of the fact that the accused committed the crime, and it does not likewise exclude the possibility of error;[71] what is only required is that degree of proof which, after a scrutiny of the facts, produces in an unprejudiced mind moral certainty of the culpability of the accused.[72]

Moreover, direct evidence of the commission of a crime is not the only basis on which a court draws its finding of guilt.[73] Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction.[74] The commission of a crime, the identity of the perpetrator, and the finding of guilt may all be established by circumstantial evidence.[75] In *Planteras, Jr. v. People*,[76] the Court expounded on the distinction between direct and circumstantial evidence, thus:

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[70] *Id.*, citing *People v. Macaspac*, 806 Phil. 285, 290 (2017).

[71] *People v. Pentecostes*, 820 Phil. 823, 840 (2017), citing *People v. Tropa*, 424 Phil. 783, 789 (2002).

[72] *Id.*, citing *People v. Casitas, Jr.*, 445 Phil. 407, 420 (2003).

[73] *People v. Casitas, Jr.*, 445 Phil. 407, 417 (2003).

[74] *Id.*, citing *People v. Acuram*, 387 Phil. 142, 151 (2000).

[75] *Planteras, Jr. v. People*, G.R. No. 238889, October 3, 2018, citing *Cirera v. People*, 739 Phil. 25, 41 (2014) and *People v. Villaflores*, 685 Phil. 595, 615-617 (2012).

[76] *Id.*

The difference between direct evidence and circumstantial evidence involves the relationship of the fact inferred to the facts that constitute the offense. Their difference does not relate to the probative value of the evidence.

Direct evidence proves a challenged fact without drawing any inference. Circumstantial evidence, on the other hand, "indirectly proves a fact in issue, such that the fact-finder must draw an inference or reason from circumstantial evidence."

The probative value of direct evidence is generally neither greater than nor superior to circumstantial evidence. The Rules of Court do not distinguish between "direct evidence of fact and evidence of circumstances from which the existence of a fact may be inferred." The same quantum of evidence is still required. Courts must be convinced that the accused is guilty beyond reasonable doubt.

A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator. There is no requirement in our jurisdiction that only direct evidence may convict. After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.[77]

It is well-settled that in the absence of direct evidence, the courts could resort to circumstantial evidence to avoid setting felons free and deny proper protection to the community.[78] Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience.[79] An accused may be convicted on the basis of circumstantial evidence, provided the proven circumstances constitute an unbroken chain leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[80] It is akin to

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[77] *Id.* Citations omitted.

[78] *People v. Asis*, 439 Phil. 707, 717 (2002), citing *People v. Felixminia*, 429 Phil. 309, 325 (2002) and *People v. Gallo*, 419 Phil. 937, 946 (2001).

[79] *People v. Cachuela*, 710 Phil. 728, 742 (2013).

[80] *People v. Asis, supra* note 78 at 718, citing *People v. Labuguen*, 392 Phil. 268, 278-279 (2000).

a tapestry made up of strands which create a pattern when interwoven.[81]

Section 4, Rule 133 of the Rules of Court provides for the requisites that need to be established to sustain a conviction based on circumstantial evidence. The provision states:

> SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Thus, for the courts to consider circumstantial evidence, the following requisites must be present: (1) there must be more than one circumstance; (2) the facts from which inferences are derived were proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[82]

In convicting accused-appellants, the RTC found that the following circumstances in their entirety, all duly proven and consistent with each other, lead to the conclusion of their guilt:

> Hereunder are the circumstances that proved that the herein accused Reynaldo Juare y Elisan and Danily Aguadilla y Bacalocos – and no other–have robbed and killed the victim:
>
> 1. Both accused Reynaldo Juare and Danilo Aguadilla are/were under the employ of the Abellas with the former (Reynaldo Juare) as a stay-in houseboy/helper and the latter (Danilo Aguadilla) was a driver of the Abellas for about three (3) months only reckoned to the day of the robbery and killing of the victim.

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[81] *Id.*, citing *People v. Cabrera*, 311 Phil. 33, 38 (1995).

[82] Section 4, Rule 133 of the Rules of Court.

2. Also, both accused Juare and Aguadillo were in the know, that as of the time of the robbery (and killing of the victim) on the night of May 23, 2000 until the early morning of May 24, 2000, said victim had considerable and valuable jewelries because a month earlier she had been robbed already in her bedroom of some of her jewelries valued at ₱3,000,000.00, being then both employed by and at the victim's residence/ business establishment.

3. Likewise, both accused Juare and Aguadilla are known to- if not close to-each other because it was the latter (Aguadilla) who recommended the former (Juare) to the Abellas to be hired as houseboy/helper.

4. On the night of May 23, 2000, both accused Reynaldo Juare (as a stay-in househelp) and Danilo Aguadilla who visited and entered the residence of the Abellas (as a former driver) were inside and stayed in the premises of the Abellas as they played chess and drank gin with the other house help/ caretaker of the Abellas in the person of Alfredo Baudin.

5. In the same night of May 23, 2000, it was accused Reynaldo Juare who was tasked to close/secure the gates and/or entrances to the residential building of the Abellas as the other househelp/caretaker (Alfredo Baudin) was not feeling well.

6. In the morning of May 24, 2000, when PO2 Jose Jumaquio conducted an ocular inspection of the entire premises of the residential building of the Abellas, particularly the room or quarters occupied by accused Reynaldo Juare, a short pants stained with blood was found among the personal things or belongings of the latter (accused Reynaldo Juare).

7. Also, in the same morning at about lunchtime of May 24, 2000, when househelp/caretaker Alfredo Baudin went with Barangay Chairman Reynaldo Tan to the house of accused Danilo Aguadilla to retrieve the umbrella that the latter borrowed from the former (Alfredo Baudin), said Brgy. Chairman Tan retrieved or recovered a kitchen knife tucked to the wall of the Aguadilla's house — which knife was later identified as being owned by the victim (gifted to her by the latter's daughter who resided in the USA), as testified to by Teresita Abella.

8. Both accused Reynaldo Juare and Danilo Aguadilla were in dire need of financial resources because Juare was earning only his wages as a houseboy/helper while Aguadilla (though a driver) was earning only ₱2,500 a month and he was sending money to his family of five (5) in the Visayas every month to support/sustain the family's needs and weeks before the incident the wife of said accused Aguadilla needed a medical operation.

9. Finally, both accused Reynaldo Juare and Danilo Aguadilla are of questionable character and/or personal predisposition with accused Juare tagged as an "addict" and accused Aguadilla, a "problematic" guy with his family, particularly on financial matters.

10. Prosecution witnesses have no ill-motives to testify against the accused.[83]

The combination of all of these circumstances convinces this Court that the accused-appellants are guilty beyond reasonable doubt. These circumstantial evidence, as proven by the prosecution, are sufficient proof of the accused-appellants' guilt. Records reveal that there are several circumstantial evidence surrounding the commission of the crime. Every circumstance and factual evidence from which inferences are derived were proven and supported by physical and testimonial evidence. And the combination of all these circumstances produced a conviction of the accused-appellants beyond reasonable doubt.

In *People v. Beriber*[84] (*Beriber*), the Court convicted the accused even though no direct testimony was presented by the prosecution to prove that the accused is the author of the crime of robbery with homicide since several circumstances, when taken together, constitute an unbroken chain of events enough to arrive at the conclusion that appellant was responsible for robbing and killing the victim. In *Beriber* the Court considered as sufficient to convict the accused the following circumstantial evidence:

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[83] CA *rollo*, pp. 60-62.

[84] 693 Phil. 629 (2012).

x x x 1. accused was at the *locus criminis* at around the time of the stabbing incident; 2. witnesses testified seeing him at the scene of the crime going in and going out of the house of the victim at the time of the perpetration of the crime; 3. accused, in his own admission mentioned that he was going to Batangas for medical treatment, however, when the policemen, together with the Barangay Chairman went to Talisay, Batangas where he lives, he was nowhere to be found; 4. immediately after the incident, the witnesses and the offended party noticed that all his clothes kept underneath the bamboo bed where the victim was found sprouted with blood were all gone because he took everything with him although his intention was merely for medical treatment in Batangas; 5. he mentioned that he was then still waiting for Kuya Henry, husband of Lourdes, when he had already a talk with Henry Vergara that he will go to Batangas for medical treatment that did not materialize; 6. after the killing incident, accused simply disappeared and did not return anymore; 7. when he was confronted by Henry Vergara concerning the killing, he could not talk to extricate himself from the accusation; and 8. that he has been using several aliases to hide his true identity.[85]

In *Beriber*, the witnesses only saw the accused at the scene of the crime at the time of the commission of the crime, but they did not see him actually robbed and killed the victim. However, the Court considered several circumstances as sufficient proof of the guilt of the accused and eventually convicted him.

In another case, the Court considered as one of the material circumstantial evidence the human blood stains on the front door of the appellant's house, on his clothing, and on his yellow slippers. The pieces of circumstantial evidence were discovered by the police only after three days from the commission of the crime. The Court considered these circumstantial evidence coupled with other factual evidence sufficient to convict the accused.[86]

In the case at bench, the unbroken chain of the pieces of circumstantial evidence led to one fair reasonable conclusion

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[85] *Id.* at 638-639.

[86] See *People v. Salas*, 384 Phil. 54 (2000).

pointing to the accused-appellants, to the exclusion of all others, as the guilty persons. The accused-appellants were the only persons seen to be present in the victim's house on that fateful night. Aguadilla admitted that he was able to enter the premises because Juare opened the door for him. This circumstance is coupled with the fact that a bloodied shorts was found in Juare's possession and a blood-stained kitchen knife, owned by the victim, was found in Aguadilla's possession after the commission of the crime. In the absence of substantial explanation from the accused-appellants how and why they possessed these incriminating evidence, these facts should be considered circumstantial evidence connected with the commission of the crime and consistent with the accused-appellants' guilt. These interwoven facts produces in an unprejudiced mind moral certainty of the accused-appellants' culpability. Thus, from these circumstances, the prosecution was able to prove all the elements of the special complex crime of Robbery with Homicide.

The complex crime of Robbery with Homicide is specially defined and penalized under Article 294(1) of the Revised Penal Code, *viz.*:

> ART. 294. *Robbery with violence against or intimidation of persons — Penalties*. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.
>
> x x x x x x x x x

It requires the following elements: (1) taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is with *anima lucrandi*; and (4) by reason of the robbery, or on the occasion thereof, homicide is committed.[87] A conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor, and the

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[87] *People v. Mancao*, G.R. No. 228951, July 17, 2019.

killing is merely incidental to the robbery.[88] The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[89]

When the victim's body was discovered, her room was in disarray. Her daughter, Teresita, testified that her mother's bag containing cash and jewelry was missing.[90] This Court upholds, as ruled by the trial court and the CA, the credibility of Teresita's claim as the victim was engaged in a Marine Supply business, thus, it is logical that she had money or personal properties on her. The missing bag containing money and jewelry coupled with the fact that the victim's room was in disarray is a proof that somebody took the victim's personal properties. And that somebody has the clear intention to rob the victim.

Intent to rob, may be inferred from proof of violent and unlawful taking of the victim's property.[91] Here, evidence reveals that the victim struggled to defend her life and property at the time of the commission of the crime as indicated by the locations of the stab wounds she suffered, scattered pieces of broken vases and disarrayed personal properties inside the room. Evidently, there was violent and forcible taking of the victim's personal properties.

When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court.[92] After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner.[93] It is likewise, immaterial that the robber knows the

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[88] *Id.*

[89] *Id.*

[90] TSN, February 9, 2002 pp. 7-8, 10-11, 20-22.

[91] *People v. Madrelejos*, 828 Phil. 732, 738 (2018), citing *People v. Ebet*, 649 Phil. 181, 189 (2010).

[92] *Id.*

[93] *Id.*

exact value of the thing taken. It is not required for the prosecution to prove the actual value of the thing stolen as the motivation to rob exists regardless of the amount or value involved.[94]

It is a given fact that there was no eyewitness to the actual killing of the victim. To reiterate, direct evidence of the commission of the crime is not the only basis from which a court may draw its conclusion.[95] In this case, the totality of the circumstantial evidence presented by the prosecution proved beyond reasonable doubt that the accused-appellants robbed the victim and on the occasion thereof, the latter was killed. All of the circumstances proved were consistent with each other, consistent with the hypothesis that the accused-appellants (and no other) are guilty, and at the same time inconsistent with the hypothesis that they are innocent.

The prosecution established the following: that at least between 6:00 p.m. to 9:00 p.m. of May 23, 2000, aside from the victim herself, only three persons (Juare, Aguadilla and Baudin) were in the victim's house; the three doors of the building can only be locked from inside and that no one can enter without being let in by somebody inside; among the three persons present on that fateful night, it was Juare who was tasked to lock the doors as Baudin was indisposed; hence, Baudin left the premises; per testimony of Tecson, he saw Aguadilla enter the victim's house through the accordion door at around 9:00 p.m. and he never saw Aguadilla come out from the premises; Aguadilia himself admitted that he entered the victim's house on that fateful night and it was Juare who opened the door for him; and Aguadilla's allegation that he left the premises at around 9:00 p.m. because it was raining was not uncorroborated. The established circumstantial facts point, to nothing else than the conclusion that the perpetrators of the crime are the accused-appellants. Evidently, they were the only persons who were in the very place where the crime happened.

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[94] *Id.*

[95] *People v. Casitas, Jr., supra* note 73.

In addition, a blood-stained shorts was found by the police among the things of Juare, which was unexplained by the latter. Although, the blood-stained shorts was not marked in evidence at the onset of the trial, it was included in the Serology Report No. S-1019-00 of prosecution witness Dr. Jose Arnel Marquez and marked as RDS-2, thus:

ATTY. BARIAS: DIRECT EXAMINATION

x x x x x x x x x

Q: Mr. Witness, in connection with your work as medico-legal officer, do you remember having been referred to your office by the SOCO four (4) specimen, which are as follows:

One (1) pc. pillow case color yellow marked RDS-1
One (1) pc. printed short marked RDS-2
One (1) pc. t-shirt color dark blue REEBOK RDS-3
Pieces of broken flower base
in connection with this case?

A: Yes sir.

Q: What kind of examination did you perform Mr. Witness?

A: Serology examination sir.

Q: Did you prepare a report in your examination of the request of SOCO in connection with this case?

A: Yes sir.

Q: May we have it then?

A: Here sir.

ATTY. BARIAS

At this juncture Your Honor, may we request that Serology Report No. S-1019-00 be marked in evidence as Exhibit "S" as in sugar, and we request that the photocopy be instead marked after comparison has been made by the defense Your Honor.

COURT

Why, where will you bring the original? The original can be marked, why do you have to keep the original?

ATTY. BARIAS

Because there are other cases wherein we will use this Your Honor.

COURT

Show it counsel.

ATTY. TAN

The photocopy is the faithful reproduction of the original Your Honor.

COURT

Mark it.

ATTY. BARIAS

Q: Based on this report Mr. Witness, it was made to appear for your findings, which we would like to quote as follows: Specimen "A", "B", "C" and "D" gave positive results to the test for the presence of human blood; Specimen "C" gave negative result to the test of human blood; and Specimens "A" and "D" revealed that blood stains belong to human blood, which we request that the quoted portion be bracketed and marked as Exhibit "S-1" Your Honor.

COURT

Mark it.

ATTY. BARIAS

Q: What is your conclusion in connection with this findings of yours?

A: My conclusion is that Specimen "A", "B", and "D" reveal presence of human blood; Specimens "A" and "D" reveals human blood, group "O", and Specimen "C" absence of blood sir.[96]

Added to this, the blood-stained kitchen knife was found in the house of Aguadilla when Baudin and the authorities went therein to retrieve the umbrella borrowed by Aguadilla on that

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[96] TSN, January 27, 2005, pp. 5-6.

fateful night.[97] The knife belonged to the victim as claimed by her daughter. Notably, Aguadilla's possession of the subject knife was also unrefuted; he offered no substantial explanation on how he had in his house the bloodied knife with human blood on it.

Furthermore, the Court cannot subscribe to the accused-appellants defense of denial and alibi. Their defense is weak and self-serving. To Juare, the accusations were all lies, but when asked why they were indicted all that he can muster was to say "maybe they could not find the prime suspect that is why we were the ones charged in this case." The same goes for Aguadilla, he simply said that he really felt bad for the victim's loss or "*nanghihinayang*." No other explanation was offered by both accused-appellants, especially regarding their respective possessions of the bloodied shorts and kitchen knife.

It is also worthy to note that during the presentation of the evidence for the defense, the trial court judge had closely observed the demeanor of both accused-appellants and he noticed that they were definitely not telling the truth as they were evasive and were offering plain alibis instead of answering the simple questions with simple and candid answers.[98]

Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[99] In this jurisdiction, we are replete of cases pronouncing that denial and alibi are inherently weak defenses because they can easily be fabricated.[100] The accused-appellants' plain alibi cannot be accorded evidentiary weight than the positive declaration of credible witnesses. Their denial and alibi are not enough to convince this Court that they were falsely charged.

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[97] TSN, May 6, 2004, pp. 10-11. TSN, May 6, 2003, pp. 4-5.

[98] RTC Decision, pp. 14-15.

[99] *Id.*

[100] *People v. Mancao, supra* note 87, citing *People v. Ambatang*, 808 Phil. 236, 243 (2017).

Finally, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are worthy of full faith and credit.[101] There is nothing in the records to show that the prosecution witnesses harbored any ill-will against the accused-appellants. Neither did they have any reason to fabricate statements that could deprive the innocents of their freedom. As for the testimony of Teresita, the victim's daughter, it would be unnatural for her to implicate someone other than the real culprit lest the guilty go unpunished. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence to blame one who is innocent of the crime.[102] Clearly, in testifying against the accused-appellants, the prosecution witnesses were solely impelled to bring justice to the victim.

All told, the CA did not err in affirming the trial court's verdict of conviction. Absent any modifying circumstances, the penalty of *reclusion perpetua* was properly imposed.

As for the monetary awards, the Court sustains the grant of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages in accordance with the prevailing jurisprudence.[103] However, the award of actual damages in the amount of ₱315,000.00 shall be deleted for failure of the prosecution to substantiate the actual value of the lost personal properties of the victim. No receipts or any documentary proof supporting the value of the jewelries or the amount of the lost money were presented by the heirs of the victim. In lieu of actual damages, this Court awards ₱50,000.00 to the heirs of the victim as temperate damages since it was proven that personal properties were lost although their exact value cannot be determined. These amounts shall earn 6% *per annum* from finality of this Decision until fully paid.

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[101] *People v. Vibal, Jr.*, G.R. No. 229678, June 20, 2018, 867 SCRA 370, 391, citing *People v. Lucero*, 659 Phil. 518, 540 (2011).

[102] *People v. Solar*, G.R. No. 225595, August 6, 2019.

[103] *People v. Jugueta*, 783 Phil. 806 (2016).

WHEREFORE, the appeal of accused-appellant Reynaldo Juare *y* Elisan is **DISMISSED**. The Decision dated July 4, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08369 with respect to accused-appellant Reynaldo Juare *y* Elisan is **AFFIRMED with MODIFICATION** in that he is ordered to pay the heirs of the victim ₱75,000.00 civil indemnity; ₱75,000.00 moral damages; ₱75,000.00 as exemplary damages; and ₱50,000.00 as temperate damages in lieu of actual damages. These amounts shall earn an interest of 6% *per annum* from finality of this Decision until fully paid.

With respect to accused-appellant Danilo Aguadilla *y* Bacalocos, the appealed Decision is **SET ASIDE** and this criminal case is **DISMISSED**, by reason of his death during the pendency of his appeal.[104]

Let entry of judgment be issued.

SO ORDERED.

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

Gaerlan,[*] *J.*, on leave.

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[104] In a letter dated December 10, 2019, Jaime P. Batuyog Jr., Jail Inspector, Acting Superintendent, NBP, Muntinlupa City informed this Court that accused-appellant Danilo Aguadilla *y* Bacalocos died on March 10, 2015 at NBP Hospital per attached certified true copy of the Certificate of Death of Aguadilla.

[*] Designated as additional member as per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 235658. June 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **RAUL DEL ROSARIO *y* NIEBRES,** *accused-appellant*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; AN APPEAL IN CRIMINAL CASES THROWS THE WHOLE CASE OPEN FOR REVIEW. —** It is a well-established rule that an appeal in criminal cases throws the whole case open for review. Thus, the appellate court has the competence to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. After careful examination, this Court finds the appeal meritorious.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); CHAIN OF CUSTODY RULE; TO REMOVE ANY DOUBT OR UNCERTAINTY ON THE IDENTITY AND INTEGRITY OF THE SEIZED DRUG, IT MUST BE SHOWN THAT THE SUBSTANCE ILLEGALLY POSSESSED OR SOLD BY THE ACCUSED IS THE SAME SUBSTANCE OFFERED AND IDENTIFIED IN COURT; CHAIN OF CUSTODY, DEFINED. —** To sustain a conviction for the offense of illegal sale or possession of dangerous drugs under R.A. No. 9165, it is of utmost importance to establish with moral certainty the identity of the confiscated drug. To remove any doubt or uncertainty on the identity and integrity of the seized drug, it must be shown that the substance illegally possessed or sold by the accused is the same substance offered and identified in court. This requirement is known as the chain of custody rule under R.A. No. 9165 created to safeguard doubts concerning the identity of the seized drugs. Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.

3. ID.; ID.; ID.; THE APPREHENDING TEAM IS REQUIRED, AFTER SEIZURE AND CONFISCATION, TO IMMEDIATELY CONDUCT A PHYSICAL INVENTORY OF, AND PHOTOGRAPH, OF THE SEIZED DRUGS IN THE PRESENCE OF THE REQUIRED WITNESSES; THE POLICE OFFICERS OR PHILIPPINE DRUG ENFROCEMENT AGENCY (PDEA) AGENTS MUST STRICTLY COMPLY WITH THE MANDATORY PROCEDURES, ALTHOUGH FAILURE TO STRICTLY DO SO DOES NOT, *IPSO FACTO*, RENDER THE SEIZURE AND CUSTODY OVER THE ILLEGAL DRUGS AS VOID AND INVALID IF THERE IS JUSTIFIABLE GROUND FOR SUCH NONCOMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED EVIDENCE WERE PRESERVED. — Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of, and photograph, the seized drugs in the presence of: (a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) an elected public official. These four (4) witnesses should be present at the time of the apprehension of the accused and must all sign the copies of the inventory and obtain a copy thereof. The procedure enshrined in Sec. 21, Article II of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. The police officers or PDEA agents implementing R.A. No. 9165 must strictly comply with the procedure laid out, although failure to strictly do so does not, *ipso facto*, render the seizure and custody over the illegal drugs as void and invalid if: (a) there is justifiable ground for such noncompliance; and (b) the integrity and evidentiary value of the seized evidence were preserved. Nonetheless, the safeguard measures under Sec. 21, Article II of R.A. No. 9165 must be strictly adhered to.

4. ID.; ID.; ID.; ID.; REQUIRED PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEMS AND PRESENCE OF THE THREE WITNESSES, NOT COMPLIED WITH; WHEN A COURT CANNOT BE ASSURED THAT THE DRUGS PRESENTED AS EVIDENCE ARE EXACTLY WHAT THE PROSECUTION PURPORTS THEM TO BE, IT CANNOT BE ASSURED THAT ANY ACTIVITY OR TRANSACTION

PERTAINING TO THEM TRULY PROCEEDED, AS THE PROSECUTION CLAIMS THEY DID; THUS, NO CONVICTION CAN ENSUE. — In this case, the buy-bust team completely ignored the procedure outlined under Sec. 21, Article II of R.A. No. 9165. They failed to conduct a physical inventory of the seized items and to photograph the same. x x x. Moreover, the presence of the representatives required by law to witness the apprehension of appellant and seizure of the illegal drugs were not secured by the buy-bust team. In *People v. Tomawis*, this Court held that the witnesses required by law in order to insulate against the police practice of planting evidence should be present at or near the time of apprehension of the accused. This Court held that the time of the warrantless arrest is "the 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." Neither can the prosecution rely on the saving clause of Sec. 21, Article II of R.A. No. 9165. In *Gamboa v. People*, this Court ruled that "the saving clause applies only where the prosecution has recognized the procedural lapses on the part of the police officers or PDEA agents, and thereafter explained the cited justifiable grounds; after which, the prosecution must show that the integrity and evidentiary value of the seized items have been preserved." It was not shown that the prosecution even recognized that the buy-bust team in this case committed major lapses in handling the seized illegal drugs from appellant. Consequently, no justification was offered by the prosecution as to why the procedure in Sec. 21, Article II of R.A. No. 9165 was not adhered to. When a court cannot be assured that the drugs presented as evidence are exactly what the prosecution purports them to be, it cannot be assured that any activity or transaction pertaining to them truly proceeded, as the prosecution claims they did. Thus, no conviction can ensue, as in this case.

5. **ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY, EXPLAINED; NOT ESTABLISHED. —** This Court explained in *Malillin v. People* how the chain of custody or movement of the seized evidence should be maintained and why this must be shown by evidence, *viz*.: As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It

would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. In *People v. Kamad* and *People v. Dahil*, this Court enumerated the links that the prosecution must establish in the chain of custody of a buy-bust situation to be as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. This Court finds that the second, third, and fourth links in the chain of custody were not established by the prosecution in the case at bar.

6. ID.; ID.; ID.; SECOND LINK IN THE CHAIN OF CUSTODY; THE FAILURE OF THE APPREHENDING OFFICER TO IDENTIFY THE INVESTIGATING OFFICER TO WHOM HE TURNED OVER THE SEIZED ITEMS, WHEN TAKEN IN LIGHT OF THE SEVERAL OTHER LAPSES IN THE CHAIN OF CUSTODY THAT ATTEND THE CASE, RAISES DOUBTS AS TO WHETHER THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ILLEGAL DRUGS HAD BEEN PRESERVED. — The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating officer's possession of the seized drugs must be documented and established. Here, the name of the investigator was neither identified nor mentioned by the prosecution. SPO1 Naredo failed to specify the person to whom he turned over the seized items upon reaching the police station. It was merely stated that "the

police officers prepared a request for laboratory examination and drug testing." However, the specific person who handled the seized items for the preparation of the required documents was not named in the records. When the apprehending officer is unable to identify the investigating officer to whom he turned over the seized items, this Court has held that such circumstance, when taken in light of the several other lapses in the chain of custody that attend the case, raises doubts as to whether the integrity and evidentiary value of the seized illegal drugs had been preserved.

7. ID.; ID.; ID.; FOURTH LINK IN THE CHAIN OF CUSTODY, NOT ESTABLISHED; WHERE NO PRECAUTIONS WERE TAKEN TO ENSURE THAT THERE WAS NO CHANGE IN THE CONDITION OF THE ITEMS SEIZED AND NO OPPORTUNITY FOR SOMEONE NOT IN THE CHAIN TO HAVE POSSESSION THEREOF, THE ACCUSED SHALL BE ACQUITTED OF THE CRIME CHARGED AGAINST HIM. — The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. In this case, there was no testimonial or documentary evidence on how FC Rodrigo kept the seized items while it was in her custody and in what condition the items were in until it was presented in court. While the parties stipulated on FC Rodrigo's testimony, the stipulations do not provide information regarding the condition of the seized item while in her custody or if there was no opportunity for someone not in the chain to have possession thereof. In *People v. Gutierrez*, there were inadequate stipulations as to the testimony of the forensic chemist. In that case, no explanation was given regarding the chemist's custody in the interim — from the time it was turned over to the investigator to its turnover for laboratory examination. The records also failed to show what happened to the allegedly seized *shabu* between the turnover by the chemist to the investigator and its presentation in court. Thus, since no precautions were taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof, the accused therein was acquitted.

8. ID.; ID.; ID.; ACQUITTAL OF THE ACCUSED-APPELLANT, PROPER WHERE THERE ARE LAPSES IN THE CHAIN OF CUSTODY AND LACK OF COMPLIANCE WITH

SECTION 21, ARTICLE II OF R.A. NO. 9165.— In view of the x x x lapses in the chain of custody and the lack of compliance with Sec. 21, Article II of R.A. No. 9165, appellant's acquittal is only proper. Serious uncertainty hangs over the identification of the *corpus delicti* that the prosecution introduced into evidence in order to convict appellant. In effect, the prosecution has no evidence against appellant given that the circumstances surrounding the handling of the seized items cast doubt on their source, identity, and integrity.

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

GESMUNDO, *J.*:

This is an Appeal[1] from the February 22, 2017 Decision[2] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 07680. The CA affirmed the July 22, 2015 Judgment[3] of the Regional Trial Court of Calamba City, Branch 37 *(RTC)* in Criminal Case Nos. 15745-2008-C and 15746-2008-C, finding Raul Del Rosario *y* Niebres *(appellant)* guilty beyond reasonable doubt of the illegal sale and possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act (*R.A.*) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Antecedents

In an Information filed before the RTC, appellant was charged with violation of Sec. 5, Article II of R.A. No. 9165 or Illegal Sale of Dangerous Drugs. The accusatory portion of the Information reads:

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[1] *Rollo*, pp. 22-23; Notice of Appeal.

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

[3] CA *rollo*, pp. 22-32 and 72-82; penned by Presiding Judge Caesar C. Buenagua.

Criminal Case No. 15745-2008-C

That on or about 11:00 p.m. of 21 April 2008 at Brgy. Pansol, Calamba City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully, and feloniously sell and deliver to a poseur buyer one (1) transparent plastic sachet containing Methamphetamine Hydrochloride, otherwise known as "*shabu*," weighing 0.01 gram, in violation of the aforementioned provision of law.

CONTRARY TO LAW.[4]

In another Information, appellant was charged with violation of Sec. 11, Article II of R.A. No. 9165 or Illegal Possession of Dangerous Drugs. The accusatory portion of the Information reads:

Criminal Case No. 15746-2008-C

That on or about 11:00 p.m. of 21 April 2008 at Brgy. Pansol, Calamba City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously, possess a quantity of Methamphetamine Hydrochloride, having a total weight of 0.09 grams.

CONTRARY TO LAW.[5]

During his arraignment on May 14, 2008,[6] appellant pleaded "not guilty" to the charges. Thereafter, trial ensued.

The prosecution presented Forensic Chemist Lalaine Ong Rodrigo *(FC Rodrigo)* and the arresting officer, Senior Police Officer I Apolonio Naredo *(SPO1 Naredo)*.

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[4] *Id.* at 22.

[5] *Id.*

[6] *Rollo*, p. 3; CA Decision.

Version of the Prosecution

On April 21, 2008, a confidential informant reported to SPO1 Naredo that accused was engaged in illegal drug activities at Barangay Pansol, Calamba City. Police Inspector Alex Marasigan, the team leader of SPO1 Naredo, thus formed a buy-bust team consisting of SPO1 Naredo, Senior Police Officer II Melvin Llanes, Police Officer II Carpio, Police Officer II Arnel Sanque, the confidential informant, and himself. The confidential informant was designated as the *poseur*-buyer.[7]

At 11:00 o'clock in the evening of the same day, the buy-bust team proceeded to the billiard hall at Purok 7, Brgy. Pansol. SPO1 Naredo positioned himself about five (5) meters away from the confidential informant. SPO1 Naredo saw the confidential informant hand to appellant the marked money amounting to ₱200.00. Appellant then gave the confidential informant a plastic sachet with white crystalline substance. After the confidential informant gave the pre-arranged signal, SPO1 Naredo approached appellant and introduced himself as a police officer. He arrested appellant and recovered the marked money. SPO1 Naredo conducted a preventive search by instructing appellant to empty the contents of his pocket. Appellant subsequently brought out three (3) small plastic sachets with white crystalline substance. The confidential informant also handed the plastic sachet bought from appellant to SPO1 Naredo. SPO1 Naredo thus marked the plastic sachet bought by the confidential informant with "ACN-RND" and those in appellant's possession with "ACN-RND-1," "ACN-RND-2," and "ACN-RND-3." Appellant was thereafter brought to the police station.[8]

At the police station, the buy-bust team proceeded to make a request for laboratory examination of the seized evidence from appellant. Thereafter, Police Officer I Richard Cruz *(PO1 Cruz)*, together with SPO1 Naredo, turned over the seized

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[7] *Id.* at 4.

[8] *Id.*

evidence to the crime laboratory.[9] A certain SPO1 Agustin of the crime laboratory received the same from PO1 Cruz.[10] FC Rodrigo conducted the forensic examination and prepared Chemistry Report No. D-174-08. In said Report, FC Rodrigo confirmed that the plastic sachets confiscated and bought from appellant were positive for *shabu*. FC Rodrigo placed her markings on the plastic sachets after the forensic examination.[11]

Version of the Defense

Appellant testified that, around 8:00 o'clock in the evening of April 21, 2008, two (2) men suddenly arrived at his hut, restrained him, and searched the premises. Finding nothing, they forced appellant to board a passenger jeep. Appellant was taken to a house where he was asked his name and address. He was thereafter picked up by a police mobile and brought to the barangay hall. At the barangay hall, he was instructed to sign a document. Afterwards, appellant was escorted back to the house where he was previously brought. There, he was shown a plastic sachet with white crystalline substance and money. Appellant was then transferred to the city hall where he was detained. He was informed that he was being charged with the illegal sale and possession of dangerous drugs.[12]

Appellant's neighbor, Rosita Mangundayao *(Mangundayao)*, testified that, on April 21, 2008, at around 11:00 o'clock in the evening, she heard a noise coming from appellant's hut, which was merely 1 ½ arm's length away from her house. Mangundayao looked through her window and saw appellant resting when two (2) men suddenly came in and searched the hut. She only heard the noises made by the three (3) men but she did not audibly hear their conversation. Thereafter, she saw appellant being handcuffed.[13]

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[9] *Id.*

[10] *Id.* at 10.

[11] *Id.* at 11.

[12] *Id.* at 6.

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

The RTC Ruling

In its July 22, 2015 Judgment, the RTC found appellant guilty beyond reasonable doubt of the illegal sale and possession of dangerous drugs. In Criminal Case No. 15745-2008-C, appellant was sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of ₱500,000.00. In Criminal Case No. 15746-2008-C, appellant was sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and ordered to pay a fine of ₱300,000.00.[14]

The RTC ruled that the testimony of SPO1 Naredo carried with it the presumption of regularity in the performance of official functions. It gave no credence to appellant's defense of denial or frame-up since it could be easily concocted and was a common and standard defense ploy. The RTC also underscored the inconsistent testimonies of the defense witnesses as to the time of appellant's arrest at his hut by the two (2) unidentified men.[15]

The RTC held that all of the elements of the offenses were sufficiently established by the prosecution. The prosecution was able to prove that a buy-bust operation was conducted. Even without the testimony of the *poseur*-buyer, the RTC held that SPO1 Naredo's testimony sufficiently established that a sale took place and that the marked money was recovered from appellant.[16]

Further, the RTC ruled that the integrity and evidentiary value of the seized evidence were preserved notwithstanding the lack of physical inventory and photographing of the seized evidence. The RTC held that SPO1 Naredo's testimony sufficiently showed that the illegal drugs subject of the sale were handed to him by the confidential informant, who had bought the same from appellant, and that SPO1 Naredo himself recovered three (3)

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[14] CA *rollo*, p. 32.

[15] *Rollo*, p. 7, CA Decision; CA *rollo*, p. 25, RTC Decision.

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

plastic sachets from appellant. Thereafter, the seized evidence were marked and delivered by PO1 Cruz to one SPO1 Agustin of the crime laboratory. FC Rodrigo thereafter examined the seized evidence and placed her markings thereon. According to the RTC, the prosecution's failure to follow the procedural requirements under Section 21 of R.A. No. 9165 did not affect the integrity and evidentiary value of the seized evidence.[17]

Aggrieved, appellant appealed to the CA.

The CA Ruling

In its February 22, 2017 Decision, the CA affirmed appellant's conviction. The CA ruled that the prosecution was able to establish all the elements of Illegal Sale of Dangerous Drugs. It gave full credence to SPO1 Naredo's positive identification of appellant and his narration of the buy-bust operation. The CA affirmed the finding of the RTC that the integrity and evidentiary value of the seized evidence had been preserved despite noncompliance with Sec. 21 of R.A. No. 9165. The chain of custody, according to the CA, consisted of the possession of the seized evidence by the police officers, the testing in the laboratory to determine its composition, and the presentation of the same seized evidence in court. The CA noted that the custody of the seized evidence remained with SPO1 Naredo until its delivery to the crime laboratory for forensic examination.[18]

Appellant now seeks the reversal of the CA Decision before this Court.

Issue

WHETHER OR NOT THE GUILT OF APPELLANT FOR THE OFFENSES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

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[17] *Id.* at 28-32.

[18] *Rollo*, pp. 13-20.

In a January 17, 2018 Resolution,[19] this Court required the parties to submit their respective supplemental briefs, if they so desired. In its April 10, 2018 Manifestation (Re: Supplemental Brief),[20] the Office of the Solicitor General *(OSG)* manifested that it will no longer file a supplemental brief considering that the guilt of appellant was exhaustively discussed in its appellee's brief and no new issue was raised in the automatic review. In its April 18, 2018 Manifestation (In Lieu of a Supplemental Brief),[21] appellant averred that he would no longer file a supplemental brief to avoid repetition since he had sufficiently refuted all the arguments raised in the Appellee's Brief.

In his Appellant's Brief[22] before the CA, appellant argues that there was failure to comply with the requirements of Sec. 21, Article II of R.A. No. 9165. The arresting officer failed to conduct the physical inventory of, and to photograph, the seized evidence. Consequently, there was also non-compliance with the requirement of the presence of representatives from the Department of Justice *(DOJ)* and media, and an elected public official during the physical inventory and photographing of the seized evidence. Appellant maintains that the apprehending officers did not exert any genuine and sufficient effort to comply with the mandate of Sec. 21, Article II of R.A. No. 9165. He contends that the police officers failed to justify their failure to comply with the requirements under R.A. No. 9165, since the urgency of conducting a buy-bust operation was also not established and it was not shown that the tip given by the confidential informant was verified. Finally, appellant argues that there were breaks in the chain of custody, specifically from the second to the fourth links.

In its Appellee's Brief[23] before the CA, the OSG urges this Court to affirm the challenged Decision of the RTC. The OSG

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[19] *Id.* at 26-27.

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

[21] *Id.* at 33-35.

[22] CA *rollo*, pp. 51-70.

[23] *Id.* at 97-109.

maintains that the prosecution duly established the elements of the offenses charged. It insists that mere possession of a prohibited drug is sufficient to convict appellant in the absence of any satisfactory explanation, more so because the seized evidence from appellant tested positive for *shabu*. The OSG countered that there was an unbroken chain of custody — from SPO1 Naredo's recovery of the plastic sachets from appellant, to the markings he placed thereon after appellant's arrest, to the request for laboratory examination made by the buy-bust team, to the turnover by PO1 Cruz of the seized evidence to the crime laboratory, and to the examination thereof by FC Rodrigo which yielded a positive result for *shabu*. According to the OSG, the integrity and identity of the seized evidence were sufficiently preserved by the police officers who handled the plastic sachets confiscated from appellant.

The Court's Ruling

It is a well-established rule that an appeal in criminal cases throws the whole case open for review.[24] Thus, the appellate court has the competence to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[25] After careful examination, this Court finds the appeal meritorious.

To sustain a conviction for the offense of illegal sale or possession of dangerous drugs under R.A. No. 9165, it is of utmost importance to establish with moral certainty the identity of the confiscated drug.[26] To remove any doubt or uncertainty on the identity and integrity of the seized drug, it must be shown that the substance illegally possessed or sold by the accused is the same substance offered and identified in court.[27] This requirement is known as the chain of custody rule under R.A.

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[24] *People v. Ygoy*, G.R. No. 215712, August 7, 2019.

[25] *People v. Comboy*, 782 Phil. 187, 196 (2016).

[26] See *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

[27] See *People v. Pagaduan*, 641 Phil. 432, 442-443 (2010).

No. 9165 created to safeguard doubts concerning the identity of the seized drugs.[28]

Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.[29] Under Sec. 21, Article II of R.A. No. 9165:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

The implementing rules and regulations of R.A. No. 9165 further expounded this provision:

a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by

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[28] See *People v. Climaco*, 687 Phil. 593, 604-605 (2012), citing *Malillin v. People*, 576 Phil. 576 (2008).

[29] Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

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Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of, and photograph, the seized drugs in the presence of: (a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) an elected public official. These four (4) witnesses should be present at the time of the apprehension of the accused and must all sign the copies of the inventory and obtain a copy thereof.

The procedure enshrined in Sec. 21, Article II of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[30] The police officers or PDEA agents implementing R.A. No. 9165 must strictly comply with the procedure laid out, although failure to strictly do so does not, *ipso facto*, render the seizure and custody over the illegal drugs as void and invalid if: (a) there is justifiable ground for such noncompliance; and (b) the integrity and evidentiary value of the seized evidence were preserved. Nonetheless, the safeguard measures under Sec. 21, Article II of R.A. No. 9165 must be strictly adhered to.

There was a total lack of compliance with Sec. 21, Article II of R.A. No. 9165.

In this case, the buy-bust team completely ignored the procedure outlined under Sec. 21, Article II of R.A. No. 9165. They failed to conduct a physical inventory of the seized items and to photograph the same. The deficiency is apparent from SPO1 Naredo's testimony:

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[30] *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 145, citing *Gamboa v. People*, 799 Phil. 584, 597 (2016).

Q: Did you have receipt of inventory issued in these cases?
A: None, ma'am.

Q: You have also no photographs?
A: None, ma'am.[31]

Moreover, the presence of the representatives required by law to witness the apprehension of appellant and seizure of the illegal drugs were not secured by the buy-bust team. In *People v. Tomawis*,[32] this Court held that the witnesses required by law in order to insulate against the police practice of planting evidence should be present at or near the time of apprehension of the accused.[33] This Court held that the time of the warrantless arrest is "the 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."[34]

Neither can the prosecution rely on the saving clause of Sec. 21, Article II of R.A. No. 9165. In *Gamboa v. People*,[35] this Court ruled that "the saving clause applies only where the prosecution has recognized the procedural lapses on the part of the police officers or PDEA agents, and thereafter explained the cited justifiable grounds; after which, the prosecution must show that the integrity and evidentiary value of the seized items have been preserved."[36] It was not shown that the prosecution even recognized that the buy-bust team in this case committed major lapses in handling the seized illegal drugs from appellant. Consequently, no justification was offered by the prosecution as to why the procedure in Sec. 21, Article II of R.A. No. 9165 was not adhered to.

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[31] *Rollo*, p. 15; CA Decision.

[32] *Supra* note 30.

[33] *Id.* at 147.

[34] *Id.* at 150.

[35] *Supra* note 30.

[36] *Id.* at 595.

When a court cannot be assured that the drugs presented as evidence are exactly what the prosecution purports them to be, it cannot be assured that any activity or transaction pertaining to them truly proceeded, as the prosecution claims they did. Thus, no conviction can ensue, as in this case.[37]

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

This Court explained in *Malillin v. People*[38] how the chain of custody or movement of the seized evidence should be maintained and why this must be shown by evidence, *viz.*:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[39]

In *People v. Kamad*[40] and *People v. Dahil*,[41] this Court enumerated the links that the prosecution must establish in the chain of custody of a buy-bust situation to be as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer

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[37] *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019.

[38] *Supra* note 28.

[39] *Id.* at 587; citations omitted.

[40] 624 Phil. 289 (2010).

[41] 750 Phil. 212 (2015).

to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

This Court finds that the second, third, and fourth links in the chain of custody were not established by the prosecution in the case at bar.

Second link

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer.[42] The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating officer's possession of the seized drugs must be documented and established.[43]

Here, the name of the investigator was neither identified nor mentioned by the prosecution. SPO1 Naredo failed to specify the person to whom he turned over the seized items upon reaching the police station. It was merely stated that "the police officers prepared a request for laboratory examination and drug testing."[44] However, the specific person who handled the seized items for the preparation of the required documents was not named in the records. When the apprehending officer is unable to identify the investigating officer to whom he turned over the seized items, this Court has held that such circumstance, when taken in light of the several other lapses in the chain of custody that attend the case, raises doubts as to whether the integrity and evidentiary value of the seized illegal drugs had been preserved.[45]

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[42] *Id.* at 235.

[43] *Id.*

[44] *Rollo*, p. 5; CA Decision, p. 4.

[45] *People v. Hementiza*, 807 Phil. 1017, 1035 (2017), citing *People v. Nandi*, 639 Phil. 134 (2010).

Third Link

The third link in the chain of custody is the delivery by the investigating officer of the illegal drug to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.[46]

Here, SPO1 Naredo testified that he was with PO1 Cruz when the latter delivered the seized items to SPO1 Agustin of the crime laboratory. Thus, there was an apparent transfer of the seized items from SPO1 Naredo to PO1 Cruz. As can be gleaned from SPO1 Naredo's testimony, however, no informative details were provided as to how, and at what point, the seized items were handed to PO1 Cruz, who was not even a member of the buy-bust team. There was also lack of information on the condition of the seized items when SPO1 Naredo transmitted the same to PO1 Cruz and when PO1 Cruz delivered it to SPO1 Agustin. Further, there was no documentary evidence indicating SPO1 Agustin's actual receipt of the seized items and how the latter handled the same upon his receipt thereof before transmitting the same to FC Rodrigo for forensic examination.

Fourth Link

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.[47] In this case, there was no testimonial or documentary evidence on how FC Rodrigo kept the seized items while it was in her custody and in what condition the items were in until it was presented in court. While the parties stipulated on FC Rodrigo's testimony, the stipulations do not provide information regarding the condition of the seized item while in her custody or if there was no opportunity for someone not in the chain to have possession thereof.

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[46] *People v. Asaytuno, Jr., supra* note 37.

[47] *Id.*

In *People v. Gutierrez*,[48] there were inadequate stipulations as to the testimony of the forensic chemist. In that case, no explanation was given regarding the chemist's custody in the interim — from the time it was turned over to the investigator to its turnover for laboratory examination. The records also failed to show what happened to the allegedly seized *shabu* between the turnover by the chemist to the investigator and its presentation in court. Thus, since no precautions were taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof, the accused therein was acquitted.

In view of the foregoing lapses in the chain of custody and the lack of compliance with Sec. 21, Article II of R.A. No. 9165, appellant's acquittal is only proper. Serious uncertainty hangs over the identification of the *corpus delicti* that the prosecution introduced into evidence in order to convict appellant. In effect, the prosecution has no evidence against appellant given that the circumstances surrounding the handling of the seized items cast doubt on their source, identity, and integrity.

WHEREFORE, the appeal is **GRANTED**. The February 22, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07680 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of Raul Del Rosario *y* Niebres. He is hereby **ACQUITTED** of the crimes charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this Decision and to inform this Court of the date of the actual release from confinement of Raul Del Rosario *y* Niebres within five (5) days from receipt of this Decision.

SO ORDERED.

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[48] 614 Phil. 285 (2009).

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

Gaerlan, J., on leave.

SPECIAL SECOND DIVISION

[G.R. No. 240664. June 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **JONATHAN MAYLON *y* ALVERO *alias* "JUN PUKE" and ARNEL ESTRADA *y* GLORIAN,** *accused-appellants*.

SYLLABUS

CRIMINAL LAW; EXTINCTION OF CRIMINAL LIABILITY; THE DEATH OF THE ACCUSED PENDING APPEAL OF HIS CONVICTION EXTINGUISHES HIS CRIMINAL LIABILITY INASMUCH AS THERE IS NO LONGER A DEFENDANT TO STAND AS THE ACCUSED. — In view of Estrada's supervening death, there is a need to reconsider and set aside his conviction for Illegal Possession of Dangerous Drugs in Criminal Case No. 2014-4407-D-MK and enter a new one dismissing the same. Under prevailing law and jurisprudence, Estrada's death prior to his final conviction by the Court renders dismissible the criminal case against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused x x x. In *People v. Monroyo*, the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities x x x. [U]pon Estrada's death pending appeal of his conviction, the criminal action against him is extinguished inasmuch as there is no longer a defendant to stand as the accused.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

In a Decision[1] dated March 11, 2019, the Court affirmed the Decision[2] dated February 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09141 finding: (*a*) accused-appellants Jonathan Maylon *y* Alvero *alias* "Jun Puke" (Maylon) and Arnel Estrada *y* Glorian (Estrada; collectively, accused-appellants) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. 9165,[3] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002"; and (*b*) Maylon guilty beyond reasonable doubt of violating Section 5 of the same Act, the pertinent portion of which reads:

WHEREFORE, the appeal is **DISMISSED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated February 23, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09141 and **AFFIRMS** said Decision finding accused-appellant Jonathan Maylon *y* Alvero **GUILTY** beyond reasonable doubt of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, Article II of Republic Act No. 9165, respectively, and accused-appellant Arnel Estrada *y* Glorian **GUILTY** beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section

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[1] *Rollo*, pp. 57-64.

[2] *Id.* at 2-19. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Remedios A. Salazar-Fernando and Ma. Luisa Quijano-Padilla, concurring.

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

11, Article II of the same Act. Accordingly, they are hereby sentenced as follows: (*a*) in Criminal Case No. 2014-4405-D-MK for Illegal Sale of Dangerous Drugs, accused-appellant Jonathan Maylon *y* Alvero is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; (*b*) in Criminal Case No. 2014-4406-D-MK for Illegal Possession of Dangerous Drugs, accused-appellant Jonathan Maylon *y* Alvero is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00; and (*c*) in Criminal Case No. 2014-4407-D-MK for Illegal Possession of Dangerous Drugs, accused-appellant Arnel Estrada *y* Glorian is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, [to] fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.

SO ORDERED.[4]

Aggrieved, accused-appellants timely moved for reconsideration.[5] Meanwhile, the Court notes the separate letters[6] both dated June 28, 2019 from the Office of the Overseer and the Superintendent, New Bilibid Prison, informing the Court that Estrada had already died on April 26, 2018, as evidenced by his Certificate of Death[7] issued by the Office of the Civil Register General.

In view of Estrada's supervening death, there is a need to reconsider and set aside his conviction for Illegal Possession of Dangerous Drugs in Criminal Case No. 2014-4407-D-MK and enter a new one dismissing the same.

Under prevailing law and jurisprudence, Estrada's death prior to his final conviction by the Court renders dismissible the criminal case against him. Article 89 (1) of the Revised Penal Code

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[4] *Rollo*, p. 80.

[5] See motion for reconsideration dated July 12, 2019: *id.* at 83-88.

[6] See letters dated June 28, 2019 signed by Chief CSI Raymund DL. Peneyra and CSSupt. Arturo N. Sabadisto, respectively.

[7] *Rollo*, p. 67. In the letter dated June 28, 2019, the Office of the Overseer erroneously wrote that Estrada died on April 25, 2018.

provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

Article 89. *How criminal liability is totally extinguished*. – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

In *People v. Monroyo*,[8] the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities, as follows:

From this lengthy disquisition, we summarize our ruling herein:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law
b) Contracts
c) Quasi-contracts
d) x x x
e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule III of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/

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[8] G.R. No. 223708, October 9, 2019.

administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[9]

Thus, upon Estrada's death pending appeal of his conviction, the criminal action against him is extinguished inasmuch as there is no longer a defendant to stand as the accused.

With respect to the Motion for Reconsideration of accused-appellant Maylon, the Court finds that the issues raised therein are but mere rehash of the grounds already evaluated and passed upon by the Court in the assailed Decision. Hence, the Court finds no cogent reason to reverse the same.

WHEREFORE, the Court resolves to: (*a*) **DENY** the Motion for Reconsideration filed by herein accused-appellant Jonathan Maylon *y* Alvero *alias* "Jun Puke"; and (*b*) **MODIFY** the Court's Decision dated March 11, 2019, **DISMISSING** Criminal Case No. 2014-4407-D-MK before the Regional Trial Court of Marikina City, Branch 263 and **DECLARING** the same **CLOSED** and **TERMINATED** by reason of the supervening death of accused-appellant Arnel Estrada *y* Glorian.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Delos Santos, JJ.*, concur.

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[9] See *id.*, citing *People v. Culas*, 810 Phil. 205, 208-209 (2017).

THIRD DIVISION

[G.R. No. 243653. June 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **JONATHAN WESTLIE KELLEY, *a.k.a.* "DADDY WESTLIE," CARLOTA CERERA DELA ROSA, *a.k.a.* "MOMMY LOTA," CHERRIE NUDAS DATU, *a.k.a.* "MOMMY CHERRIE," REY KELLEY *alias* "BUROG," *alias* DADDY KELLEY," and GLENDA L. JIMENEZ,** *accused*,

JONATHAN WESTLIE KELLEY, CARLOTA CERERA DELA ROSA, and CHERRIE NUDAS DATU, *accused-appellants*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FINDINGS OF FACT BY THE TRIAL COURT, WHEN AFFIRMED BY THE APPELLATE COURT, ARE GIVEN GREAT WEIGHT AND CREDENCE ON REVIEW, EXCEPT WHEN BOTH OR ANY OF THE LOWER COURTS OVERLOOKED OR MISCONSTRUED SUBSTANTIAL FACTS WHICH COULD HAVE AFFECTED THE OUTCOME OF THE CASE. — "As a general rule, the findings of fact by the trial court, when affirmed by the appellate court, are given great weight and credence on review." This is because "[t]he trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness stand." The exception is when both or any of the lower courts "overlooked or misconstrued substantial facts which could have affected the outcome of the case." A careful examination of the records shows nothing that would warrant a reversal of the decisions of the Regional Trial Court and the Court of Appeals.

2. ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; THE MOTION TO QUASH THE SEARCH WARRANT FILED BY THE ACCUSED SHALL BE GOVERNED BY THE OMNIBUS

MOTION RULE, WHICH DEMANDS THAT ALL AVAILABLE OBJECTIONS BE INCLUDED IN A PARTY'S MOTION; OTHERWISE, SAID OBJECTIONS SHALL BE DEEMED WAIVED; PROVIDED, HOWEVER, THAT OBJECTIONS NOT AVAILABLE, EXISTENT OR KNOWN DURING THE PROCEEDINGS FOR THE QUASHAL OF THE WARRANT MAY BE RAISED IN THE HEARING OF THE MOTION TO SUPPRESS. — The Court of Appeals correctly noted that the issuance by the Malolos City Regional Trial Court of a search warrant was not fatal to the prosecution's cause. Firstly, accused-appellants failed to timely assail the purportedly faulty issuance of a search warrant before the Regional Trial Court. They only belatedly pleaded this before the Court of Appeals. Accordingly, the Court of Appeals did not err in disregarding this argument. As has been explained by this Court: The omnibus motion rule embodied in Section 8, Rule 15, in relation to Section 1, Rule 9, demands that all available objections be included in a party's motion, otherwise, said objections shall be deemed waived; and, the only grounds the court could take cognizance of, even if not pleaded in said motion are: (a) lack of jurisdiction over the subject matter; (b) existence of another action pending between the same parties for the same cause; and (c) bar by prior judgment or by statute of limitations. It should be stressed here that the Court has ruled in a number of cases that the omnibus motion rule is applicable to motions to quash search warrants. Furthermore, the Court distinctly stated in *Abuan v. People*, that "the motion to quash the search warrant which the accused may file shall be governed by the omnibus motion rule, provided, however, that objections not available, existent or known during the proceedings for the quashal of the warrant may be raised in the hearing of the motion to suppress. . . ."

3. ID.; ID.; ID.; FOR COMPELLING REASONS STATED IN THE APPLICATION, AN APPLICATION FOR SEARCH WARRANT SHALL BE FILED AT ANY COURT WITHIN THE JUDICIAL REGION WHERE THE CRIME WAS COMMITTED IF THE PLACE OF THE COMMISSION OF THE CRIME IS KNOWN, OR ANY COURT WITHIN THE JUDICIAL REGION WHERE THE WARRANT SHALL BE ENFORCED; THE CONFIDENTIAL NATURE OF THE OPERATION AND THE DESIRE TO AVOID LEAKAGE ARE COMPELLING REASONS

WHICH WARRANT THE APPLICATION OF THE RULE. — [R]ule 126, Section 2 (b) of the Revised Rules of Criminal Procedure provides: SECTION 2. *Court where application for search warrant shall be filed.* — An application for search warrant shall be filed with the following: … b) *For compelling reasons stated in the application*, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced. In this case, the prosecution noted that the confidential nature of the operation being hatched and P/Supt. Puapo's desire to avoid leakage was such a compelling reason within the contemplation of Rule 126, Section 2 (b). In *People v. Chiu*, this Court acknowledged that the confidentiality of operations, and the possibility of leakage warranted the application of Rule 126, Section 2 (b) x x x. That confidentiality and the need to foreclose leakage are compelling reasons within the contemplation of Rule 126, Section 2 (b) was also emphasized by this Court in *Petron Gasul LPG Dealers Association v. Lao*.

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ACCUSED'S BARE AND HOLLOW DENIALS CANNOT TRUMP THE CLEAR TESTIMONIES OF THE VICTIM AND OF THE POLICE OFFICERS WHO CAREFULLY PREPARED AND CONDUCTED THE ENTRAPMENT OPERATION. — Ultimately, the Regional Trial Court's findings on each of accused-appellants' participation in the common design to traffic women by way of prostitution stands. Their excuses of being an unwitting patron (in the case of Westlie), or employees (in the cases of Carlota and Datu) fail to persuade. They are nothing more than self-serving excuses which admit that they were indeed in the establishment where trafficking and prostitution were being committed, except that they were not direct participants. These bare and hollow denials cannot trump the clear testimonies of OOO and of the police officers who — through every step — carefully prepared and conducted the entrapment operation. OOO, in particular, recalled in detail the circumstances of her engagement and the operation being run by accused appellants x x x.

5. CRIMINAL LAW; EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2012 (REPUBLIC ACT NO. 9208), AS AMENDED BY REPUBLIC ACT NO. 10364; ACCUSED-

APPELLANTS FOUND GUILTY OF OPERATING AS A SYNDICATE TO COMMIT QUALIFIED TRAFFICKING IN PERSONS; PAYMENT OF MORAL DAMAGES TO ALL THE VICTIMS, WARRANTED. — While this Court sustains the findings of the Court of Appeals and the Regional Trial Court, further modification is in order. The Court of Appeals and the Regional Trial Court ordered the payment of moral damages only to OOO. This should be rectified. Accused-appellants were found guilty of operating as a syndicate to commit qualified trafficking in persons. Their offense was committed as much against the 15 other women rescued on May 22, 2013 as it was against OOO. Even if it was only OOO who personally testified, her testimony, along with those of P/Supt. Puapo and PO3 Pagumpaton, and the entire corpus of evidence adduced by the prosecution attest to the manifold operation of accused-appellants whose object was by no means OOO alone. AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, and PPP are as much victims of accused-appellants' sinister designs. They are each equally deserving of a measure of recompense. As such, this Court orders the payment of moral damages, not just to OOO, but to each of the 15 other victims rescued on May 22, 2013. Likewise, each of accused-appellants contributed to realizing the objectives of their sinister operation. Their contributions may have been varied, but they were no less necessarily connected. Their culpability as knowing individuals each enabling and assisting a perverse scheme impels liability for damages from each of them to each of their victims.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

LEONEN, *J.*:

The factual findings of a trial court, along with its evaluation of the credibility of witnesses and their testimonies are entitled to great respect. These are not to be disturbed on appeal, unless it can be shown that the trial court "overlooked, misapprehended,

or misapplied" facts or circumstances of weight and substance.[1] Bare denials by the accused cannot prevail against unequivocal proof of their participation in the complex operations of a syndicate trafficking persons. When their participation in a conspiracy is shown beyond reasonable doubt, each of them is accountable. Each of them is therefore liable for damages to each of their victims in addition to criminal penalties.

In an Information, accused-appellants Jonathan Westlie Kelley, *a.k.a.* "Daddy Westlie" (Westlie), Carlota Cerera Dela Rosa, *a.k.a.* "Mommy Lota" (Dela Rosa), Cherrie Nudas Datu, *a.k.a.* "Mommy Datu" (Datu), Rey Kelley *alias* "Burog," or "Daddy Kelley" (Rey), and Glenda L. Jimenez (Jimenez) were charged with qualified trafficking in persons, as penalized by Section 4 (e)[2] in relation to Sections 3 (a) and (c),[3] 6 (a)

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[1] *People v. De Jesus*, 695 Phil. 114 (2012) [Per J. Brion, Second Division] citing *People v. Jubail*, 472 Phil. 527 (2004) [Per J. Carpio, First Division].

[2] SECTION 4. *Acts of Trafficking in Persons.* — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

. . . . . .

(e) To maintain or hire a person to engage in prostitution or pornography.

[3] SECTION 3. *Definition of Terms.* — As used in this Act:

(a) *Trafficking in Persons* — refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons, with or without the victim's consent or knowledge, within or across national borders 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.

The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph.

. . . . . .

and (c),[4] and 10 (e)[5] of Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003, as amended by Republic Act No. 10364, or the Expanded Anti-Trafficking in Persons Act of 2012. The Information reads:

That on May 22, 2013, and on dates prior thereto, at [redacted], [redacted] Pampanga, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, and for the purpose of prostitution and other forms of sexual exploitation and by taking advantage of the vulnerability of "AAA," "BBB," "CCC," "DDD," "EEE," "FFF," "GGG," "HHH," "III," "JJJ," "KKK," "LLL," "MMM," "NNN," "OOO," and "PPP," then seventeen (17) years old, by reason of their poverty, did then and there, willfully, unlawfully[,] feloniously, for profit and through deceit, procure and employ them to work as dancers/entertainers for [redacted], Angeles City for purposes of engaging the customers of the said establishment in sexual intercourse and other lascivious conduct, in exchange for money, to their damage and prejudice.

(c) *Prostitution* — refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration[.]

[4] SECTION 6. *Qualified Trafficking in Persons*. — The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

. . . . . .

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group[.]

[5] SECTION 10. Penalties and Sanctions. — The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

. . . . . .

(e) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00)[.]

That the accused being a syndicate and perpetrated the crime in large scale [sic] against three (3) or more persons, individually or as a group and against victim "PPP," then a minor of seventeen (17) years old, committed qualified trafficking.

CONTRARY TO LAW.[6]

Rey and Jimenez remained at large. Thus, only Westlie, Dela Rosa, and Datu were arraigned. They all pleaded not guilty.[7] The same three (3) accused also stood trial for the simultaneous charge of violating Republic Act No. 7610, with respect to their engagement of PPP, who was allegedly 17 years old when her services were engaged.[8]

The prosecution presented three (3) witnesses: OOO, one of the offended parties; P/Supt. Jaqueline Puapo (P/Supt. Puapo); and PO3 Aisha Pagumpaton (PO3 Pagumpaton).[9]

OOO recounted that she came upon a sign, in an establishment recruiting waitresses and applied for the job. However, she was told by Datu, a 'mamasang' in that establishment, that she could not be a waitress unless she accompanied another applicant

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[6] *Rollo*, pp. 3-4.

[7] *Id.* at 4.

[8] *Id.* at 62. The Information for this simultaneous charge read:

That on May 22, 2013, and on dates prior thereto, at [redacted], [redacted], Pampanga, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another; and for the purpose of prostitution and other forms of sexual exploitation and by taking advantage of the vulnerability of [redacted], then seventeen (17) years old, and the fact that they are the employers/managers of Eager Beavers Bar located at [redacted], [redacted], [redacted], did then and there, willfully, unlawfully, feloniously, for profit and through deceit, promote, facilitate, induce, procure and employ said [redacted] to work as dancer/entertainer for [redacted] Bar for purposes of engaging the customers of the said establishment in sexual intercourse and other lascivious conduct, in exchange for money, to her damage and prejudice.
CONTRARY TO LAW.

[9] *Id.* at 65-73.

who would be a dancer. Faced with the prospect of not being able to work, she agreed to be a dancer herself. She started working in April 2013. She explained that dancers like her were subject to customers' option to pay a 'bar fine' of ₱2,000.00, so they can be taken out for sexual intercourse. Of this amount, ₱1,200.00 went to the establishment, and ₱800.00 to the dancer. She recalled having been bar fined 10 times. She added, however, that she had been 'tabled' more times, during which, customers would fondle her genitals. She pointed to Dela Rosa as a mamasang, apart from Datu, and to Westlie as the 'tagapuna,' or the monitor who admonished dancers when they were not doing anything.[10]

P/Supt. Puapo and PO3 Pagumpaton testified on the entrapment operation that led to the apprehension of Westlie, Dela Rosa, and Datu. They recalled that on May 8, 2013, a representative of the National Intelligence Coordination Agency (NICA) accompanied PPP's sister to report to them that an establishment had been prostituting girls for ₱2,000.00 each. PPP's sister recalled that PPP was recruited by a "Cherrie Datu" to be a "Guest Relations Officer" or GRO.[11]

On May 17, 2013, a surveillance operation was conducted, which revealed that: (1) a foreigner, Rey, owned the establishment; (2) Westlie was the floor manager; and (3) that PPP, a 17-year-old minor worked at the establishment offering sexual services.[12]

On May 21, 2013, they obtained a search warrant from the Malolos, Bulacan Regional Trial Court.[13]

On May 22, 2013, the surveillance team, other police officers, and two (2) assets conducted an entrapment operation. In the bar, four (4) scantily clad girls were presented to the assets by

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

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

[12] *Id.*

[13] *Id.*

Datu and Carlota, with the offer that they could have sex with them upon payment of the bar fine. The assets agreed and handed ₱8,000.00 in marked money. The assets then placed a call to the team, which proceeded to enforce the search warrant.[14]

The operation led to the arrest of Westlie, Carlota, and Datu, as well as the rescue of sixteen (16) victims, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, and PPP.[15]

Westlie, Carlota, and Datu denied participating in any prostitution operation. Westlie claimed that he was merely in the establishment as a patron. Carlota and Datu alleged they were merely working as checker and purchaser, respectively.[16]

In a July 5, 2016 Judgment,[17] the Regional Trial Court found Westlie, Carlota, and Datu guilty beyond reasonable doubt of qualified trafficking in persons. However, it acquitted them of the simultaneous charge of child abuse, as penalized by Republic Act No. 7610 because "[n]o witness was presented [to testify] that PPP was a minor at the time of the incident and that [Westlie, Carlota, and Datu] induced or employed a minor for the purpose of prostitution."[18]

In convicting Westlie, Carlota, and Datu, the Regional Trial Court did not give weight to their denials, as against the clear accounts of the prosecution witnesses. The dispositive portion of the Regional Trial Court's Decision read:

WHEREFORE, premises considered, as the prosecution has proven the guilt beyond reasonable doubt of the accused, Jonathan Westlie Kelley, Carlota Cerera Dela Rosa and Datu Nudas Datu for violation

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[14] *Id.*

[15] *Id.* at 64.

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

[17] *Id.* at 60-93. The Judgment was penned by Judge Bernardita Gabitan-Erum of the Sixty-First Division of the Regional Trial Court, Angeles City.

[18] *Id.* at 93.

of Section 4 (a) in relation to Section 3(c), Section 6(c) and Section 10(c) of Republic Act No. 9208 as amended by Republic Act No. 10364 in Criminal Case No. 13-10089, the said three (3) accused are hereby sentenced to suffer **LIFE IMPRISONMENT** and each to pay a fine of **One Million Pesos (Php1,000,000.00)** and to pay [redacted] the sum of **One Hundred Thousand Pesos (₱100,00.00)** as moral damages.

As the prosecution failed to prove the guilt beyond reasonable doubt of the accused Jonathan Westlie Kelley, Carlota Cerera Dela Rosa and Datu Nudas Datu for violation of Section 5 (a) of Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination) in Criminal Case No. 13-10090, they are hereby **ACQUITTED**.

As the accused, Rey Kelley @ Burog @ Daddy Kelly and Glenda L. Jimenez remain at large, let the records of these cases against them be sent to the **ARCHIVES** subject to the revival upon the arrest of the said accused. An *alias* warrant of arrest against the said accused is hereby ordered issued.

SO ORDERED.[19] (Emphasis in the original)

Westlie, Carlota, and Datu appealed to the Court of Appeals. In addition to denying their participation in prostitution operations, they also assailed the issuance by the Malolos Regional Trial Court of a search warrant to be conducted in Angeles City.

In its assailed Decision,[20] the Court of Appeals affirmed the Decision of the Regional Trial Court with modification. Regarding the search warrant issued by the Malolos Regional Trial Court, the Court of Appeals explained that, for compelling reasons, an application for a search warrant may be made in any court within the judicial region where the crime was

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[19] *Id.*

[20] *Id.* at 2-19. The Decision dated May 31, 2018 in CA-G.R. CR-HC No. 08618 was penned by Associate Justice Ramon A. Cruz and concurred by Associate Justices Ramon M. Bato, Jr. (Chairperson) and Pablito A. Perez of the Eleventh Division of the Court of Appeals, Manila.

committed (if the place of commission is known), or any court within the judicial region where it shall be imposed.[21]

The dispositive portion of this assailed Decision read:

> **WHEREFORE**, premises considered, the appeal is hereby **DISMISSED**, and the Judgment dated July 5, 2016 of the Regional Trial Court of Angeles City, Branch 61, convicting the accused-appellants in Criminal Case No. 13-10089, is **AFFIRMED** with **MODIFICATION** in that the accused-appellants are each ordered to pay a fine of two million pesos (₱2,000,000.00).
>
> **SO ORDERED**.[22] (Emphasis in the original)

Thereafter, Westlie, Carlota, and Datu filed their Notice of Appeal.[23]

The Court of Appeals elevated the records of the case to this Court in compliance with its July 17, 2018 Resolution,[24] which gave due course to the Notice of Appeal filed by accused-appellants Westlie, Carlota, and Datu.

In a March 20, 2019 Resolution,[25] this Court noted the records forwarded by the Court of Appeals, and informed accused-appellants and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, that they may file their supplemental briefs.

In a September 18, 2019 Resolution,[26] this Court noted the Manifestations filed by plaintiff-appellee and accused-appellants, stating that they will no longer file supplemental briefs.

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

[22] *Id.* at 17.

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

[24] *Id.* at 1.

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

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

For resolution is the issue of whether or not accused-appellants Jonathan Westlie Kelley, Carlota Cerera Dela Rosa, and Cherrie Nudas Datu are guilty beyond reasonable doubt of qualified trafficking in persons.

I

"As a general rule, the findings of fact by the trial court, when affirmed by the appellate court, are given great weight and credence on review."[27] This is because "[t]he trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness stand."[28] The exception is when both or any of the lower courts "overlooked or misconstrued substantial facts which could have affected the outcome of the case."[29]

A careful examination of the records shows nothing that would warrant a reversal of the decisions of the Regional Trial Court and the Court of Appeals.

II

The Court of Appeals correctly noted that the issuance by the Malolos City Regional Trial Court of a search warrant was not fatal to the prosecution's cause.

Firstly, accused-appellants failed to timely assail the purportedly faulty issuance of a search warrant before the Regional Trial Court. They only belatedly pleaded this before the Court of

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[27] *People v. Feliciano, Jr.*, 734 Phil. 499, 521 (2014) [Per J. Leonen, Third Division].

[28] *Ditche v. Court of Appeals*, 384 Phil. 35, 36 (2000) [Per J. De Leon, Jr., Second Division].

[29] *People of the Philippines v. Montinola*, 567 Phil. 387, 404 (2008) [Per J. Carpio, Second Division], citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per J. Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per J. Tinga, *En Banc*]; and *People v. Bejic*, 552 Phil. 555 (2007) [Per J. Chico-Nazario, *En Banc*].

Appeals. Accordingly, the Court of Appeals did not err in disregarding this argument. As has been explained by this Court:

> The omnibus motion rule embodied in Section 8, Rule 15, in relation to Section 1, Rule 9, demands that all available objections be included in a party's motion, otherwise, said objections shall be deemed waived; and, the only grounds the court could take cognizance of, even if not pleaded in said motion are: (a) lack of jurisdiction over the subject matter; (b) existence of another action pending between the same parties for the same cause; and (c) bar by prior judgment or by statute of limitations. It should be stressed here that the Court has ruled in a number of cases that the omnibus motion rule is applicable to motions to quash search warrants. Furthermore, the Court distinctly stated in *Abuan v. People*, that "the motion to quash the search warrant which the accused may file shall be governed by the omnibus motion rule, provided, however, that objections not available, existent or known during the proceedings for the quashal of the warrant may be raised in the hearing of the motion to suppress. . . ."[30] (Citations omitted)

In any case, Rule 126, Section 2 (b) of the Revised Rules of Criminal Procedure provides:

> SECTION 2. *Court where application for search warrant shall be filed*. — An application for search warrant shall be filed with the following:
>
> . . . . . .
>
> b) *For compelling reasons stated in the application*, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced. (Emphasis supplied)

In this case, the prosecution noted that the confidential nature of the operation being hatched and P/Supt. Puapo's desire to avoid leakage was such a compelling reason within the contemplation of Rule 126, Section 2 (b).

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[30] *Pilipinas Shell Petroleum Corp. v. Romars International Gases Corp.*, 753 Phil. 707, 715-716 (2015) [Per J. Peralta, Third Division].

In *People v. Chiu*,[31] this Court acknowledged that the confidentiality of operations, and the possibility of leakage warranted the application of Rule 126, Section 2 (b):

> In this case, Fernandez filed the application for a search warrant with the Pasay City RTC instead of the Quezon City RTC because of the possibility that the *shabu* would be removed by the appellant from No. 29 North Road, Barangay Bagong Lipunan, Cubao, Quezon City. Indeed, as shown by the evidence, the appellant had a residence other than No. 29 North Road where he sold *shabu*. There was also the pervading concern of the police officers that if they filed the application in Quezon City where the appellant plied his illicit activities, it may somehow come to the knowledge of Molina and the appellant, thus, rendering the enforcement of any search warrant issued by the court to be a useless effort. We find and so hold that Judge Lopez did not err in taking cognizance of and granting the questioned application for a search warrant.[32]

That confidentiality and the need to foreclose leakage are compelling reasons within the contemplation of Rule 126, Section 2 (b) was also emphasized by this Court in *Petron Gasul LPG Dealers Association v. Lao*.[33]

III

Ultimately, the Regional Trial Court's findings on each of accused-appellants' participation in the common design to traffic women by way of prostitution stands. Their excuses of being an unwitting patron (in the case of Westlie), or employees (in the cases of Carlota and Datu) fail to persuade. They are nothing more than self-serving excuses which admit that they were indeed in the establishment where trafficking and prostitution were being committed, except that they were not direct participants. These bare and hollow denials cannot trump the

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[31] 468 Phil. 183, 198-199 (2004) [Per J. Callejo, Sr., Second Division].

[32] *Id.*

[33] 790 Phil. 216 (2016) [Per J. Del Castillo, Second Division].

clear testimonies of OOO and of the police officers who — through every step — carefully prepared and conducted the entrapment operation.

OOO, in particular, recalled in detail the circumstances of her engagement and the operation being run by accused appellants:

Atty. Piccio: (To the Witness)

Q: When did you appl[y] for work at [redacted]?
A: Last week of April, 2013, ma'am.

Q: That was when you applied for work. When did you start working at [redacted]?
A: On the same week, ma'am.

Q: As a dancer, what were your duties and functions at [redacted]?
A: I was entertaining customers, ma'am.

Q: How do you entertain customers?
A: I danced for them and I was "tabled" by them and also "nagpapa-bar fine," ma'am.

Q: How do you mean "nagpapa-bar fine?"
A: That I will be paid by the customers to go out with them for x x x sexual intercourse, ma'am.

Q: Can you please tell x x x this Honorable Court if other dancers at [redacted] [were] doing the same thing, if you know?

Atty. Duro: Objection, your Honor, hearsay.

Atty. Piccio: Your Honor, I am asking her if she knows for she [wa]s working at [redacted] so she witnessed everything inside the bar.

Court: Objection overruled. Let the witness answer.

Witness:
A: Yes, ma'am.

Q: Why do you know this?
A: Because I was there when they were chatting about that, ma'am.

Q: You mentioned that customers bar fine you, if a customer wants to take you out on a bar fine transaction, who does [the] customer talk to?
A: Mamasang, ma'am.

Q: How many times have you been bar fined, if you can still remember?
A: Ten (10) times, ma'am.

Q: How much do they pay you for a bar fine transaction, Ms. Witness?
A: ₱2,000.00, ma'am. ₱800.00 will be given to me and ₱1,200.00 will be given to the bar.

Q: To whom is the payment x x x made if the customer wants [to take you out] for [a] bar fine transaction?
A: Sometimes to the mamasang to be paid directly to the cashier or sometimes to the waitress also to be paid directly to the cashier, ma'am.

x x x x x x x x x

Q: You also mentioned a while ago [that] you experienced "nagpapa-table" at [redacted], can you still recall the number of times of "nagpapa-table ka?"
A: Twenty (20) times, ma'am.

Q: Whe[n]ever you are being "tabled," what is usually x x x done to you?
A: Sometimes they chat with me and sometimes they hold the private part of my body, ma'am.[34]

From these, the following observations of the Regional Trial Court are well-taken:

When complainant [OOO] testified, she was sincere, straightforward and honest. She was crying and emotional while testifying o[n] what she's been t[hrough], what actually happened and what she experienced while working as a dancer in [redacted]. The court is convinced that she was telling the truth. The accused Cherrie Datu recruited [OOO] for the purpose of prostitution and sexual exploitation. Thus, Cherrie Datu allowed her to be tabled and barfined to do what

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[34] *Rollo*, pp. 12-14.

the customers wanted and even received commissions from barfine[s] paid by the customers.

When there is nothing to indicate that a witness was actuated by improper motive, her positive and categorical declarations on the witness [stand under the' solemnity of an] oath deserved full faith and credit (*Pangonoram vs. People*, 455 SCRA 211). Further, in the case of *Sonia v. [Court of Appeals]* 175 SCRA 518 it was held that testimonies of witnesses are worthy of full faith and credit as there was no evidence of improper motive on their part to testify against Sonia.

As in the above cases, there was no motive on the part of [OOO] to testify against all of the accused than to declare that she was told [by] Cherrie Datu that she [would be hired] as [a] dancer but ended up working as a dancer offering sex services for a fee to foreigners in [redacted] in [redacted] managed by accused Jonathan Westlie Kell[e]y and that the accused Carlota Dela Rosa is a mama[sang] in the said bar.[35]

IV

While this Court sustains the findings of the Court of Appeals and the Regional Trial Court, further modification is in order. The Court of Appeals and the Regional Trial Court ordered the payment of moral damages only to OOO. This should be rectified.

Accused-appellants were found guilty of operating as a syndicate to commit qualified trafficking in persons. Their offense was committed as much against the 15 other women rescued on May 22, 2013 as it was against OOO. Even if it was only OOO who personally testified, her testimony, along with those of P/Supt. Puapo and PO3 Pagumpaton, and the entire corpus of evidence adduced by the prosecution attest to the manifold operation of accused-appellants whose object was by no means OOO alone. AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, and PPP are as much victims

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[35] *Id.* at 89.

of accused-appellants' sinister designs. They are each equally deserving of a measure of recompense. As such, this Court orders the payment of moral damages, not just to OOO, but to each of the 15 other victims rescued on May 22, 2013.

Likewise, each of accused-appellants contributed to realizing the objectives of their sinister operation. Their contributions may have been varied, but they were no less necessarily connected. Their culpability as knowing individuals each enabling and assisting a perverse scheme impels liability for damages from each of them to each of their victims.

WHEREFORE, the Court of Appeals' May 31, 2018 Decision in CA-G.R. CR-HC No. 08618 is **AFFIRMED with MODIFICATION**. This Court finds accused-appellants Jonathan Westlie Kelley, Carlota Cerera Dela Rosa, and Cherrie Nudas Datu **GUILTY** beyond reasonable doubt of violating Section 4 (a) in relation to Section 3 (c), Section 6 (c) and Section 10 (e) of Republic Act No. 9208 as amended by Republic Act No. 10364. They are each sentenced to suffer the penalty of LIFE IMPRISONMENT, and to each pay a fine of two million pesos (₱2,000,000.00). They are also ordered to pay AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, and PPP the sum of One Hundred Thousand Pesos (₱100,000.00) each as moral damages.

All damages awarded shall be subject to the interest rate of six percent (6%) per annum from the finality of this Decision until fully paid.[36]

SO ORDERED.

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

Gaerlan, J., on leave.

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

SECOND DIVISION

[G.R. No. 250003. June 22, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **NOLASCO MENDOZA,** *accused-appellant*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW, AND IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE, AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED. —** Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. Guided by this consideration, the Court finds it proper to modify Mendoza's convictions to two (2) counts of Simple Rape only, instead of Qualified Rape.

2. **CRIMINAL LAW; RAPE; ELEMENTS; RAPE SHALL BE QUALIFIED IF AT THE TIME OF THE COMMISSION OF THE OFFENSE, THE ACCUSED KNEW OF THE MENTAL DISABILITY, EMOTIONAL DISORDER, AND/OR PHYSICAL HANDICAP OF THE VICTIM. —** Under Article 266-A (1) of the RPC, the elements of Rape are: (*a*) the offender had carnal knowledge of the victim; and (*b*) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or by means of fraudulent machination or grave abuse of authority; or when the victim is under twelve (12) years of age, or is demented. Furthermore, these acts of Rape shall be qualified pursuant to Article 266-B (10) of the RPC if at the time of the commission of the offense,

the accused knew of the mental disability, emotional disorder, and/or physical handicap of the victim.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO WOMAN WOULD CONCOCT A STORY OF DEFLORATION, ALLOW EXAMINATION OF HER PRIVATE PARTS, AND SUBJECT HERSELF TO PUBLIC TRIAL OR RIDICULE IF SHE HAS NOT, IN TRUTH, BEEN A VICTIM OF RAPE AND IMPELLED TO SEEK JUSTICE FOR THE WRONG DONE TO HER BEING. —** The Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that Mendoza had carnal knowledge of AAA on two (2) separate occasions through force and intimidation. In this regard, case law states that no woman would concoct a story of defloration, allow examination of her private parts, and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being, as in this case. Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same. In view of the foregoing, the Court finds that Mendoza indeed committed the crime of Rape against AAA twice, and must be held criminally responsible therefor.

4. **CRIMINAL LAW; QUALIFYING AND AGGRAVATING CIRCUMSTANCES; THE PRESENCE OF QUALIFYING AND AGGRAVATING CIRCUMSTANCES CANNOT BE APPRECIATED AGAINST THE ACCUSED, EVEN IF DULY PROVEN BY THE PROSECUTION, WHERE THE SAME WERE NOT ALLEGED IN THE COMPLAINT OR INFORMATION, AS THE ACCUSED MUST BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; ACCUSED CANNOT BE CONVICTED OF THE CRIMES OF QUALIFIED RAPE, EVEN IF IT WAS PROVEN THAT HE KNEW OF THE VICTIM'S MENTAL DISABILITY AT THE TIME HE COMMITTED THE CRIMES AGAINST HER, WHERE**

HIS KNOWLEDGE OF SAID MENTAL DISABILITY WAS NOT ALLEGED IN THE INFORMATIONS. — [T]he Court cannot convict Mendoza of the crimes of Qualified Rape despite the courts *a quo's* uniform finding that he knew of AAA's mental disability at the time he committed the crimes against her, considering that his knowledge of said mental disability was not alleged in the Informations against him. In *People v. Lapore*, the Court reiterated the importance of alleging the presence of qualifying and aggravating circumstances in the complaint or information against an accused, and discussed the effect of the failure to do so, to wit: Sections 8 and 9 of Rule 110 of the [Revised] Rules on Criminal Procedure provide that for qualifying and aggravating circumstances to be appreciated, **it must be alleged in the complaint or information. This is in line with the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Even if the prosecution has duly proven the presence of the circumstances, the Court cannot appreciate the same if they were not alleged in the Information.** Hence, although the prosecution has duly established the presence of the aforesaid circumstances, which, however, were not alleged in the Information, this Court cannot appreciate the same.

5. ID.; SIMPLE RAPE; ACCUSED-APPELLANT FOUND GUILTY THEREOF; PENALTY OF *RECLUSION PERPETUA*, IMPOSED; CIVIL LIABILITY OF ACCUSED-APPELLANT. — [M]endoza may only be found guilty of two (2) counts of simple Rape, and accordingly, sentenced to suffer the penalty of *reclusion perpetua* for each count. [I]n light of prevailing jurisprudence, Mendoza should pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for each count of Simple Rape, all with legal interest at the rate of six percent (6%) per annum from 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.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] assailing the Decision[2] dated April 25, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10643, which upheld the modification with Judgment[3] dated May 17, 2017 of the Regional Trial Court of [redacted], Quezon, Branch 61 (RTC) in Criminal Case Nos. 10978-G and 10979-G finding accused-appellant Nolasco Mendoza (Mendoza) guilty beyond reasonable doubt of two (2) counts of Qualified Rape, defined and penalized under Article 266-A (1) in relation to Article 266-B of the Revised Penal Code (RPC).

The Facts

The instant case stemmed from two (2) Informations each charging Mendoza of Rape committed against AAA,[4] a mentally-disabled woman, the accusatory portions of which state:

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[1] See Notice of Appeal dated May 21, 2019; *rollo*, pp. 14-15.

[2] *Id*. at 3-13. Penned by Associate Justice Mario V. Lopez (now a member of the Court) with Associate Justices Zenaida T. Galapate-Laguilles and Tita Marilyn B. Payoyo-Villordon, concurring.

[3] CA *rollo*, pp. 55-68. Penned by Judge Maria Chona E. Pulgar-Navarro.

[4] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262 entiled, "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr*., 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND

Criminal Case No. 10978-G[5]

That on or about the 18th day of October 2009, at Barangay [redacted], Municipality of [redacted], Province of [redacted], Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a mentally disabled young woman, against her will, causing her impregnation, to her great damage and prejudice.

Contrary to law. (Underscoring supplied)

Criminal Case No. 10979-G[6]

That on or about the 4th day of April 2010, at Barangay [redacted], Municipality of [redacted], Province of [redacted], Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a mentally disabled young woman, against her will, to her great damage and prejudice.

Contrary to law. (Underscoring supplied)

The prosecution alleged that at around one (1) o'clock in the aftenoon of October 18, 2009, Mendoza forced AAA to go with him inside his *kubo*. Thereat, Mendoza removed AAA's shorts and underwear, laid on top of her, inserted his penis inside AAA's vagina, and thereafter, threatened her not to say anything about the incident. Several months later, or on April 4, 2010, a similar incident happened between Mendoza and AAA. AAA's mother, BBB, noticed that AAA's menstruation had stopped sometime in October 2009. However, she only discovered her daughter's ordeal under the hands of Mendoza

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POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.) See further *People v. Ejercito*, G.R. No. 229861, July 2, 2018.

[5] *Rollo*, p. 4.

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

on April 5, 2010 when she saw AAA crying; thereafter, the latter confided in her. AAA was then brought to a rural health center for examination where the medico-legal not only found her to be pregnant, but also found evidence that she had been sexually abused.[7]

In his defense, Mendoza mainly offered the defense of denial, averring that he is just a mere *habal-habal* driver who knew AAA only because she is a resident at the area and that he never had any dealings or interactions with her.[8]

The RTC Ruling

In a Judgment[9] dated May 17, 2017, the RTC found Mendoza guilty beyond reasonable doubt of two (2) counts of Qualified Rape and accordingly, sentenced him to suffer the penalty of *reclusion perpetua* for each count, and ordered him to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exmplary damages, for each count.[10]

The RTC found that the prosecution, through the very candid and consistent testimony of AAA, had established beyond reasonable doubt that Mendoza indeed had carnal knowledge of her on two (2) separate occasions. In light of such positive identification, not to mention the findings of the medico-legal officer, the RTC found untenable Medoza's defense of denial, especially considering that he did not even present evidence supporting such defense. Finally, the RTC opined that the crimes of rape committed by Mendoza should be qualified considering that the prosecution had also established the fact that he knew of AAA's mental disability, and the fact that she was already pregnant when the second rape incident happened.[11]

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

[8] See *Id*. at 5.

[9] CA *rollo*, pp. 55-68.

[10] *Id*. at 68.

[11] See *Id*. at 63-68.

Aggrieved, Mendoza appealed[12] to the CA.

The CA Ruling

In a Decision[13] dated April 25, 2019, the CA affirmed the RTC ruling with modification, sentencing Mendoza with the penalty of *reclusion perpetua* without eligibility for parole for each count, increasing the monetary awards due to AAA to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, and imposing legal interest on all monetary awards at the rate of six percent (6%) per annum from finality of judgment until full payment.[14] It held that Mendoza's bare and unsubstantiated denials must necessarily crumble in light of AAA's clear and positive testimony that he had carnal knowledge of her through force and intimidation on two (2) separate instances. On this note, the CA also upheld the RTC's ruling that Mendoza should be guilty of Qualified Rape considering that he knew of AAA's mental disability at the time he committed the said crimes.[15]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Mendoza is guilty beyond reasonable doubt of two (2) counts of Qualified Rape.

The Court's Ruling

Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the

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[12] Dated December 19, 2017. *Id*. at 11-12.

[13] *Rollo*, pp. 3-13.

[14] *Id*. at 12.

[15] See *id*. at 6-12.

appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[16]

Guided by this consideration, the Court finds it proper to modify Mendoza's convictions to two (2) counts of Simple Rape only, instead of Qualified Rape, as will be explained hereunder.

Article 266-A (1), in relation to Article 266-B of the RPC, respectively read:

Article 266-A. *Rape. When and How Committed*.– Rape is committed. –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Article 266-B. *Penalties*.– Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x x x x x x

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[16] See *People v. De Guzman*, G.R. No. 234190, October 1, 2018; citations omitted.

10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

x x x x x x x x x

Under Article 266-A (1) of the RPC, the elements of Rape are: (*a*) the offender had carnal knowledge of the victim; and (*b*) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or by means of fraudulent machination or grave abuse of authority; or when the victim is under twelve (12) years of age, or is demented. Furthermore, these acts of Rape shall be qualified pursuant to Article 266-B (10) of the RPC if at the time of the commission of the offense, the accused knew of the mental disability, emotional disorder, and/or physical handicap of the victim.

Here, the Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that Mendoza had carnal knowledge of AAA on two (2) separate occasions through force and intimidation. In this regard, case law states that no woman would concoct a story of defloration, allow examination of her private parts, and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being,[17] as in this case. Thus, the Court finds no reason to deviate from the factual findings of trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[18] In view of the foregoing, the Court finds that Mendoza

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[17] See *People v. Tubillo*, 811 Phil. 525, 533 (2017), citing *People v. Pareja*, 724 Phil. 759, 780 (2014).

[18] See *Arambulo v. People*, G.R. No. 241834, July 24, 2019, citing *Peralta v. People*, 817 Phil. 554, 563 (2017).

indeed committed the crime of Rape against AAA twice, and must be held criminally responsible therefor.

However, the Court cannot convict Mendoza of the crimes of Qualified Rape despite the courts *a quo*'s uniform finding that he knew of AAA's mental disability at the time he committed the crimes against her, considering that his knowledge of said mental disability was not alleged in the Informations against him.[19] In *People v. Lapore*,[20] the Court reiterated the importance of alleging the presence of qualifying and aggravating circumstances in the complaint or information against an accused, and discussed the effect of the failure to do so, to wit.:

> Sections 8 and 9 of Rule 110 of the [Revised] Rules on Criminal Procedure provide that for qualifying and aggravating circumstances to be appreciated, **it must be alleged in the complaint or information. This is in line with the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Even if the prosecution has duly proven the presence of the circumstances, the Court cannot appreciate the same if they were not alleged in the Information.** Hence, although the prosecution has duly established the presence of the aforesaid circumstances, which, however, were not alleged in the Information, this Court cannot appreciate the same. x x x[21] (Emphasis and underscoring supplied)

In view of the foregoing, Mendoza may only be found guilty of two (2) counts of Simple Rape, and accordingly, sentenced to suffer the penalty of *reclusion perpetua* for each count. Finally, and in light of prevailing jurisprudence,[22] Mendoza should pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for each count of Simple Rape, all with legal interest at the rate of six percent (6%) per annum from finality of this decision until fully paid.

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[19] See *rollo*, pp. 4-5.

[20] 761 Phil. 196 (2015).

[21] *Id*. at 203; citations omitted.

[22] See *People v. Jugueta*, 783 Phil. 806 (2016).

WHEREFORE, the appeal is **DISMISSED**. Accordingly, the Decision dated April 25, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10643 is hereby **AFFIRMED** with **MODIFICATION**, finding accused-appellant Nolasco Mendoza **GUILTY** beyond reasonable doubt of two (2) counts of Simple Rape, as defined and penalized under Article 266-A (1) of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua* for each count, and **ORDERED** to pay AAA the amounts of ₱75,00.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,00.00 as exemplary damages for each count, all with legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.

SO ORDERED.

Hernando, Inting, and *Delos Santos, JJ.*, concur.

Gaerlan,[*] *J.*, on leave.

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[*] Designated Additional Member per Special Order No. 2780 dated May 11, 2020.

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amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings. (*Id*.)

AGGRAVATING CIRCUMSTANCES

***Dwelling* —** Dwelling is aggravating because of the sanctity of privacy which the law accords to human abode; he who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere; dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor. (People *vs.* Lignes, G.R. No. 229087, June 17, 2020) p. 530

— In *People v. Mesias*, We held that "dwelling is not inherent in the crime of *Robbery with Homicide* and should be appreciated as an aggravating circumstance since the author thereof could have accomplished the heinous deed without having to violate the domicile of the victim." (*Id*.)

ALIBI AND DENIAL

***Defenses of* —** Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law; in this jurisdiction, we are replete of cases pronouncing that denial and alibi are inherently weak defenses because they can easily be fabricated; the accused-appellants' plain alibi cannot be accorded evidentiary weight than the positive declaration of credible witnesses. (People *vs.* Juare, *et al.*, G.R. No. 234519, June 22, 2020) p. 850

— Under Section 2 of PD 1612, Fencing is defined as the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft. (*Id.*)

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Section 3 (e) — For there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed; it must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence. (Sabaldan, Jr. *vs.* Office of the Ombudsman for Mindanao, *et al.*, G.R. No. 238014, June 15, 2020) p. 144

— The elements of the offense are: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference. (*Id.*)

— The offense under Section 3(e) may be committed in three ways; there is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another; "partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are"; evident bad faith, on the other hand, pertains to bad judgment as well as palpably and patently fraudulent and dishonest purpose to do moral obliquity

especially when these findings are affirmed by the Court of Appeals. (Ramil *vs.* Stoneleaf Inc./Joey de Guzman/ Mac Dones/Riselda Dones, G.R. No. 222416, June 17, 2020) p. 439

— Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect as they are specialized to rule on matters falling within their jurisdiction especially when supported by substantial evidence; the rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the quasi-judicial agency, as in this case. (The Roman Catholic Bishop of Malolos, Inc., *et al. vs.* The Heirs of Mariano Marcos, represented by Francisca Marcos *alias* Kikay, G.R. No. 225971, June 17, 2020) p. 481

— It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect, but even finality, and bind the Court when supported by substantial evidence; consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases; however, the Court may take cognizance of and resolve factual issues, when the findings of fact and conclusions of law of the LA are inconsistent with those of the NLRC and the CA. (Philippine Savings Bank *vs.* Genove, G.R. No. 202049, June 15, 2020) p. 1

***Factual findings of construction arbitrators* —** Courts should thus defer to the factual findings of the Arbitral Tribunal as held in *CE Construction Corp. v. Araneta Center, Inc.*: in appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it. (Wyeth

***Questions of fact* —** Forgery is the counterfeiting of any writing, consisting in the signing of another's name with intent to defraud; since it is not presumed, forgery "must be proved with clear, positive and convincing evidence" by the party alleging it; whether forgery exists on the checks is a question of fact, which requires reevaluation of evidence best left to the lower courts. (Philippine Savings Bank *vs.* Sakata, G.R. No. 229450, June 17, 2020) p. 545

— Questions of fact or those which require a review of the evidence to determine "the truth or falsehood of alleged facts" or involve the correctness of the lower courts' appreciation of the evidence are not proper in a Petition for Review on *Certiorari*; the function of the Court, not being a trier of facts, is limited to reviewing errors of law committed by the lower courts. (*Id.*)

***Questions of law and questions of fact* —** There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. (Domingo *vs.* Civil Service Commission, *et al.*, G.R. No. 236050, June 17, 2020) p. 587

ARREST

Warrantless arrest — Lawful warrantless arrest under Rule 113, Section 5 of the Revised Rules of Criminal Procedure states: SECTION 5. *Arrest without warrant; when lawful*. - A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has

and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged; being negligent in failing to detect the forgery, petitioner bears the loss. (Philippine Savings Bank *vs.* Sakata, G.R. No. 229450, June 17, 2020) p. 545

— A banking institution must be reminded of the oft-repeated principle that a purchaser or mortgagee cannot close its eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor; banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands. (Sy, *et al. vs.* China Banking Corporation, G.R. No. 213736, June 17, 2020) p. 398

— Banking institutions are imbued with public interest, and the trust and confidence of the public to them are of paramount importance; as such, they are expected to exercise the highest degree of diligence, and high standards of integrity and performance. (Philippine Savings Bank *vs.* Sakata, G.R. No. 229450, June 17, 2020) p. 545

— By the nature of its functions, a bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship; the prime duty of a bank is to ascertain the genuineness of the signature of the drawer or the depositor on the check being encashed, with reasonable business prudence. (*Id.*)

BILL OF RIGHTS

***Right against unreasonable search and seizure* —** As a rule, a search and seizure operation conducted by the authorities is reasonable *only* when a court issues a search warrant after it has determined the existence of probable cause through the personal examination under oath or affirmation of the complainant and the witnesses presented before the court, with the place to be searched and the

in nature, as well as all proceedings, either judicial or quasi-judicial. (*Id.*)

CERTIORARI

Petition for — A petition for *certiorari* is intended to correct errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction; grave abuse of discretion is defined by jurisprudence as the capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility. (BBB *vs.* Cantilla, G.R. No. 225410, June 17, 2020) p. 468

— It is well-settled that in an action for *certiorari*, the primordial task of the court is to ascertain whether the court *a quo* acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment; the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. (Say, *et al. vs.* Dizon, G.R. No. 227457, June 22, 2020) p. 782

— Section 4, Rule 65 of the Rules of Court, as amended by Administrative Matter No. 07-7-12-SC reads: SEC. 4. *When and where to file petition*, the petition shall be filed not later than sixty (60) days from notice of the judgment or resolution; in case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)-day period shall be counted from the notice of the denial of the motion. (BBB *vs.* Cantilla, G.R. No. 225410, June 17, 2020) p. 468

— There was no patent abuse of discretion which was so gross in nature amounting 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; what is only

practice of planting evidence should be present at or near the time of apprehension of the accused; this Court held that the time of the warrantless arrest is "the 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." (People *vs.* Del Rosario, G.R. No. 235658, June 22, 2020) p. 881

— It is essential to ensure that the substance recovered from the accused is the same substance offered in court; the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court. (People *vs.* Padua, G.R. No. 244287, June 15, 2020) p. 181

— Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of, and photograph, the seized drugs in the presence of: (a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) an elected public official; these four (4) witnesses should be present at the time of the apprehension of the accused and must all sign the copies of the inventory and obtain a copy thereof. (People *vs.* Del Rosario, G.R. No. 235658, June 22, 2020) p. 881

— The absence of these required witnesses does not *per se* render the confiscated items inadmissible; however, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced; in *People v. Umpiang*, the Court held that the prosecution

— This Court explained in *Malillin v. People* how the chain of custody or movement of the seized evidence should be maintained and why this must be shown by evidence, *viz*.: as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. (*Id.*)

— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. (People *vs.* Mejia *alias* "Dormie," G.R. No. 241778, June 15, 2020) p. 168

— To sustain a conviction for the offense of illegal sale or possession of dangerous drugs under R.A. No. 9165, it is of utmost importance to establish with moral certainty the identity of the confiscated drug; to remove any doubt or uncertainty on the identity and integrity of the seized drug, it must be shown that the substance illegally possessed or sold by the accused is the same substance offered and identified in court. (People *vs.* Del Rosario, G.R. No. 235658, June 22, 2020) p. 881

***Illegal possession of dangerous drugs* —** In cases for Illegal Possession of Dangerous Drugs under R.A. No. 9165, it is absolutely necessary that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failure to prove the integrity of the *corpus delicti* leaves the evidence for the State inadequate for a conviction and hence, warrants an acquittal. (People *vs.* Mejia *alias* "Dormie," G.R. No. 241778, June 15, 2020) p. 168

— The requisites of illegal possession of dangerous drugs, to wit: 1) that the accused was in possession of the object identified as a prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that

— The general rule then is that the awards of the Arbitral Tribunal may be appealed only on pure questions of law, and its factual findings should be respected and upheld. (*Id.*)

Construction Industry Arbitration Commission (CIAC) — An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction. (Wyeth Philippines, Inc. *vs.* Construction Industry Arbitration Commission ("CIAC"), *et al.*, G.R. Nos. 220045-48, June 22, 2020) p. 730

— On the costs of the arbitration, the CIAC Revised Rules of Procedure Governing Construction Arbitration, Rule 16, Section 16.5 states: *Decision as to costs of arbitration* - In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitral Tribunal, the Final Award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each of them. (*Id.*)

— The authority of the Commission proceeds from its technical expertise; the Construction Industry Arbitration Law states that arbitrators shall be persons of distinction in whom the business sector, particularly the stakeholders of the construction industry and the government can have confidence. (*Id.*)

— The Commission's authority is expounded in *CE Construction Corp. v. Araneta Center, Inc.*: the CIAC does not only serve the interest of speedy dispute resolution, it also facilitates authoritative dispute resolution; its authority proceeds not only from juridical legitimacy but equally from technical expertise; the creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. (*Id.*)

of the imposable penalty; (2) amendments that do not change the offense originally charged; (3) allegations that will not alter the prosecution's theory as to surprise the accused and affect their form of defense; (4) amendments that do not prejudice an accused's substantial rights; and (5) amendments that only address the vagueness in the information but do not "introduce new and material facts" and those which "merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged"; on the other hand, substantial amendments refer to the "recital of facts constituting the offense charged and determinative of the jurisdiction of the court." (*Id.*)

— In *Ricarze v. Court of Appeals*, this Court held that the test of determining whether an amendment is substantial is the effect of the amendment on the defense and evidence; an amendment is deemed substantial if the accused's defense and evidence will no longer be applicable after the amendment is made. (*Id.*)

— Unlike for a substantial amendment, a second arraignment is not required for a formal amendment; this is so because a formal amendment does not charge a new offense, alter the prosecution's theory, or adversely affect the accused's substantial rights. (*Id.*)

***Arraignment* —** Arraignment is the accused's first opportunity to know the precise charge pressed against them; during the arraignment, they are "informed of the reason for their indictment, the specific charges they are bound to face, and the corresponding penalty that could be possibly meted against them"; arraignment is not a mere formality, but a legal imperative to satisfy the constitutional requirements of due process. (Villarba *vs.* Court of Appeals, *et al.*, G.R. No. 227777, June 15, 2020) p. 84

— Due process in criminal prosecutions requires that an accused be "informed of the nature and cause of the accusation against him," a right enshrined in our very

— It is emphasized that the failure to designate the offense by statute or to mention the specific provision penalizing the act or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged; the actual facts recited in the information are controlling and not the title of the information or the designation of the offense. (People *vs.* Nocido, G.R. No. 240229, June 17, 2020) p. 653

— Rule 110, Section 6 of the Rules of Court provides the allegations fundamental to an information, namely: (1) the accused's name; (2) the statute's designation of the offense; (3) the acts or omissions complained of that constitute the offense; (4) the offended party's name; (5) the approximate date of the offense's commission; and (6) the place where the offense was committed; it is critical that all of these elements are alleged in the information; full compliance with this rule is essential to satisfy the constitutional rights of the accused; conversely, any deviation that prejudices the accused's substantial rights is fatal to the case. (Villarba *vs.* Court of Appeals, *et al*., G.R. No. 227777, June 15, 2020) p. 84

— Rule 110, Section 9 of the Rules of Court is clear that the information does not need to use the exact language of the statute; to successfully state the acts or omissions that constitute the offense, they must be "described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged"; furthermore, the use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient. (*Id*.)

— The allegations in the information are vital because they determine the real nature and cause of the accusation against an accused; they are given more weight than a prosecutor's designation of the offense in the caption; nevertheless, the wording of the information does not need to be a verbatim reproduction of the law in alleging the acts or omissions that constitute the offense. (*Id*.)

DAMAGES

is *reclusion perpetua* to death, such as in a case involving Robbery with Homicide, the principal consideration is the penalty provided for by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender. (People *vs.* Lignes, G.R. No. 229087, June 17, 2020) p. 530

— Jurisprudence has settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering; the award of exemplary damages is also proper to set a public example and to protect the young from sexual abuse. (People *vs.* Nocido, G.R. No. 240229, June 17, 2020) p. 653

***Exemplary damages* —** Case law states that "exemplary or corrective damages are imposed by way of example or correction for the public good, *in addition to* moral, temperate, liquidated, or compensatory damages; the award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions." (Lomarda, *et al. vs.* Engr. Fudalan, G.R. No. 246012, June 17, 2020) p. 689

***Moral damages* —** A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor or is done in a manner contrary to good morals, good customs or public policy; exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner; bad faith, under the law, does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud; it must be noted that the burden of proving bad faith rests on the one alleging it since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. (Gimalay

— As we held in *Fernandez v. Newfield Staff Solutions, Inc.*: Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work; a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal; the filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment. (The Roman Catholic Bishop of Malolos, Inc., *et al. vs.* The Heirs of Mariano Marcos, represented by Francisca Marcos *alias* Kikay, G.R. No. 225971, June 17, 2020) p. 481

— To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and manifested by some overt acts. (*Id.*)

***Burden of proof* —** In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause, and the employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense; if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. (Gimalay *vs.* Court of Appeals, *et al.*, G.R. Nos. 240123 & 240125, June 17, 2020) p. 627

***Doctrine of strained relations* —** An illegally dismissed employee is entitled to reinstatement as a matter of right; over the years, however, the case law developed that where reinstatement is not feasible, expedient or practical, as where reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement. (Nippon Express

constituting breach of trust, which act/s the courts must gauge within the parameters defined by the law and jurisprudence. (*Id.*)

— Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: 1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or 2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money or property; in any of these situations, it is the employee's breach of trust that his or her position holds which results in the employer's loss of confidence. (*Id.*)

ESTAFA

Estafa by means of deceit — The elements of *Estafa* under paragraph 2(a), Article 315 of the RPC are: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property. (Favis-Velasco, *et al. vs.* Gonzales, G.R. No. 239090, June 17, 2020) p. 613

Estafa through misappropriation — The elements of *Estafa* through misappropriation under Article 315, paragraph 1(b) are: (a) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (b) misappropriation or conversion by the offender of the

— For the courts to consider circumstantial evidence, the following requisites must be present: (1) there must be more than one circumstance; (2) the facts from which inferences are derived were proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. (People *vs.* Juare, *et al.*, G.R. No. 234519, June 22, 2020) p. 850

— It is well-settled that in the absence of direct evidence, the courts could resort to circumstantial evidence to avoid setting felons free and deny proper protection to the community; circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. (*Id.*)

— 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." (People *vs.* Lignes, G.R. No. 229087, June 17, 2020) p. 530

— The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated not singly but collectively; the guilt of the accused cannot be deduced from scrutinizing just one (1) particular piece of evidence; they are like puzzle pieces which when put together reveal a convincing picture pointing to the conclusion that the accused is the author of the crime. (*Id.*)

— This Court has recognized the reality that in certain cases, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence; 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. (People *vs.* Lignes, G.R. No. 229087, June 17, 2020) p. 530

contrary to morals, good customs, public order or public policy; and (3) is done with intent to injure." (Lomarda, *et al. vs.* Engr. Fudalan, G.R. No. 246012, June 17, 2020) p.

— Article 19, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties;" in this regard, case law states that "a right, though by itself legal because it is recognized or granted by law as such, may nevertheless become the source of some illegality. (*Id.*)

— Requires that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith; this provision of law sets standards which must be observed in the exercise of one's rights as well as in the performance of its duties. (Land Bank of the Philippines *vs.* Catadman, G.R. No. 200407, June 17, 2020) p. 363

— When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible"; "Article 19 is the general rule which governs the conduct of human relations; by itself, it is not the basis of an actionable tort; Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21." (Lomarda, *et al. vs.* Engr. Fudalan, G.R. No. 246012, June 17, 2020) p. 689

INJUNCTION

***Writ of* —** An injunction can either be a main action or a provisional remedy: injunction is defined as "a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act"; it may be filed as a main action before the trial court or as a provisional remedy in the main action. (Bagong Repormang Samahan

remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard; a preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order; it persists until it is dissolved or until the termination of the action without the court issuing a final injunction. (*Id.*)

INSURANCE CODE (P.D. NO. 612)

***Suretyship* —** A suretyship agreement is a contract of adhesion ordinarily prepared by the surety or insurance company; its provisions are interpreted liberally in favor of the insured and strictly against the insurer who, as the drafter of the bond, had the opportunity to state plainly the terms of its obligation. (Cellpage International Corporation *vs.* The Solid Guaranty, Inc., G.R. No. 226731, June 17, 2020) p. 515

— Section 175 of Presidential Decree No. 612 or the Insurance Code defined suretyship as an agreement where a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of a third person called the obligee. (*Id.*)

— Since the liability of a surety is determined strictly by the terms of the surety contract, each case then must be assessed independently in light of the agreement of the parties as embodied in the terms of the contract of suretyship; basic is the rule that a contract is the law between the contracting parties and obligations arising therefrom have the force of law between them and should be complied with in good faith. (*Id.*)

— The surety's liability is joint and several with the obligor, limited to the amount of the bond, and determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee. (*Id.*)

— Under Section 176 of the Insurance Code, the nature and extent of a surety's liability are as follows: SEC.

it must transpire after the judgment becomes final and executory. (Spouses Poblete *vs.* Banco Filipino Savings and Mortgage Bank, *et al.*, G.R. No. 228620, June 15, 2020) p. 112

— This Court has recognized that the dispositive portion of a final and executory judgment may be amended to rectify an inadvertent omission of what it should have logically decreed based on the discussion in the body of the Decision; the Court is vested with inherent authority to effect the necessary consequence of the judgment; however, it should be limited to explaining a vague or equivocal part of the judgment which hampers its proper and full execution; the Court cannot modify or overturn its Decision in the guise of clarifying ambiguous points. (*Id.*)

JUDICIAL AFFIDAVIT RULE (JAR)

***Filing and service of judicial affidavits* —** Section 2 (a) of the JAR mandates the parties to file and serve the Judicial Affidavits of their witnesses, together with their documentary or object evidence, not later than five (5) days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents. (Say, *et al. vs.* Dizon, G.R. No. 227457, June 22, 2020) p. 782

— Section 10 (a) of the Judicial Affidavit Rule further contains a *caveat* that the failure to timely submit the Judicial Affidavits and documentary evidence shall be deemed a waiver of their submission; however, it bears to note that Section 10 (a) does not contain a blanket prohibition on the submission of a belatedly filed judicial affidavit; as also stated in the same provision, the submission of the required judicial affidavits beyond the mandated period may be allowed once provided that the following conditions were complied, namely: *(a)* that the delay was for a valid reason; *(b)* it would not unduly prejudice the opposing party; and *(c)* the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00 at the discretion of the court. (*Id.*)

— Local governments possess delegated legislative power to regulate traffic; in *Legaspi v. City of Cebu*, this Court emphasized that local governments are given broad latitude in crafting traffic rules and regulations because they are familiar with the conditions of their localities; Section 458 anchors itself on the delegated police power provided in the general welfare clause of the Local Government Code. (*Id*.)

MOTIONS

***Omnibus Motion Rule* —** Section 8, Rule 15 of the Rules, commonly referred to as the "Omnibus Motion Rule," explicitly states: Section 8. *Omnibus Motion*. — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived; in turn, Section 1 of Rule 9 as mentioned in the above provision states that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived"; however, this rule is subject to the following exceptions: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription. (Pancho *vs*. Sandiganbayan (6th Division), *et al*., G.R. Nos. 234886-911 & 235410, June 17, 2020) p. 568

MOTION TO QUASH

***Filing of* —** Failure of the accused to move to quash information based on the ground of duplicity of the offenses charged is deemed a waiver of any objection on that ground due to his/her failure to assert it before he/she pleaded to the information. (People *vs*. VVV, G.R. No. 230222, June 22, 2020) p. 811

NEGOTIABLE INSTRUMENTS

***Forged signature* —** "A forged signature is a real or absolute defense, and a person whose signature on a negotiable instrument is forged is deemed to have never become a party thereto and to have never consented to the contract that allegedly gave rise to it"; as payment made under

— The Court has consistently refrained from interfering with the Ombudsman's determination of the existence of a probable cause; we have repeatedly explained: this Court's consistent policy has been to maintain non--interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. (*Id.*)

PENALTIES

Application of indivisible penalties — Robbery with Homicide is punishable by *reclusion perpetua* to death; Article 63 of the Revised Penal Code provides that in all cases in which the law prescribes a penalty composed of two indivisible penalties, and when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied; with an ordinary aggravating circumstance of dwelling, the imposable penalty is death; however, pursuant to Republic Act No. 9346, which proscribed the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua*, without eligibility for parole. (People *vs.* Lignes, G.R. No. 229087, June 17, 2020) p. 530

PHILIPPINE MINING ACT OF 1995 (R.A. NO. 7942)

Filing of expropriation — In the question as to whether petitioner, as transferee of mining rights, can file a complaint for expropriation, R.A. No. 7942 (Philippine Mining Act of 1995) provides that a grantee of an exploration permit may transfer or assign its rights to another operator subject to the approval of the Government. (Agata Mining Ventures, Inc. *vs.* Heirs of Teresita Alaan, Represented by Dr. Lorenzo Alaan, G.R. No. 229413, June 15, 2020) p. 130

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensable disability — For disability to be compensable, it (1) must be the result of a work-related injury or a work-related illness, and (2) must have existed during

PROCEDURAL RULES

***Construction* —** While it is conceded that procedural rules are to be construed liberally, it is also true that the provisions on reglementary period must be applied *strictly*, as they are indispensable to the prevention of needless delays and are necessary to the orderly and speedy discharge of judicial business. (BBB *vs.* Cantilla, G.R. No. 225410, June 17, 2020) p. 468

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

***Application of* —** Application for registration of both public and private lands is governed by P.D. No. 1529; Section 14 (1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of public domain since June 12, 1945 or earlier without regard to whether the land was susceptible to private ownership at that time; on the other hand, Section 14(2) of P.D. No. 1529 is registration of a patrimonial property of the public domain acquired through prescription; in both instances, the nature of the land being alienable and disposable land of public domain must be established; this is so because the Regalian Doctrine presumes that all lands which do not clearly appear to be within private ownership belongs to the State. (Republic *vs.* Spouses Dela Cruz, G.R. No. 220868, June 15, 2020) p. 74

— Section 14 (1) of P.D. No. 1529 requires the concurrence of the following: (1) the land or property forms part of the alienable and disposable lands of the public domain; (2) the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and (3) it is under a *bona fide* claim of ownership since June 12, 1945, or earlier. (*Id.*)

— To prove the classification of a land as alienable and disposable, a positive act of the Executive Department classifying the lands as such is necessary; for this purpose, the applicant may submit: (1) Certification from the CENRO or Provincial Environment and Natural Resources

government, and tarnished the image and integrity of the PNP; the constitutional portrait that "all government officials and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, efficiency, act with patriotism and justice, and lead modest lives" is not an empty and meaningless mandate, but must be relentlessly observed by public officers who are tasked and expected to embody this dictum in the performance of their duties. (Office of the Ombudsman *vs.* P/C Supt. Saligumba, G.R. No. 212293, June 15, 2020) p. 26

Misconduct — Misconduct is a transgression of some established and definite rule of action, particularly, as a result of a public officer's unlawful behavior, recklessness, or gross negligence; this type of misconduct is characterized for purposes of gravity and penalty as simple misconduct; the misconduct is *grave* if it involves any of the additional elements of corruption, clear willful intent to violate the law, or flagrant disregard of established rules, supported by substantial evidence. (Domingo *vs.* Civil Service Commission, *et al.*, G.R. No. 236050, June 17, 2020) p. 587

Serious dishonesty — The affixing of signatures by the members of the inspection and acceptance committee (IAC) in a document are not mere ceremonial acts but proofs of authenticity and marks of regularity; respondent's act of affixing his signature in Resolution No. IAC-09-045, which approved the purchase of helicopters which were found non-compliant with the guidelines of the Philippine National Police (PNP) constitutes serious dishonesty. (Office of the Ombudsman *vs.* P/C Supt. Saligumba, G.R. No. 212293, June 15, 2020) p. 26

QUALIFYING AND AGGRAVATING CIRCUMSTANCES

Allegation of — In *People v. Lapore*, the Court reiterated the importance of alleging the presence of qualifying and aggravating circumstances in the complaint or information against an accused and discussed the effect of the failure to do so, to wit: Sections 8 and 9 of Rule 110 of the

intercourse is committed with an offended party who is a child less than 12 years old or is demented, whether or not exploited in prostitution, it is always a crime of statutory rape; more so when the child is below 7 years old, in which case the crime is always qualified rape; *second*, when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A (1) (a) of the RPC; in contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed "exploited in prostitution or other sexual abuse," the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," which deemed the child as one "exploited in prostitution or other sexual abuse." (People *vs.* Nocido, G.R. No. 240229, June 17, 2020) p. 653

— In the prosecution of rape, the foremost consideration is the victim's testimony, and not the findings of the medico-legal officer; a medico-legal report is not indispensable in rape cases, as it is merely corroborative; the sole testimony of the victim if found to be credible, is sufficient to convict a person accused of rape. (*Id.*)

— It is well-settled that the crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the "mere touching of the external genitalia by a penis capable of consummating the sexual act"; that the slightest penetration of the male organ or even its slightest contact with the outer lip or the labia majora of the vagina already consummates the crime. (People *vs.* Agan *a.k.a.* "Jonathan Agan", G.R. No. 228947, June 22, 2020) p. 795

— Petitioner was charged and correctly convicted of rape through sexual assault under Article 266-A (2) of the

ROBBERY WITH HOMICIDE

***Commission of* —** A conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery; the intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery. (People *vs.* Juare, *et al.*, G.R. No. 234519, June 22, 2020) p. 850

— It exists when a homicide is committed either by reason, or on the occasion, of the robbery; in charging Robbery with Homicide, the *onus probandi* is to establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed. (People *vs.* Lignes, G.R. No. 229087, June 17, 2020) p. 530

— It is immaterial that the robber knows the exact value of the thing taken; it is not required for the prosecution to prove the actual value of the thing stolen as the motivation to rob exists regardless of the amount or value involved. (People *vs.* Juare, *et al.*, G.R. No. 234519, June 22, 2020) p. 850

***Elements* —** It requires the following elements: (1) taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is with *anima lucrandi*; and (4) by reason of the robbery, or on the occasion thereof, homicide is committed. (People *vs.* Juare, *et al.*, G.R. No. 234519, June 22, 2020) p. 850

ROBBERY WITH RAPE

***Elements* —** The crime of Robbery with Rape is a special complex crime which is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659; for one to be liable for the complex crime of Robbery with Rape, the following

SEARCHES AND SEIZURES

***Search of a moving vehicle* —** A variant of searching moving vehicles without a warrant may entail the setting up of military or police checkpoints; the setting up of such checkpoints is not illegal *per se* for as long as its necessity is justified by the exigencies of public order and conducted in a way least intrusive to motorists. (People *vs.* Sapla *a.k.a.* Eric Salibad, G.R. No. 244045, June 16, 2020) p. 240

— In order for the search of vehicles in a checkpoint to be non-violative of an individual's right against unreasonable searches, the search must be limited to the following: (a) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (b) where the officer simply looks into a vehicle; (c) where the officer flashes a light therein without opening the car's doors; (d) where the occupants are not subjected to a physical or body search; (e) where the inspection of the vehicles is limited to a visual search or visual inspection; and (f) where the routine check is conducted in a fixed area. (*Id.*)

— Peace officers in such cases, however, *are* limited to routine checks where the examination of the vehicle is limited to visual inspection; on the other hand, an extensive search of a vehicle is permissible, but only when the officers made it upon probable cause, *i.e.*, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains an item, article or object which by law is subject to seizure and destruction. (*Id.*)

— Routine inspections do not give the authorities *carte blanche* discretion to conduct intrusive warrantless searches in the absence of probable cause; when a vehicle is stopped and subjected to an extensive search, as opposed to a mere routine inspection, "such a warrantless search has been held to be valid only as long as the officers conducting the search have *reasonable or probable cause* to believe before the search that they will find the

— The known jurisprudential instances of reasonable warrantless searches and seizures are: (1) warrantless search incidental to a lawful arrest; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances. (*Id.*)

— There are, however, instances wherein searches are reasonable even in the absence of a search warrant, taking into account the "uniqueness of circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured." (*Id.*)

— There can only be an effective waiver of rights against unreasonable searches and seizures if the following requisites are present: 1. It must appear that the rights exist; 2. The person involved had knowledge, actual or constructive, of the existence of such right; and 3. Said person had an actual intention to relinquish the right. (*Id.*)

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

***Child abuse* —** The phrase "other sexual abuse" is construed in relation to the definitions of "child abuse" under Section 3, Article I of RA 7610 and of "sexual abuse" under Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases; "child abuse" as defined in the former provision refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters; on the other hand, "sexual abuse" as defined in the latter provision includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. (People *vs.* VVV, G.R. No. 230222, June 22, 2020) p. 811

themselves even authorized to adopt external measures or procedures in case an issue brought before them were not contemplated by the rules. (The Roman Catholic Bishop of Malolos, Inc., *et al. vs.* The Heirs of Mariano Marcos, represented by Francisca Marcos *alias* Kikay, G.R. No. 225971, June 17, 2020) p. 841

***Procedural rules* —** In *Tan, Jr. vs. Court of Appeals*, we discussed the exceptions to the rule that procedural laws are applicable to pending actions or proceedings. (Patenia-Kinatac-An, *et al. vs.* Patenia-Decena, *et al.*, G.R. No. 238325, June 15, 2020) p. 158

TRANSPORTATION LAW

***Certificate of public convenience* —** Among the powers of the Land Transportation Franchising and Regulatory Board is to issue certificates of public convenience; a certificate of public convenience is a permit authorizing operations of land transportation services for public use. (Bagong Repormang Samahan ng mga Tsuper at Operator sa Rotang Pasig Quiapo *via* Palengke San Joaquin Ikot, Inc., represented by its president, Cornelio R. Sadsad, Jr. *vs.* City of Mandaluyong, *et al.*, G.R. No. 218593, June 15, 2020) p. 50

— It is settled that a certificate of public convenience is a mere license or privilege; it does not vest property rights on the routes covered in it; as early as 1966, *Lagman v. City of Manila* clarified that the authority to issue certificates of public convenience does not remove a local government's power to regulate traffic in its locality; a grantee is still required to comply with national laws and municipal ordinances. (*Id.*)

UNJUST ENRICHMENT

***Principle of* —** 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." (Land Bank of the Philippines *vs.* Catadman, G.R. No. 200407, June 17, 2020) p. 363

WITNESSES

after all, testimonies are weighed, not numbered; it is inconsequential that only the victim testified on the events that transpired during the hazing. (Villarba *vs.* Court of Appeals, *et al*., G.R. No. 227777, June 15, 2020) p. 84

— The well-settled rule in this jurisdiction is that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect; findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. (Estrella *vs*. People, G.R. No. 212942, June 17, 2020) p. 374

— Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation; this is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty, and candor. (People *vs.* Juare, *et al.*, G.R. No. 234519, June 22, 2020) p. 850

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